

1988 November 16

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS YIALLOURIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 677/84, 680/84, 18/85,
38/85, 45/85, 69/85).

5 *Public Officers—First entry and promotion post—Combined establishment—
The Public Service Law, 1967 (Law 33/67), section 30—Scheme of ser-
vice limiting those qualified for first entry to higher post (First entry and
promotion post) to those serving as casual Assistant Assessors on scale
A 7—Not ultra vires the said law.*

*Constitutional Law—Equality—Constitution, Art. 28—Does not prohibit rea-
sonable differentiations.*

10 *Public Officers—Appointments/Promotions—First entry and promotion
post—Interviews, performance at—Weight—Delay of about a month in re-
cording impressions—Not such as to justify annulment.*

*Public Officers—Appointments/Promotions—First entry and promotion
post—Qualifications—Due inquiry in respect of.*

15 *Public Service Commission—May regulate its own procedure—Decision re-
versing a previous decision to hold written examinations of candidates for
appointment—Nothing irregular about it.*

By means of these recourses the appointments of the interested parties

to the post of Assistant Assessor 1st Grade and Assistant Assessor 2nd Grade are challenged.

Two of the questions that were raised for determination were whether the provision of the scheme of service, hereinafter referred to, was, ultra vires the Public Service Law, 1967 (Law 33/67), sections 29 and 30, and whether it was contrary to the principle of equality, safeguarded under Art. 28.

The relevant scheme of service defined the post of Assistant Assessor 1st grade as a first entry and promotion post. This post was combined with the post of Assistant Assessor 2nd grade. However, in virtue of a provision in the said scheme the only persons that could be appointed as first entrants to the first of the said posts were those, who served for at least two years on scale A.7 as casual Assistant Assessors.

The other issues that were raised for determination include:

- (a) The question whether the respondent Commission, once it decided to hold written examinations, could change its mind.
- (b) The question whether some of the candidates possess the necessary qualifications for appointment to the sub judge post.
- (c) The question whether the Commission attached undue weight to the performance of the candidates at the interview.
- (d) The question whether the delay in recording the impressions at the interviews (the interviews were held between 4th and 13th of October, whereas such recording was made on 16th of November of the same year) could lead to annulment, and
- (e) The question of the effect of the fact that the Head of the Department evaluated the performance at work of candidates who were casual employees whilst he failed to evaluate the performance of the applicants who were public officers.

Held:

- (1) The relevant provision in the scheme is not ultra vires the Public Service Law, 33/67. The scheme makes provision both for promotion and for first entry appointments, though in the latter case, those qualified belong to a limited class of persons.

- (2) The principle of equality does not preclude the adoption of reasonable differentiations. This is the case here because of the difference between the salary of those serving on scale A.7 and the salary of the other candidates, who were, also, serving in the Public Service.
- 5 (3) The Commission is free to regulate its own procedure. There was nothing irregular in the decision to reverse its previous decision relating to the holding of written examinations.
- 10 (4) The academic qualifications of three of the interested parties were such as to lead to the conclusion that unless they passed the Government Qualifying Examinations they were not qualified for appointment. Since there was nothing in their files about such examinations, their appointments have to be annulled for lack of due inquiry into their qualifications.
- 15 (5) In the light of the decision in *Public Service Commission v. Potoudes and Others* (1987) 3 C.L.R. 1591 the delay in recording the impressions at the interviews was not such as to lead to annulment.
- (6) Bearing in mind that the post of Assistant Assessor 2nd Grade is a First Entry post, the weight attached to the interviews was not an undue one in the circumstances.
- 20 (7) The Head of the Department evaluated the performance at work of those officers who were working in the Department. The non evaluation of clerks second grade was reasonable since they were performing different duties.

25 *Appointments of three interested parties annulled. Recourses as regards the other sub judice appointments dismissed. No order as to costs.*

Cases referred to:

Mikrommatis v. The Republic, 2 R.S.C.C. 125;

Constantinou v. The Republic (1966) 3 C.L.R. 572;

Georghiades and Another v. The Republic (1966) 3 C.L.R. 827;

Lazarou v. The Republic (1968) 3 C.L.R. 129;

Public Service Commission v. Potoudes and Others (1987) 3 C.L.R. 1591;

Nicolaidou v. Public Service Commission (1985) 3 C.L.R. 2492.

Recourses.

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Recourses against the decision of the respondents to appoint the interested parties to the post of Assistant Assessor 1st and 2nd Grade in preference and instead of the applicants.

E. Efsthathiou, for applicant in Case No. 677/84.

E. Lemonaris, for applicant in Case No. 680/84.

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Ph. Valiantis, for applicants in Cases No. 18/85 and 45/85.

A.S. Angelides, for applicants in Cases Nos. 39/85 and 69/85.

A. Vladimirov, for respondents.

A. Boyiadjis, for interested party *E. Yiassemides*.

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E. Hadjieftychiou, for interested parties *Th. Christodoulou* and *St. Theofanous*.

E. Odysseos, for interested party *Ch. Gavrielides*.

D. Parachrysostomou, for interested party *A. Anastassiou*.

Cur. adv. vult. 20

HADJITSANGARIS J. read the following judgment. All these recourses have been heard together as presenting common ques-

5 tions of law and fact. The applicants challenge the decision of the respondent, published in the Official Gazette of the Republic dated the 9th November 1984, whereby the interested parties were appointed to the posts of Assistant Assessor 1st and 2nd Grade as from the 1st November, 1984, instead of and in preference to the applicants.

10 The names of all interested parties appear in the attached appendix. Interested parties 1-12, inclusive, were appointed to the post of Assistant Assessor 1st Grade, whilst interested parties 13-27 to the post of Assistant Assessor 2nd Grade.

Applicant in case No. 69/85, Heraclis Thrassyvoulou, challenges the appointment of all 27 interested parties.

15 Applicants in cases Nos. 677/84, Andreas Yiallourides, 680/84, Costas Kalaidjis and 39/85, Kleanthis Kleanthous, Sophoulis Agapiou, Alexia Liatsou, Evdokia Nicolaou Chrysostomou, Andreas Polonos, Andreas Chrysostomou, Georghia Andreou and Sophia Ioannou, challenge the appointment of interested parties 13-27 inclusive.

20 Applicants in cases Nos. 18/85 and 45/85, Androulla Apostolidou and Maria Nicolaidou, challenge the appointment of interested parties 14-27 inclusive.

The facts which are common to all cases, are as far as relevant the following:

25 On the 24th of April, 1982, a number of vacancies in the combined posts of Assistant Assessor 1st and 2nd Grade in the Department of Income Tax were advertised in the Official Gazette of the Republic (appendix 9 to the opposition). The post of Assistant Assessor 1st Grade is a First Entry and Promotion post, whilst that of Assistant Assessor 2nd Grade is a First Entry post. The matter was referred to a Departmental Committee which was set up for the purpose. By its report, which was submitted to the respondent by letter dated the 5th January, 1983; the said Commit-

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tee recommended 189 candidates, amongst whom the applicants and the interested parties. During its subsequent meetings the respondent considered the report of the Departmental Committee and excluded 7 of the candidates recommended by it as not satisfying the requirements of the schemes of service regarding qualifications. The respondent also having originally decided to invite the qualified candidates for an interview later revoked such decision and decided to conduct written examinations, but finally reverted to its original decision. The interviews took place between the 4th and the 13th October, 1983, in the presence of the Director of the Department of Inland Revenue.

At its meeting dated the 11th November, 1983, the respondent heard the views of the Head of the Department regarding the performance of the candidates during the interviews as well as the performance at work of those serving as casual employees in the Department. At its next meeting dated the 16th November, 1983, the respondent made its own evaluation of the performance of the candidates during the interviews and having made a general evaluation and comparison of the candidates proceeded to the selection of 52 candidates amongst whom the interested parties, for the filling of an equal number of posts (appendix 40).

However, before the communication of the decision to the persons interested, the procedure for the filling of a number of the posts in question was terminated and that for the remaining posts suspended, upon the request of the appropriate authority.

The respondent met again on the 9th August, 1984, upon the request of the appropriate authority for the filling of 30 vacancies in the posts concerned. At that meeting the respondent reconsidered the matter and after a new evaluation and comparison of the candidates concerned selected 30 candidates, amongst whom the interested parties, for appointment to the vacant posts (appendix 47). The appointments were published in the Official Gazette of the Republic dated the 9th November 1984, as a result of which the present recourse were filed.

As stated earlier, by five out of the six recourses, the appointment of 15 persons to the post of Assistant Assessor 2nd Grade only is challenged, whilst by the sixth, No. 69/85, the appointment of another 12 persons to the post of Assistant Assessor 1st Grade is also challenged. I will deal first with that part of recourse No. 69/85, by which the appointment of the 12 interested parties to the post of Assistant Assessor 1st Grade is challenged.

Counsel for the applicant in this respect argued that the schemes service are ultra vires the Law, especially sections 29 and 30, in that, by note (3)(b) thereof, the applicant is treated in a discriminatory way vis a vis the interested parties who have a privileged treatment, and also, that the post of Assistant Assessor 1st Grade is not in fact a First Entry and Promotion post but only a Promotion post since the only persons who could have claimed the post as first entrants are the interested parties for whom a special provision was made.

The applicant in case No. 69/85 holds and was holding at the material time, the post of Collection Officer 2nd Grade. The interested parties were appointed as Casual Assistant Assessors in 1979. Although the applicant does not possess the qualifications prescribed by the scheme of service for the post of Assistant Assessor 1st Grade he possesses a legitimate interest to pursue this recourse in view of the fact that he is challenging the validity of such schemes.

The schemes of service, being in fact a form of subsidiary legislation, must conform with the provisions of the enabling law.

Section 30(1) of the Public Service Law, Law No. 33/67, provides as follows:

"30.-(1) Διά τους σκοπούς διορισμού ή προαγωγής αιθέσεις διαιρούνται εις τας ακόλουθους κατηγορίας:

(α)

(β) θέσεις Πρώτου Διορισμού και Προαγωγής, εις τας οποίας πρόσωπα μη τελούντα εν τη δημοσία υπηρεσία δύνανται να διορισθώσιν ή υπάλληλοι δύνανται να διορισθώσιν ή προαχθώσι."

And the translation in English:

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("30.-(1) For the purposes of appointment or promotion the posts are divided in the following categories:

(a)

(b) First entry and Promotion posts, to which persons not in the public service may be appointed or officers may be appointed or promoted.")

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Having carefully considered the provisions of the scheme of service for the post of Assistant Assessor 1st Grade, I find that the only instance in which a person may be considered as a first entrant is in the case of casual Assistant Assessors serving on scale A7 and having 2 years service. This, however, is not contrary to the provisions of section 30(1)(b). The category of the post has been defined in the scheme of service as a First Entry and Promotion, in accordance with the provisions of s.30(2) and the scheme does in fact make provision both for Promotion and First Entry cases, even though for a limited class of persons. I therefore find no merit in this part of the argument of counsel for applicants.

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The other leg of his argument concerns the privileged treatment of the interested parties which springs out of the provisions of the scheme of service thus rendering the said provisions unconstitutional. Again I find no merit in this part of counsel's argument. As I have found earlier the provisions of the scheme of service are not outside the context of the law. As a result the applicant, who does not belong to any of the categories referred to in the scheme of service, does not possess a legitimate interest to raise this point. In any event, as stated by the Court in a number of

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5 cases, an instance of discrimination can only arise if different treatment is meted out in two cases which are similar in all material respects and differentiations which are reasonably warranted by the inherent nature of things do not amount to discrimination under Article 28 or any other Article of the Constitution. (See *Mikrommatis and the Republic*, 2.R.S.C.C. 125; *Constantinou v. Republic* (1966) 3 C.L.R. 572).

10 In the present case, the provisions of note (3)(b) which allegedly create discrimination against candidates belonging to other categories (that is categories A(1)(a) and A(1)(b)) can be reasonably differentiated in that candidates under note (3)(b) are already serving in the post of Assistant Assessor, although on a casual basis, on scale A7, which is the same scale as that of the post of Assistant Assessor 1st Grade. In the case under A(1)(a) and A
15 (1)(b) the eligible candidates must be serving in the post of Assistant Assessor 2nd Grade, which carries a lower scale (A4). A differentiation as to the years of service required in the two categories is therefore reasonable.

20 For the above reasons I find that this argument of counsel fails and as a result the first part of recourse No.69/85, by which the appointment of interested parties 1-12, inclusive to the post of Assistant Assessor 1st Grade is challenged, is dismissed.

25 Since the applicant does not possess the qualifications required by the scheme of service for the post of Assistant Assessor 1st Grade no question of comparison between him and interested parties 1-12 arises. But in any event, if I was to compare them again I would have dismissed his recourse having regard to the totality of the circumstances and the fact that he had been assessed both
30 by the Director of the Department and the respondent as "good" whilst the evaluation of the interested parties by the Director ranges from «almost very good» to «excellent» and by respondent from "very good" to "very very good". The interested parties have also been evaluated as excellent to their work by the Director.

I will now proceed to deal with the second part of recourse No. 69/85 and all other recourses together. The points of Law raised which are common to all recourses are the following:

1. The Departmental Committee did not give reasons for the selection of the 189 candidates which it recommended as the most suitable. 5
2. The respondent, although it had already decided to submit the candidates to written examinations, later changed its decision without giving reasons.
3. The recording by the respondent of the impressions during the interviews was not contemporaneous. 10
4. The Head of the Department evaluated the performance of casual employees at their work but failed to do the same about the applicants, who were public officers.
5. Undue weight was placed to the performance of the candidates during the interviews. 15
6. Outsiders were preferred for appointment to the applicants, who were public officers, without special reasons.
7. Lastly, counsel for applicant in case No. 680/84, argued that certain of the interested parties do not possess the qualifications prescribed by the scheme of service. 20

I will deal with the last ground first. The interested parties who allegedly do not possess the qualifications required are Nos. 14, 15, 16, 18, 19, 20, 21, 23, 24, 25 and 27. Counsel argued that the diplomas possessed by these candidates are equivalent to L.C.C. Higher in accordance with notes (6) and (7) of the scheme of service and they should have therefore passed the Government Qualifying Examinations (B.(1)(β) of the scheme of service) in order to be eligible for appointment. 25

5 I have considered the qualifications of these parties very carefully but I cannot accept that the Diploma of either Athens University or Aristotelion University of Salonica in Economics, which are possessed by interested parties Nos. 15, 16, 18, 19 and 27
10 corresponds to note (7) of the scheme of service, which is a Diploma in Higher Commercial Studies. Those Diplomas are University Diplomas and were rightly treated as so by the respondent. These interested parties are therefore qualified under provision B(1)(α) of the scheme of service and did not have to pass the Government Qualifying Examinations. In any event, interested parties Nos. 19 and 27 have also passed the Government Qualifying Examinations. The same applies to interested parties
15 Nos. 21 and 25 who possess a Diploma of Pantios Higher School of Political Science in Public Administration as well as interested party No. 24, who possesses a diploma of the Highest Industrial School of Salonica in Economics. They were also rightly treated as being qualified under B.(1)(α) of the scheme of service and did not have to pass the said examination.

20 Interested parties Nos. 14, 20 and 23, however, possess a diploma of the Athens Highest School of Commercial and Economic Studies, which is enumerated under note (6) of the scheme of service as being equivalent to L.C.C. Higher in Accounting. These parties, as a result, should have passed the Government Qualifying examinations in order to be eligible for appointment,
25 having regard to provision B.(1)(β) of the scheme of service. Since nothing appears in their files to this effect I find that the respondent failed to conduct a due inquiry into the matter and as a result the recourses against these interested parties succeed and their appointment must be annulled.

30 I will now deal with the other grounds of the recourses, against the remaining interested parties.

35 With regard to the first ground, it is clear from the contents of the report of the Departmental Committee that its selection was based on the totality of the material before it, which were the qualifications of the candidates, the personal and confidential files

of those of them who were public officers, and their performance at the interviews before it. This ground therefore fails.

As to the second ground raised, it has been stated in a number of cases that the Public Service Commission is free to regulate its own proceedings (see *Georghiades & Another v. Republic* 5 (1966) 3 C.L.R. 827; *Lazarou v. Republic* (1968) 3 C.L.R. 129). I find nothing wrong or irregular in the decision of the respondent to change its previous decision and as a result this ground also fails.

The next point raised is the non-contemporaneous recording of the results of the interviews by the respondent. The interviews took place on different dates between the 4th and 13th October 1983, whilst the assessment by the respondent of the performance of the candidates during such interviews was recorded at its meeting of the 16th November, 1983, that is about four to five weeks later. In the Full Bench case of *The Public Service Commission v. Marina Potoudes and Others* (1987) 3 C.L.R. 1591 the facts of which are similar to those in the present cases, it was found that the time of 39-79 days which had elapsed between the interviews and the recording of their results was not such as to annul the decisions concerned on that ground. Following the above case I will dismiss this ground as well. 10 15 20

I come now to ground 4, by which the applicants complain that the Head of the Department failed to evaluate their performance at work whilst he did so in the case of certain of the interested parties who are casual employees. It is obvious from the contents of appendix 39, which contains the views of the Head of the Department about each one of the candidates interviewed, that he evaluated the performance at work of those officers who were working in the Department, which does not include only certain of the interested parties, but also certain of the applicants (applicants in cases Nos. 677/85, 45/85 and applicant Polonos in case No. 39/85). 25 30

With regard to the other applicants, who were clerks 2nd

Grade, I find that the course followed by the Head of the Department not to evaluate their performance at work was a reasonable one in the circumstances since they were performing different duties. As a result this ground is also dismissed.

5 As to the weight which was placed at the interviews, although
the respondent preferred for appointment those who performed
better at the interviews before it this was not the only criterion
taken into consideration, but it was over and above the qualifica-
10 tions of the applicants and the performance at work of those serv-
ing within the Department. Bearing in mind that the post of As-
sistant Assessor 2nd Grade is a First Entry post, the weight
attached to the interviews was not an undue one in the circum-
stances (see *Nicolaidou v. The Public Service Commission*
15 (1985) 3 C.L.R. 2492 at p. 2500 and also the Full Bench case of
The Public Service Commission v. Marina Potoudes and Others
(supra)).

What remains to be considered is the last point concerning the appointment of outsiders instead of the applicants who were public officers.

20 The paramount duty of the respondent is to select the best candi-
dates for appointment. As I said earlier the majority of the appli-
cants were clerks 2nd Grade in various Departments and their du-
ties have nothing to do with those of the post under
consideration. Applicants Yiallourides, Polonos and Nicolaidou,
25 although they were working in the Department, were casual em-
ployees and this does not put them in an advantageous position
vis a vis other outsiders as they are also considered as such (*Nic-
olaidou v. Republic* (supra) at p. 2499). As it transpires from the
various minutes of the respondent and especially appendices 40
30 and 47, the respondent selected those of the qualified candidates
who performed better at the interviews before it, taking also into
consideration the evaluation of their performance by the Director.
All interested parties have been assessed by the respondents as
"very good" with the exception of interested party No. 21 who
35 has been assessed as "very very good". The assessment of the

Director about the same parties ranges between "very good" and "excellent" with the exemption of interested parties 20 and 22 who have been assessed as "almost very good". All applicants on the other hand have been assessed by the respondent as "almost very good" with the exemption of applicant in case No. 69/85 who has been assessed as "good" both by the respondent and the Director. The assessment of the applicants by the Director ranges from "good" to "very very good".

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Taking into consideration all the material before me, which was also before the respondent, I find that the sub judice decision was reasonably open to the respondent and the applicants, or any of them, failed to establish striking superiority over these interested parties.

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In the result these recourses succeed partly, as against interested parties A. Anastassiou, Chr. Michaelides and A. Tsolakis, and are dismissed as against the remaining interested parties. In the circumstances I have decided not to make any order as to costs.

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*Sub judice decision
partly annulled.*

No order as to costs.

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APPENDIX

1. Charalambos Gavriel.
2. Agathi Georghiadou - Theofilou.
3. Anastasios Constantinou.
4. Gregoris Petrou.
5. Nicos Prokopiou.
6. Efpraxia Roussou.
7. Maria Tsolaki.
8. Maria Gregoriadou.
9. Eleni Damaskinou.

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10. Pantelitsa Chimona.
11. Egli Christoudi.
12. Niki Chrysantou.
13. Angelos Antoniou.
- 5 14. Anastasia Anastassiou.
15. Charalambos Gavrielides.
16. Yiangos Yiangou.
17. Elefteria Yiassemidou.
18. Monalita Evripidou.
- 10 19. Stavroulla Theophanous.
20. Chrysis Michaelides.
21. Sophia Pelava.
22. Sotiris Pierides.
23. Andreas Tsolakis.
- 15 24. Vera Charalambous - Chlorakioti.
25. Vyron HadjiGeorghiou.
26. Panikos HadjiYiannis.
27. Theodotos Christodoulou.