

1988 July 14

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS KAPITANIS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 373186).

5 *Natural Justice—Bias—Promotions of public officers—Confidential reports—Strained relations between reporting officer and officer reported upon stemming from the poor view taken by the former of the performance or conduct of the latter—They cannot establish a case of bias—Personal animosity stemming from an extraneous factor—Depending on the circumstances, it might be taken into account in determining whether there exists bias.*

*Public Officers—Promotions—Confidential reports—Preparatory acts—If void, they sweep with them to annulment every act that follows, including the final act.*

10 *General principles of administrative law—Preparatory acts—Consequences of these being null and void.*

15 *Public Officers—Promotions—Candidates coming from different branches of a department—Each one's performance in one's section should be taken into consideration, without considering which of the sections was the most important.*

The facts of this case sufficiently appear in the Judgment of the Court.

*Recourse dismissed.*  
*No order as to costs.*

*Cases referred to:*

- Christou v. The Republic* (1983) 3 C.L.R. 437; 5
- Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032;
- Masoura v. The Republic* (1984) 3 C.L.R. 631;
- Charalambides v. The Republic* (1983) 3 C.L.R. 992;
- Republic v. Haris* (1985) 3 C.L.R. 106;
- Agrotis v. Electricity Authority* (1981) 3 C.L.R. 503; 10
- Michaeloudis v. The Republic* (1979) 3 C.L.R. 56.

**Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Senior Technician in the Department of Antiquities in preference and instead of the applicant. 15

*St. Kittis with A.S. Angelides*, for the applicant.

*L. Koursoumba (Mrs.)*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act or decision of the respondent Commission by which it promoted Gregoris Christou to the post of Senior Technician in the Department of Antiquities as from the 1st April 1986 is null and void 20

and with no legal effect.

5 The relevant facts are these: The said post is a promotion post and according to the Law and the Regulations a Departmental Board was set up which recommended four of the candidates who had the required qualifications for selection for promotion to the said post including the applicant. The respondent Commission upon receiving the report of the Departmental Board decided to take into consideration three more candidates whose confidential reports were higher than the those recommended.

10 The Respondent Commission at its meeting of the 20th March, 1986 heard the views and recommendations of the Acting Director of the Department of Antiquities having invited him to take into consideration the candidates added to those recommended by the Board. In making his recommendations, which appear in the minutes of the respondent Commission (Appendix 6), he stated  
15 that the various candidates come from different branches of the Department, performing different types of duties. He went on then to describe each one to the seven candidates. He gave an outline of each one's personality, abilities and experience, and concluded by saying that only one who has experience in the management of personnel was Xenophon Michael whom he recom-  
20 mended.

The respondent Commission then examined the confidential reports in their totality and indicatively set out in its minutes the ratings of the candidates during the last six years. It also gave due  
25 weight to the qualifications of the candidates. From the point of view of seniority it said Kapitanis was leading having been promoted to the post of Technician 1st Grade as from the 15th February 1983 and there were following him in that order Christou, Papadopoulos, Michael, Zachariou, Socratous and Constantinou  
30 and it noted that it came to that order of seniority on the basis of their previous seniority and where that was the same on the basis of their age.

The respondent Commission then gave reasons why it could

not adopt the recommendation of the Acting Director of the Department and instead it selected the interested party pointing out that the latter had on the whole higher confidential reports and seniority in a previous post as against Xenophon Michael. It observed that each one of them was serving in the branch in which he had been posted but both had been reported upon by the same reporting and countersigning officers. 5

Under the circumstances and inspite of the statement of the Acting Director that the only one of the candidates who had experience in the management of personnel was Xenophon Michael, the Commission taking into consideration that the "officers do not choose themselves their duties but perform those duties that are assigned to them", came to the conclusion on the basis of the three objective criteria that Gregoris Christou was superior to the other candidates and decided to promote him to the said post. 10 15

This statement of the Law is a correct one and consistent with the Case Law. It has been held that it cannot be considered against an officer the fact that he has been exclusively engaged in certain duties; the kind of work which the officer performs on instruction by his superiors; the fact that he had not applied to be given certain kind of work so long as there does not emanate from the law such obligation, but such posting is up to the Administration. Nor that the officer did not administer certain department so that his ability therefrom could be determined as the Administration must afford to its officers the opportunity to develop their abilities assigning to them the exercise of competence analogous to their status. Yet it can lawfully be taken into consideration the fact that the officer has not assumed service analogous to his grade having frustrated same, by efforts outside the service, as well as the fact that by outside the service efforts he has frustrated the decision regarding his transfer. Furthermore it does not constitute a lawful element for adverse decision the fact that the officer has come by transfer from a relative branch of the service nor for the long time secondment of the officer to another service lawfully effected. As regards the latter principle there have been however later decisions of the Greek Council of State to the contrary, 20 25 30 35

(See *Conclusions of the Greek Council of State 1929 - 1959* p. 357.)

5 The first ground of Law relied upon by the applicant refers to the preparation of the confidential reports by the reporting officer with whom the applicant had "misunderstandings" and/or "differences" which led the reporting officer not to have friendly relations with him. In the case of *Christou v. Republic* (1983) 3 C.L.R. 437, it was held that bias and generally the absence of objectivity towards a subordinate officer has to be established by  
10 concrete facts. In view of this authority an affidavit was filed by the applicant himself aiming at establishing grounds of bias and the incorrectness of the rating of the reporting officer on the applicant. An affidavit in reply was filed by the Technical Inspector, who at the material time was Senior Technician in the Department  
15 of Antiquities and who states therein that was supervising the work of everybody working with him including that of the applicant and that he was briefing the reporting officer Mr. Louloubis and discussing with him the progress of the work of the applicant and the other officers at any given moment and the reporting officer had on account of that a clear picture and full knowledge of  
20 the performance of the applicant, the quality and level of his work and that he has been rated very fairly in the confidential reports.

25 On the totality of the circumstances and bearing in mind the argument advanced on behalf of the applicant by reference to the contents of the confidential reports and the variations that are to be found therein, I have come to the conclusion that this ground cannot succeed.

30 By having referred to the contents of the affidavit of Chryssilios Polycarpou I cover also the second ground of Law relied upon on behalf of the applicant to the effect that Mr. Louloubis, the reporting officer, did not have direct knowledge of the work or contribution of the applicant and therefore the confidential reports were made in violation of Regulation 4(a) of Circular 491/79 which governs the preparation of confidential reports.

Reference may be made here to our Case law on the matter of bias. In *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032 at p. 1035 the Full Bench held that the existence of strained relations between a superior and a subordinate emanating from their relations at work, stemming from the poor view taken by the superior of the services or conduct of his subordinate can never found bias. If this were the case, superiors would, in most cases be excluded from the evaluation of the services of those subordinates of whom they take a poor view. It would be otherwise if it was proved that there was personal animosity on account of any extraneous factor, then, depending on its nature and circumstances giving rise to it, it might be taken into account in determining whether a case of bias was established. Relevant on this issue are also the cases of *Masoura v. Republic* (1984) 3 C.L.R. 631 at p. 634, *Charalambides v. Republic* (1983) 3 C.L.R. 992 at p. 1006. *Republic v. Haris* (1985) 3 C.L.R. 106 at p. 117 (Full Bench).

Complaints that the reporting officer did not discuss the performance of the applicant with the officers having immediate supervision of the applicant do not also stand in view of the contents of the affidavit hereinabove referred to. The complaint, therefore, of the applicant that the respondent commission had before it irregularly and illegally prepared report does not stand. It is true that a confidential report is a preparatory act and that, if it is found to be null and void, it sweeps with it to annulment every act which follows it including the final act. See *Ntinis Agrotis v. Electricity Authority* (1981) 3 C.L.R. 503 at p. 513. *Michaeloudis v. The Republic* (1979) 3 C.L.R. 56 at pp. 71 - 72; but that situation does not arise from the circumstances of this case.

The third ground of Law relied upon on behalf of the applicant is that the recommendations of the Acting Head of the Department Mr. Papageorghiou were misleading and led the respondent Commission to a misconception of fact. More concretely it was urged that there were contradictions between the various remarks contained in the recommendation of the said officer and they were in conflict with the material in the file and these statements misled the respondent Commission and led it to wrong conclusions at the

expense of the applicant.

5 No doubt all the candidates are from different sections of the Antiquities Department. That was borne in mind by the respondent Commission and once they were all eligible for promotion the respondent Commission had to decide who was the best in the circumstances, judging the performance of each one in his own field mainly and not by considering which of the sections was the most important.

10 The last ground of Law relied upon is that the respondent Commission failed and/or omitted to carry out due inquiry. This is not borne out by the material before me as set out in the minutes of the respondent Commission. What it had before it included everything which could lawfully be taken into consideration by the Respondent Commission, that is the personal files of each candidate which disclose the professional qualifications, postings and careers of each one of them, the confidential reports which supplement the material as regards the career and postings as stated by the officer himself and the activities of the year, and set  
15 moreover the foundations for ascertaining the merit of each candidate and last but not least the recommendations of the Head of the Department that round up the picture of each candidate.  
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On the whole this recourse must fail and is hereby dismissed. The sub judice decision was taken in accordance with the general principles of administrative Law pertaining to the matter and the  
25 statutory provisions regulating the various issues raised and was reached, after a proper inquiry and is duly reasoned and the applicant has failed to establish striking superiority, as to lead this Court to the conclusion that the respondent Commission failed to exercise its administrative discretion on the matter properly.

30 For all the above reasons the recourse fails and it is hereby dismissed but in the circumstances there will be order as to costs.

*Recourse dismissed.*

*No order as to costs.*