

1988 February 3

[LORIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHRISTOFOROU,

Applicant

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent
(Case No 122/86)

*Public Officers—Promotions—Head of Department—Recommendations of—
Adequate reasons should be given for deviating therefrom—A candidate's
superiority of merit and qualifications is a powerful reason for such
deviation*

5 *Public Officers—Promotions—Qualifications—Scheme of service—
Interpretation and application of—Judicial control—Principles applicable*

*Public Officers—Promotions—Seniority—It prevails, if all other criteria are
more or less equal*

10 The applicant impugns by means of this recourse the promotion of the
interested party to the post of Senior Animal Husbandry Superintendent on
two grounds, i.e. failure of the respondent Commission to give sufficient
reasoning for not adopting the recommendations of the Head of the
Department and erroneous interpretation of the Scheme of Service

15 The Commission considered the diploma of the interested party
(Diploma of the Agronomic Mediterranean Institute) as an additional advantage
under para 4* of the Scheme of Service

* Quoted at 214 post

The applicant was senior to the interested party by about two years, but the latter was Superior both in merit, as reflected from the confidential reports, and qualifications

Held, dismissing the recourse (1) The Commission interpreted the scheme of service in a manner, which was reasonably open to it

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(2) Seniority prevails, if all other criteria are more or less equal.

(3) Superior merit and qualifications constitute powerful reasons for not adopting the recommendations of the Head of the Department. In this case such recommendations were not, in the light of their wording* consonant with the confidential reports or the material in the personal files as far as qualifications are concerned

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The superior merit and qualifications of the interested party are clearly recorded in the minutes of the Commission and form reasons for deviating from the recommendations of the Head of the Department

Recourse dismissed
No order as to costs

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Cases referred to

Frangoulides and Another v The Public Service Commission (1985) 3 CL R. 1680;

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

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Republic v Xinari & Others (1985) 3 C.L.R. 1922,

Partellides v The Republic (1969) 3 CL R 480,

Theodosiou v. The Republic, 2 R.S C C 44

Constantinou v The Republic (1984) 3 C.L R. 498,

Michael & Another v Republic (1984) 3 CL R 769,

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Ioannou v Republic (1983) 3 C.L.R 449,

HjIoannou v Republic (1983) 3 CL R 1041.

* Quoted at p. 215 post.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Animal Husbandry Superintendent in preference and instead of the applicant.

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

A. Vladimirov, for the respondent.

Cur. adv. vult

10 LORIS J. read the following judgment. The present recourse is directed against the decision of the respondent P.S.C. , published in the official Gazette of the Republic dated 31.1.86 whereby the interested party namely Vasso Tourpeki, was promoted to the permanent post of Senior Animal Husbandry Superintendent, in preference to and instead of the applicant.

The main complaints of the applicant are the following:

15 (A) Failure of the respondent P.S.C. to give sufficient reasoning for not adopting the recommendations of the Head of the Department in favour of the applicant.

20 (B) Erroneous interpretation of the relevant Scheme of Service by the respondent P.S.C. leading to a misconception, as allegedly the Diploma of the Agronomic Mediterranean Institute (1962-1963) possessed by the interested party did not constitute an additional advantage envisaged by paragraph (4) of the Scheme of Service.

25 Before proceeding with the examination of the complaints of the applicant I consider it pertinent at this stage to examine: the merit, qualifications and seniority of the applicant and the interested party:

Merit as it transpires from the relevant confidential reports: Ap-

plicant was rated "very good" for the last three years 1982 (2-10-0), 1983 (4-8-0) 1984 (5-7-0), whilst the interested party was rated for the same years "excellent" 1982 (9-3-0), 1983 (9-3-0), 1984 (9-3-0).

Qualifications: It is apparent from the relevant personal files and the list marked "Appendix A" attached to the opposition, that the interested party is better qualified than the applicant . Furthermore the respondent P.S.C. acting within its province held that the Diploma of the Agronomic Mediterranean Institute possessed by the interested party, having been acquired after 2 years studies abroad (1962-1963) (vide in this connection refs 46 and 47 in her personal file), was an additional advantage envisaged by paragraph (4) of the Scheme of Service which reads as follows:

" Δίπλωμα ή πιστοποιητικόν ανεγνωρισμένου Κολλεγίου εις Γεωπονίαν ή εις θέμα σχετικόν με τας δραστηριότητας του τμήματος Γεωργίας θα θεωρήται ως πρόσθετον προσόν".

(English Translation):

"(4) Diploma or certificate of a recognised College in Agriculture or in a subject relevant to the activities of the Department of Agriculture will be considered as an additional qualification."

"It has been a well established principle of Administrative Law, constantly reiterated by this Court in a series of cases recently reviewed in *Frangoulides and Another v. P.S.C.* (1985) 3 C.L.R. 1680 at p. 1684, that in deciding whether or not the Public Service Commission, in a given case, has conformed with the relevant Scheme of Service, the Court will not give to such Scheme of Service a different interpretation other than that given to it by the Public Service Commission, provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question (see *Papapetrou and the*

Republic, 2 R.S.C.C 61 at p. 69)".(Vide *Republic v. Xinari & others* (1985) 3 C.L.R. 1922 at p. 1928).

5 In the case under consideration bearing in mind the above principle and having examined para (4) of the Scheme of Service, the relevant Diploma of the Interested party, and the decision of the respondent, I hold the view that the relevant interpretation of the respondent P.S.C. was reasonably open to it.

10 In this connection I feel that it should be added here, that, if the statement of the Head of the Department, namely Mr. Phokas, before the P.S.C. (to the effect that "Tourpeki has the additional qualification, but her qualification does not appear to be relevant to the duties she is performing ") , was meant to provide his own interpretation to the said paragraph of the Scheme of Service, then it must be stated, with respect, that the relevant paragraph of the
15 Scheme does not provide for a qualification "relevant to the duties of the post " but for a "diploma or certificate..... in Agriculture or in a subject relevant to the activities of the Department of Agriculture....."

20 In view of the above it is obvious that the interested party was not only better qualified than the applicant, but she in fact possesses an additional qualification envisaged by paragraph (4) of the Scheme of Service.

25 In the circumstances seniority could play no role, inspite of the fact that the applicant has a seniority of about two years over the interested party (having been promoted to the post of Animal Husbandry Supt. 1st grade on 1.7.76 whilst the interested party was promoted to the said post on 1.6. 78), as seniority will prevail if all other criteria are more or less equal (vide *Partellides v. The Republic* (1969) 3 C.L.R. 480), which is not the present
30 case.

Reverting now to the question of merit. It is true that the recommendation of the Head of the Department is a weighty consideration which enhances merit and "such a recommendation

cannot be lightly disregarded" (*Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 48).

But at the same time in the case it was acknowledged that if the P.S.C. "comes to the conclusion not to follow" such recommendations then "the reasons for taking such an exceptional course would be clearly recorded in the relevant minutes of the Public Service Commission."

In the case of *Constantinou v. The Republic* (1984) 3 C.L.R. 498 it was held, inter alia, that the superior merit and qualifications of the interested party constituted very powerful reasons for deviating from the recommendations of the Head of the Department. (In this connection vide also *Michael & Another v. Republic* (1984) 3 C.L.R. 769 - *Ioannou v. Republic* (1983) 3 C.L.R. 449 at pages 457 - 458).

In the instant case, the recommendation of the Head of the Department, namely Mr. Phokas, was thus made before the respondent P.S.C: Christoforou Andreas (the applicant) is recommended, who with regard to merit does not lack behind the other two, Tourpeki Vasso (the interested party) and Neofytou Loulla, and who is excellent, in particular now that he is performing the duties of the Officer in charge for the whole of Limassol District.

As far as qualifications are concerned, the candidates are more or less equal. Tourpeki has the additional qualification, but her qualification does not appear to be relevant to the duties she is performing.

It is clear from the wording of the above recommendation, that the recommendation of the Head of the Department was not consonant either with the confidential reports or the material in the personal files as far as qualifications are concerned. As stated earlier on in the present judgment the interested party was much better rated in merit than the applicant and she possesses the additional qualification envisaged by the Scheme of Service

whilst the applicant does not possess an additional qualification.

5 The aforesaid reasons for deviating from the recommendations of the Head of the Department are clearly recorded in the minutes of the respondent P.S.C. of 2.12.85 - the sub judice decision - which thus cannot be faulted.

10 In the circumstances the applicant failed to establish striking superiority over the interested party, an element without which an Administrative Court cannot intervene in order to set aside the decision regarding such selection. (*Hjiloannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1045).

In the result the present recourse fails and is accordingly dismissed; let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*