

1988 September 10

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. IOANNIS ANGELIS,

2. GEORGHIOS ALEXANDROU,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 550/87).

*Public Officers—Promotions—Scheme of service—Interpretation and application of—Judicial control—Principles applicable—If decision of appointing organ was reasonably open to it both as a matter of construction and as a matter of application of the scheme to the situation of the candidates, this Court will not interfere, even if it entertains a different opinion.*

The facts of this case sufficiently appear in the Judgment of the Court. The outcome of this case depended on whether the interpretation placed by the Commission on the scheme of service for the post of Laboratory Assistant, 1st Grade (the scheme was approved by decision 25.772 of the Council of Ministers and its relevant part appears at pp. 1749-1750, post) was reasonably open to it.

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

*Petsas v. Republic*, 3 R.S.C.C. 60;

*Papaleontiou v. Republic* (1987) 3 C.L.R. 211;

*Nicolaides v. Municipality of Latsia* (1987) 3 C.L.R. 1496.

**Recourse.**

Recourse against the refusal and/or omission of the respondents to promote the applicants to the post of Laboratory Assistant, 1st Grade.

*A.S. Angelides*, for the applicants. 5

*A. Papasavvas*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. By the virtue of the proviso to section 44(1)(a) of the Public Service Law, 1967 (Law No. 33/67), promotion in cases of offices with a combined establishment may be made irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect. 10  
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According to general directions, issued by the Council of Ministers, promotion to the higher office is possible after the completion by the officer of the period of service required by the relevant scheme of service in the lower office or grade and the Head of the Department certifies that the officer: 20

(a) Performed his duties satisfactorily;

(b) Completed the period of service required by the scheme of service;

(c) Satisfies any other requirements of the scheme of service;

and 25

(d) He recommends the officer for promotion.

The final decision for the promotion of the Officer rests on the Public Service Commission in accordance with the law.

5 The above applies to all public officers who were appointed by the Public Service Commission and they serve in "offices with a combined establishment", an expression defined by law to mean two or more separate offices or two or more grades of the same office which have a common establishment.

10 The applicants were appointed on 15th February, 1984 to the post of "Laboratory Assistant" at the Higher Technical Institute. That post carried salary of the scale A5 and A7.

15 By the Public Officers (Restructuring of Certain Offices and Other-Connected Matters) Law, 1984 (Law No. 20/84) the post of Laboratory Assistant was renamed "Laboratory Assistant, 2nd Grade" with the same salary scale A5 and A7 and a new post, "Laboratory Assistant, 1st Grade", carrying a salary scale A8, was created. These offices were combined. Law 20/84 has a retrospective operation from 1st January, 1984.

20 On 8th May, 1984, the respondent Commission informed the applicants that the title of the post they were holding was replaced by "Laboratory Assistant, 2nd Grade", with effect 1st January, 1984.

25 On 9th May, 1985 by Decision of the Council of Ministers 25.772, a scheme of service was approved for the office of Laboratory Assistant, 1st Grade, which is, as we said earlier, a post combined with that of the 2nd Grade. The required qualifications are, at least 15 years service at the post of Laboratory Assistant, 2nd Grade, out of which at least three years on scale A7.

There is a note, however, to this scheme of service which reads as follows:

30 "Σημ.: Υπάλληλοι που υπηρετούσαν κατά την ημερομηνία εγκρίσεως του παρόντος Σχεδίου Υπηρεσίας δύνανται

να προαχθούν με ζετή τουλάχιστον υπηρεσία στη θέση Βοηθού Εργαστηρίου 2ης Τάξης στην Κλ. Α7, ή/και Βοηθού Εργαστηρίου. Ο όρος 'υπάλληλοι' περιλαμβάνει και πρόσωπα που υπηρετούσαν πάνω σε έκτακτη βάση ή/και με σύμβαση, η υπηρεσία τους όμως θα υπολογίζεται από την ημερομηνία διορισμού τους από την Επιτροπή Δημόσιας Υπηρεσίας στην οργανική θέση." 5

The applicant 1 was emplaced on scale A7 on 1st April, 1986.

On 27th February, 1987, the Acting Director of the Higher Technical Institute submitted recommendation on the prescribed form for the promotion of this applicant to the post of Laboratory Assistant, 1st Grade. 10

The respondent Commission on 27th March, 1987 considered this recommendation and decided that the applicant did not satisfy the prerequisite of service set out in the scheme of service. Their such decision, with its reasoning, was communicated to the Acting Director of the Higher Technical Institute by letter dated 4th April, 1987. 15

On 22nd April, 1987, counsel for the applicants sent letter - Appendix 8 - requesting the respondent Commission to promote both applicants, as they completed the three years service required by the scheme of service on 1st March, 1987. 20

On 28th May, 1987, the Commission communicated their negative answer to Mr. Angelides' request, duly reasoned, which in effect is a repetition of their decision of 27th March, 1987. 25

Hence this recourse, whereby the applicants pray for the annulment of the refusal and/or omission of the Respondents to promote the applicants to Laboratory Assistant, 1st Grade, and, further, a declaration of the Court that the interpretation of the scheme of service by the Respondents is contrary to law, null and void with no legal effect. 30

Counsel for the applicants contended that the respondent Commission wrongly and erroneously interpreted the scheme of service and wrongly and erroneously reached the conclusion that the applicants were holding the post of "Laboratory Assistant, 2nd Grade" and not that of "Laboratory Assistant".

It is well settled that the interpretation and application of a scheme of service is within the discretion and power of the appointing Authority. The power of this Court is limited to reviewing the exercise of their discretion. So long as their decision is one that is reasonably open, both as a matter of construction of a scheme of service and its application to the situation of candidates, there is no room for interference, notwithstanding a different opinion on the part of the Court on either of the two subjects. (See *Christoforos G. Petsas and The Republic (Public Service Commission)*, 3 R.S.C.C. 60; *Papaleontiou v. Republic* (1987) 3 C.L.R. 211, at pp. 220-221, where all the cases on the subject are cited; *Nicolaidis v. Municipality of Latsia*, (1987) 3 C.L.R. 1496).

An officer who does not possess the qualifications prescribed by the scheme of service lacks legitimate interest and is not entitled to pursue a recourse before the Administrative Court.

The Commission interpreted the note to the scheme of service of Laboratory Assistant, 1st Grade, as requiring either three years service at the post of Laboratory Assistant, 2nd Grade on scale A7, or the same length of service at the post of Laboratory Assistant. In applying this interpretation in the situation of these applicants, they said that the post of Laboratory Assistant ceased to exist as from the day that it was replaced by Laboratory Assistant, 2nd Grade, by Law 20/84, i.e., 1st January, 1984. Both applicants were appointed on 15th February, 1984, and therefore their service was at a post of Laboratory Assistant, 2nd Grade. They had no service at the post of Laboratory Assistant simpliciter.

The interpretation given by the Public Service Commission to the scheme of service, that it required three years service either as

Laboratory Assistant, 2nd Grade in the scale A7, or as Laboratory Assistant simpliciter - a post that existed prior to 1st January, 1984 - was not only reasonably open to them, but, indeed, it is the only permissible one.

In the present case the applicants were holding the post of Laboratory Assistant, 2nd Grade. Their service was not that of Laboratory Assistant simpliciter. 5

The applicants served in scale A7 as from 1st April, 1986. Therefore they have not completed the three years service in that scale. 10

The recommendation of the Acting Director of the Higher Technical Institute for applicant 1 was made under misconception.

The recommendation of the Head of the Department is a prerequisite for promotion without selection, under the proviso to section 44(1)(a) of Law 33/67. No such recommendation was made for applicant No. 2, and this omission, if any, is not challenged by this recourse. 15

In the present case, both the interpretation and the application of the scheme of service, in the circumstances, were not, in any way, faulty and they were reasonably open to the Respondents. The recourse is ill founded. 20

In the result, this recourse fails.

It is hereby dismissed with no order as to costs.

*Recourse dismissed with no order as to costs.* 25