1988 October 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI COSTA AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Consolidated Cases Nos. 859/87 & 990/87).

Legitimate interest—Promotions of public officers in the upper part of a combined establishment—No limitation of the number of posts in such part—Promotions effected without any comparison between applicants and interested parties—Whether, in view of the challenge mounted against the validity of the scheme of service, the applicants possess a legitimate interest to impugn the said promotions—Question determined in the negative—Meletis v. Cyprus Ports Authority and Another (1987) 3 C.L.R. 1984 distinguished.

Public officers—Promotions—Combined establishment—Legitimate interest to impugn promotions in the upper part of such an establishment—See legitimate interest, ante.

Public officers—Promotions—Combined establishment—Recourse challenging, inter alia, refusal to promote the applicant in the upper part of such establishment—As there was no such decision, the declaration sought falls in a vacuum.

Public officers—Scheme of service—Council of Ministers—They are the arbiters of the qualifications that are deemed necessary for promotion.

Public officers—Scheme of service—Vested rights—No officer has such a

right in the non-alteration of the schemes.

Constitutional Law—Equality—Constitution, Art. 28—Public Officers—Promotions—Differentiations on the basis of the qualifications of candidates—Permissible.

The facts of this case as well as what the Court held sufficiently appear in the notes hereinabove.

Recourses dismissed.
No order as to costs.

Cases referred to:

Meletis v. Cyprus Ports Authority and Another (1987) 3 C.L.R. 1984;

Georghiades v. The Republic (1982) 3 C.L.R. 16;

Aristidou v. The Republic (1984) 3 C.L.R. 503;

Serafim v. The Republic (1985) 3 C.L.R. 286;

Economides v. Republic (1972) 3 C.L.R. 506;

Papadopoulou v. Republic (1984) 3 C.L.R. 332.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Examiner, Second Grade in the Department of Official Receiver and Registrar of Companies in preference and instead of the applicants.

A.S. Angelides, for the applicants.

P. Hadjidemetriou, for the respondents.

A. Markides, for the interested parties.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants held the position of Examiner Third Grade in the Department of the Registrar of Companies and Official Receiver. Evdhokia Koulermou and Stelios Zachariou were likewise Examiners Third Grade in the same department. On 28/8/87 and 16/10/87, respectively, the interested parties were promoted to Examiners Second Grade, a position forming part of a combined establishment with that of Examiner Third Grade. By two separate recourses they challenged the promotion of each one of the interested parties. Notwithstanding the separateness of the two decisions, the issues raised in the two recourses are essentially similar and for that reason they were consolidated for purposes of hearing.

Detailed analysis of the facts will facilitate due appreciation of the context in which their promotions are challenged. To that end we shall apply ourselves forthwith.

The applicants and the interested parties were appointed Examiners third grade on 15/1/82. At the time, the position did not belong to a combined establishment. This was effected some four months later, on 24/5/82, by the introduction of a new scheme of service providing for the combinement of the two posts in one establishment. The scheme defines the requisites for ascending from the lower to the higher grade of the establishment. The interested parties had the qualifications provided by the scheme for promotion to the higher grade and were thus promoted on the dates indicated above. On the other hand, the applicants did not have the necessary qualifications for promotion to Examiners second grade. Consequently, the machinery for their promotion laid down in the Circulars affecting the effectuation of promotions within a combined establishment, was never set in motion.* No decision was taken at any time by the Public Service Commission refusing the promotion of the applicants, nor for that matter was the head of the department ever requested to put in motion the machinery for their promotion. Certainly, the head of the department

* (Circulars 608, dd. 27/1/82, and 750 dd. 14/11/85).

was under no obligation to make a recommendation for their promotion in view of the fact that they did not have the qualifications specified by the scheme of service.

Consequently, the declaration sought by the applicants for the invalidation of a decision of the respondents, falls in a vacuum, as there was none. Equally inconsequential is their prayer for a declaration that the respondents are guilty of an omission that they should remedy. They did not omit to carry out any of the duties cast on them by the Public Service Law or the scheme of service in force.

Notwithstanding the absence of a noticeable decision or omission the applicants asserted that they had a legitimate interest to pursue the recourse because of the challenge they mounted to the validity of the scheme of service. In their contention the scheme is ultra-vires the law and unconstitutional for breach of the provisions of article 28.1 of the Constitution, specifically that part that safeguards equality before the law and the Administration.

Applicants did not articulate their plea of ultra-vires nor did they refer to any law or regulation, the provisions of which were infringed by the introduction of the scheme of service under consideration. The submission of unconstitutionality is founded on the thesis that the provisions of article 28.1 were breached by the distinction made between holders of a degree and non holders in order to be promoted to Examiner third grade. At the time of their appointment to the position of Examiner second grade, no such differentiation was in force; though it must be stressed that at the time of their appointment the position of Examiner third grade and Examiner second grade were not combined in one establishment.

The recourses are ill founded for a number of different and independent reasons:

Applicants had no legitimate interest to impugn the promotion of the interested parties. Their promotion in no way prejudiced their rights present or future. It neither prevented their promotion

nor excluded them from consideration. What rendered them ineligible was the lack on the part of the applicants of the necessary qualifications for promotion. The scheme of service made no limitation to the posts in the upper part of the combined establishment that could be filled at any one time. Nor was any element of comparison involved in the promotion of the interested parties. Lack of legitimate interest to question the promotion of the interested parties is, in my judgment, a logical corollary of due appreciation of the realities of promotions within the context of the combined establishment. Furthermore, it is supported by a number of decisions of the Supreme Court.*.

Counsel of the applicants submitted that a legitimate interest vests to challenge promotions within a combined establishment if the scheme by reference to which they were promoted is challenged as invalid. In support of this proposition they cited the recent decision of the Full Bench in *Meletis v. Cyprus Ports Authority and Another.** Counsel for the Republic ultimately expressed the same view and suggested that applicants have a right to pursue the recourse up to the point of deciding the validity of the scheme of service. If the scheme is declared valid their interest will automatically lapse.

In *Meletis*, supra, it was decided that promotion may be challenged notwithstanding the eligibility of the pursuer to be promoted, if the scheme of service that rules out his candidature is challenged as invalid. The ratio in *Meletis* cannot be extricated from the facts of the case that are different from those of the one in hand. The promotions were not made in the context of a combined establishment. The filling of those posts left no room for the promotion of the applicants. Hence their interest to be promoted was directly prejudiced by the filling of the post to which they aspired to be promoted. Here the aspirations of the applicants to be promoted were in no way frustrated by the filling of the post; they were excluded merely because of the absence of the requisite

* (See, inter alia, Georghiades v. Republic (1982) 3 C.L.R. 16, 26; Aristidou v. Republic (1984) 3 C.L.R. 503; Serafim v. Republic (1985) 3 C.L.R. 286).

** (1987) 3 C.L.R. 1984.

qualifications on their part. A scheme of service, being a legislative instrument, cannot be directly challenged by recourse under article 146, but only indirectly, as acknowledged in the case of *Meletis* by the challenge of an administrative act founded thereon. As they had no legitimate interest to challenge the promotion of the interested parties, the validity of the scheme cannot be made the subject of adjudication. However, in the interest of completeness of this judgment, it may be added that even if I felt free to examine the validity of the scheme, the fate of the recourses would have been no different:

First, it is the province of the Council of Ministers to lay down in schemes of service those qualifications that are deemed necessary for promotion. They are the arbiters of the needs of the Civil Service in this area.

Second, no public officer has a vested right in the non alteration of the framework of the schemes of service applicable at the time of appointment or promotion.*

Third, as often acknowledged, there can be no conceivable impediment to differentiations made between the eligibility of candidates depending on their qualifications.

In the result, both recourses are dismissed. No order as to costs.

Recourses dismissed.
No order as to costs.

* (*Georghios Economides v. Republic* (1972) 3 C.L.R. 506; *Papadopoulou v. Republic* (1984) 3 C.L.R. 332).