

1988 June 15

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ADAMOS ANDREOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 406/85).

*Public Officers—Promotions—Striking superiority—Review of Authorities
concerning the notion of striking superiority.*

5 *Public Officers—Promotions—Qualifications—Scheme of service—
Determination of the issue whether a candidate possessed the required quali-
fication—Judicial control—Principles applicable.*

10 The recourse whereby the promotion of the interested party was im-
pugned was dismissed on the following grounds, namely that the applicant
failed to establish striking superiority over the interested party and that, in
the circumstances, it was reasonably open to the respondent to find that the
interested party possessed the required for the post in question qualifica-
tion.

Recourse dismissed.

No order as to costs.

Cases referred to:

15 *Georgiades and another v. The Republic* (1970) 3 C.L.R. 257;

Demosthenous v. The Republic (1973) 3 C.L.R. 534;

Georghiou v. The Republic (1976) 3 C.L.R. 74;

HadjiSavva v. The Republic (1982) 3 C.L.R. 76;

Spanos v. The Republic (1985) 3 C.L.R. 1826;

Papapetrou v. The Republic, 2 R.S.C.C.61;

Josephides v. The Republic, 2 R.S.C.C. 72;

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Koukoullis v. The Republic, 3 R.S.C.C. 134;

Neophytou v. The Republic, 1964 C.L.R. 280;

Georgiades v. The Republic (1967) 3 C.L.R. 653;

Kolokotronis v. The Republic (1980) 3 C.L.R. 418.

Recourse.

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Recourse against the decision of the respondent to promote the interested party to the post of Senior Land Officer in preference and instead of the applicant.

A. *Georghiou*, for the applicant.

R. *Gavrielides, Senior Counsel of the Republic*, for the respondents.

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Cur. adv. vult.

KOURRIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Public Service Commission to promote the interested party, Tryphon Panayides, to the post of Senior Land Officer, in preference to and instead of him, is null and void and of no effect whatsoever.

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5 The post of Senior Land Officer is a promotion post and a Departmental Committee was set up under the provisions of s.36 of the Public Service Law, 1967 (Law No. 33/67). The Departmental Committee on 14.11.84 after consideration of the list of candidates for promotion and the qualifications required under the Scheme of Service, they recommended to the respondent Commission two candidates which were the applicant and the interested party.

10 The Commission at its meeting of 27.11.1984 heard the views and recommendations of the Director of Land Services, who recommended the interested party. The Commission then, in the absence of the Director, proceeded to make its own assessment and after a general evaluation of the candidates and a comparison between them it reached the conclusion, having taken into account
15 all relevant considerations, that the interested party was superior to the applicant and decided to promote him to the post of Senior Land Officer.

20 The applicant, feeling aggrieved because of the decision, filed the present recourse and the legal grounds on which he challenges the decision are the following:

1. The Commission failed to select the most suitable candidate having regard to seniority, merit and qualifications;
2. The Commission acted in excess and/or in abuse of power;
3. The Commission failed to carry out a due inquiry;
- 25 4. The decision for promotion of the interested party is lacking due reasoning;
- 30 5. The Commission acted under misconception of law because they ignored and/or did take into consideration and/or did not give due weight to the qualifications of the applicant in spite of the fact that the interested party is lacking qualifications as against the applicant.

I propose to deal with the first ground to the effect that the respondent Commission failed to select the most suitable candidate. The burden is upon the applicant to establish that he was strikingly superior to the interested party in order to succeed in his recourse. (*Georghiades and another v. The Republic* (1970) 3 C.L.R. 257 and *Demosthenous v. The Republic* (1973) 3 C.L.R. 534). 5

It is a settled principle of administrative law when an organ, such as the Public Service, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the other who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning (*Odysseas Georghiou v. The Republic* (1976) 3 C.L.R. 74 at p. 83). 10 15 20

The notion of striking superiority was expounded in the case of *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76 where at p. 78 it is stated:- 25

"As regards the expression 'striking superiority' suggests, a party's superiority, to validate an allegation of this kind must be self-evident and apparent from a perusal of the files of the candidates. Superiority must be of such a nature as to emerge on any view of the combined effect of the merit, qualifications and seniority of the parties competing for promotion; in other words, it must emerge as an unquestionable effect; so telling as to strike one at first sight." 30 35

Also, in the case of *Spanos v. The Republic* (1985) 3 C.L.R. 1826 it is stated by the Court at p. 1832 as follows:-

5 "To make out a case of striking superiority it must be established that applicant's superiority was so glaring as to provide an objective basis for interference. A decision reasonably open to the Public Service Commission is not vulnerable to be set aside on this ground i.e. decision they could have bona fide reached in the exercise of their discretionary powers. Striking superiority must be established by reference to the statutory
10 criteria for selection - namely merit, qualifications and seniority - and emerge in consideration of the facts of the case".

I have perused the contents of the confidential reports in respect of the applicant and the interested party for the years 1979-1983 and in my view the applicant and the interested party appear
15 to be candidates of more or less equal merit. As regards seniority I have duly considered the relevant stages in the careers of the applicant and of the interested party and it appears that the interested party is senior to the applicant by 2 years regarding their previous post (see Appendix 4A).

20 The main complaint of the applicant in this recourse is that he is in a superior position with regard to qualifications.

The applicant claims that the interested party did not possess the academic qualifications laid down by the scheme of service and that in any case the respondent Commission did not carry out
25 the sufficiently necessary inquiry into this most material aspect of the matter.

The required qualifications are a University Diploma or Degree in Law recognized as a qualifications for enrolment as an advocate in Cyprus under the Advocates Law or Estate Management or
30 other appropriate subject, or membership of an appropriate recognized professional body, or other academic or professional qualification approved as being of equivalent standard.

The applicant contended that the University Diploma in Law of the interested party is not actually a diploma in Law but a diploma in Public Law and Social Sciences of the University of Thessaloniki.

It may be pointed out at this stage that the applicant is the holder of a diploma in Urban Estate Management of the Polytechnic of Central London and he is also a Professional Associate to Royal Institute of Chartered Surveyors. 5

The Diploma of the interested party is attached to the address of the interested party and the qualifications of the interested party were before the respondent Commission, and as it is well established, it is not for the Court to decide whether a person appointed was qualified in a case where it was reasonably open to the Commission to find that he was so qualified, as the present case is. (See *Papapetrou v. The Republic*, 2 R.S.C.C. 61, *Josephides v. The Republic*, 2 R.S.C.C. 72; *Koukoullis v. The Republic*, 3 R.S.C.C. 134; *Neophytou v. The Republic*, 1964 C.L.R. 280; *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653 at p. 668). In these circumstances, I am satisfied that the respondent did not act either under a misconception of fact or under a misconception of law and consequently, this point fails. 10 15 20

If it was held that the applicant was superior to the interested party as regards qualifications, who was not in the present case, he was not found by the Commission to be on the whole superior to the interested party. Indeed, the applicant failed to satisfy this Court that he was a candidate strikingly superior to the interested party, due to qualifications or otherwise, so that the Court could intervene in his favour and annul the sub judice promotion of the interested party (See *Kolokotronis v. The Republic* (1980) 3 C.L.R. 418). 25 30

In view of the foregoing I am of the opinion that the applicant has failed to discharge the burden of establishing that he was strikingly superior to the interested party so as to justify the intervention of the Court in his favour. I would like to add that in pro-

ceedings such as the present recourse this Court will not interfere with the exercise of the discretion of the respondent Commission in making promotions if the decision of the Commission was reasonably open to it in the circumstances of a case; and in the present instance, on the basis of the material that was placed before the Commission and is now before me, it was, in my view, reasonably open to it to arrive at its sub judice decision. This Court cannot substitute its own decision for that of the Commission. Consequently, this point fails.

For all these reasons the recourse is dismissed but with no order for costs.

*Recourse dismissed.
No order as to costs.*