

1988 May 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIS L. PANAYIS,

Applicant,

v.

THE PORTS AUTHORITY OF CYPRUS,

Respondents.

(Cases No. 451/86).

*Constitutional Law—Law of necessity—Constitution, Articles 122 and 125—
Public Service Commission—Cyprus Ports Authority—The power of the
Board to promote employees of the Authority—A departure from the afore-
said constitutional provisions justified by the Law of necessity.*

5 *Public Corporations—Promotions—The Cyprus Ports Authority—
Interviews—Failure to hold—Not a ground for annulment.*

10 *Reasoning of an administration act—The philosophy why reasoning is re-
quired—Factors taken into consideration must be specifically mentioned—
Reasoning must contain the way of thinking of the administration on the
facts—What is due reasoning is a question of degree—It may be supple-
mented from the material in the file—In this case, which concerns promo-
tions, the reasoning is faulty, because it does not convey why the interested
party was preferred to the applicant.*

15 *The principles applied to the facts of this case, which concerns promo-
tions made by the Board of the respondent Public Corporation, sufficiently
appear from the hereinabove notes.*

Sub judice decision annulled.

No order as to costs.

Cases referred to:

HjiGeorghiou v. The Cyprus Tourism Organisation (1986) 3 C.L.R. 1110;

The Cyprus Tourism Organisation v. HadjiDemetriou, (1987) 3 C.L.R. 780;

Republic v. Georghiadis (1972) 3 C.L.R. 594;

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Georghiadis and Others v. The Republic (1967) 3 C.L.R. 653;

HjiSavva v. The Republic (1972) 3 C.L.R. 174;

Tsouloftas and Others v. The Republic (1983) 3 C.L.R. 426;

Marangos v. The Republic (1983) 3 C.L.R. 682;

Co-Operative Society of Alona v. The Republic (1986) 3 C.L.R. 222.

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Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Port Engine Driver, 1st Grade in preference and instead of the applicant.

Ph. Valiantis, for the applicant.

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N. Papaefstathiou, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The relief prayed by applicant in this recourse is the annulment of the promotion of Georghios G. Panayi (interested party) to the post of Port Engine Driver, 1st Grade, with effect from 15.6.1986, in preference and instead of the applicant.

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The Respondents are a Corporation established by the Cyprus

Ports Authority Law, 1973 (Law No. 38/73). The Ports Authority is administered by a Board, consisting of seven members.

5 It was submitted by learned counsel for the applicant that the servants of the Authority are within the ambit of the definition of Public Service in Article 122 of the Constitution and the only competent authority for appointment, promotion, etc., of them, is the Public Service Commission envisaged in Article 125 of the Constitution. The Board of the Authority has, therefore, no competence.

10 The Public Service Commission, set up under the Constitution, ceased to function and a substitute was established by Law 33/67 with power limited to the servants of the Government.

15 *In Krinos I HjiGeorghiou, v. The Cyprus Tourism Organisation* (1986) 3 C.L.R. 1110, where a similar contention was raised with regard to the Cyprus Tourism Organisation, which was established by Law No. 54/69, I decided that the contraventions of the chapter of the Constitution dealing with the public service are justified by the law of necessity and consequently the statutory provisions of the Cyprus Tourism Organisation Law 1969 enabling the Cyprus Tourism Organisation to appoint and confirm, 20 emplace, promote, etc., of its employees, were not unconstitutional. (See, also, Revisional Appeal No. 665, *The Cyprus Tourism Organisation v. Agni HadjiDemetriou* (1987) 3 C.L.R. 780).

25 The submission of counsel in view of the aforesaid judicial decisions is untenable.

The powers of the Respondents with regard to promotions are found in sections 19 and 35 of Law 38/73.

30 The Board by virtue of its powers made Regulations. The material Regulations for the case are the Cyprus Ports Authority (Scheme and Other Conditions of Service of Officers) Regulations, 1982.

The terms and conditions of service are assimilated to those of civil servants as set out in the Public Service Laws (1967 - 1983). The promotion of the officers is decided on the basis of their merit, qualifications and seniority which is ascertained by applying mutatis mutandis the provisions of section 46 of the Public Service Law. 5

The Board has power to appoint an Advisory Committee. An Advisory Committee, which in effect has the duties and rights of the Departmental Board established under section 36 of the Public Service Law, was set up. 10

This Advisory Committee, having considered 19 applicants, recommended as suitable for promotion, in alphabetical order, four, including the applicant and the interested party.

The Board on whom the ultimate responsibility for the promotions rest reached the sub judice decision, which reads:- 15

"Το Συμβούλιο-

(α) Αφού έλαβε υπόψη όλα τα στοιχεία που είχε στη διάθεση του και άκουσε τις απόψεις της αρμόδιας υπηρεσιακής επιτροπής, αποφάσισεν όπως προσφερθεί προαγωγή στη θέση του Λιμενικού Μηχανοδηγού, 1ης Τάξης στον κ. Γεώργιο Γ. Παναγή, Λιμενικό Μηχανοδηγό 2ης Τάξης." 20

(" The Board-

(a) Having taken into consideration all the material before it and heard the views of the appropriate service committee, decided to offer promotion to the post of Port Engine Driver, 1st Grade, to Mr. Georghios G. Panayi, Port Engine Driver 2nd Grade.") 25

This decision is challenged on the grounds that the applicant was not heard by the Board; that it is not duly or at all reasoned; that the interested party did not have the required qualifications; 30

and that the Board failed to select the most suitable candidate, having regard to the three established factors, i.e. merit, qualification and seniority.

5 May I say that the first ground relates to interviews. Inter-
views, according to the case law of this Court, though they do
not have a statutory cloak, are a useful process, whereby qualifi-
cations and merit, especially for high posts in the hierarchy, are
ascertained. Performance at the interview is not a factor of its
10 own; it much be weighed together with all other relevant consid-
erations. It is not at all necessary for a Body to hold interview in
the promotion making process. Therefore this ground is untenable.

15 After an interim decision, evidence was adduced that the "ma-
terial" that the Board had before it consisted of the personal files
and the files of the confidential reports of the four candidates re-
commended by the Service Committee.

20 I have gone through their files, which are Exhibits before me,
and to say the least, neither of them is strikingly superior to the
other. It is not within my judicial duty in this case to make any
further comparison.

25 The Board should have made an evaluation of the material be-
fore it and, on the three factors that promotions are determined, to
record in its decision the reasons for preferring the promotee. The
Board is a Public Collective Organ. They have to keep written
records of their proceedings and give reasons for their decisions.

30 The requirement of due reasoning in administrative decisions
has been stressed on more than one occasion by Judgments of
this Court. The philosophy behind the requirement of reasoning
is that its presence excludes arbitrariness on the part of the admin-
istrative organ and protects the administration against itself by
preventing it from taking a hasty decision. The reasoning must be
clear, that is to say, the concrete factors upon which the adminis-
tration based its decision for the occasion under consideration

must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does not satisfy these conditions cannot be considered as due reasoning - (*Republic (Public Service Commission) v. Lefkos Georghiades* (1972) 3 C.L.R. 594, at p. 690). 5

In the case of promotions the Promoting Body has to make an evaluation of the candidates, a comparison between the candidates, having regard to the factors that are taken into consideration, and reach a decision after such evaluation and comparison. This process must be reflected and recorded in their decision. 10

What is "due reasoning" is a question of degree dependent upon the nature of the decision concerned. So long as the decision conveys, on examination of its contents and the background thereto, the reasons why a given decision is taken, it cannot be faulted for lack of due reasoning. The reasoning may be ascertained and supplemented from the material in the file of the Administration - (*Athos G. Georghiades and Others v. Republic (Public Service Commission)* (1967) 3 C.L.R. 653, 666; *Georghios HjiSavva v. Republic (Council of Ministers)* (1972) 3 C.L.R. 174; *Andreas Tsouloftas and Others v. The Republic of Cyprus* (1983) 3 C.L.R. 426; *Marangos v. The Republic* (1983) 3 C.L.R. 682; and *Co-Operative Society of Alona v. The Republic of Cyprus* (1986) 3 C.L.R. 222). 15 20 25

The decision is faulty. The reasoning is deficient. The sub judice decision falls short of the requirements of due reasoning. It does not convey the reasons why the Respondents preferred the interested party.

The reasoning cannot be ascertained, or supplemented from the material in the files of the applicant and the interested party. 30

It is not for this Court to make the necessary evaluation and give the reasons for the decision which were not recorded. This

was the task and duty of the Respondents.

In view of the foregoing, I consider it unnecessary to deal with the other grounds raised by counsel.

5 Sub judge decision is declared null and void and of no effect, but, in the circumstances, I make no order as to costs.

*Sub judge decision annulled.
No order as to costs.*