

1988 December 13

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LAKIS ZOTIADES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 237/87, 262/87, 340/87).

Public Officers—Appointments/Promotions—First entry and promotion post—Qualifications—Additional qualifications—Scheme of Service—Interpretation and application of—Judicial Control—Principles applicable.

Public Officers—Appointments/Promotions—First entry and promotion post—Qualifications—Additional qualifications—Duty to carry out due inquiry as to possession by candidates of such qualification—In this case, before taking any decision in the matter, the Commission sought and obtained the opinion of the British Council regarding the qualifications of interested party—In the circumstances the Commission carried out a due inquiry. 5

Public Officers—Appointments/Promotions—First entry and promotion post—Qualifications—Additional qualifications—Fact that on a previous occasion the Commission decided that a candidate did not possess such qualification—Does not prevent Commission, with different composition, to conduct afresh a more thorough inquiry and reach a different conclusion. 10

Public Officers—Appointments/Promotions—First entry and promotion post—Qualifications not envisaged as an advantage in the scheme of service—Weight—Do not establish by themselves superiority. 15

Public Officers—Appointments/Promotions—First entry and promotion post—

Confidential reports—Candidates holding posts on different hierarchical level—Commission thought that no absolute comparison could be made and noted the ratings of the interested party when he held applicants post and finally recorded the ratings of the candidates for the last six years—
 5 *Such a course was reasonably open to the Commission.*

Public Officers—Appointments/Promotions—Striking superiority—Meaning of.

Public Officers—Appointments/Promotions—Judicial Control—Principles applicable—Zachariades v. The Republic (1986) 3 C.L.R. 852 reiterated.

10 The applicants in these recourses challenge the validity of the appointment of the interested party to the post of Director, General Laboratory, Ministry of Health. Having recapitulated the principles governing judicial control of Appoinments/Promotions, of the interpretation and application of
 15 a scheme of service, as well as the principles establishing the need for due inquiry as to possession by candidates of additional qualifications envisaged as an advantage in the scheme of service, the principles governing the weight to be given to higher qualifications not envisaged as an advantage in the scheme of service and having referred to the notion of "striking superiority" and, finally having approved of the Commission's approach in
 20 respect of confidential reports of candidates holding different posts in the hierarchical ladder, the Court reached the conclusion, that on the facts of this case, the recourses should be dismissed.

*Recourses dismissed.
 No order as to costs.*

25 *Cases referred to:*

Frangoullides and Another v. Public Service Commission (1985) 3 C.L.R. 1680;

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

Pestas v. The Republic, 3 R.S.C.C. 60;

30 *Georghiades and Others v. Republic (1967) 3 C.L.R. 653;*

Tryfon v. Republic (1968) 3 C.L.R. 28;

Kyriacou v. Republic (1975) 3 C.L.R. 37;

Skarparis v. Republic (1978) 3 C.L.R. 106;

Mytides and Another v. Republic (1983) 3 C.L.R. 1096;

Republic and Another v. Kastellanos (1988) 3 C.L.R. 2249;

Michael and Another v. Public Service Commission (1982) 3 C.L.R. 726; 5

Karis v. Republic (1985) 3 C.L.R. 496;

Philippides v. Republic (1986) 3 C.L.R. 160;

Hjiloannou v. Republic (1983) 3 C.L.R. 1041;

Bagdades v. The Central Bank of Cyprus (1973) 3 C.L.R. 417;

Republic v. Zachariades (1986) 3 C.L.R. 852. 10

Recourses.

Recourses against the decision of the respondents to promote the interested party to the post of Director of General Laboratory of the Ministry of Health in preference and instead of the applicants. 15

G. Triantafyllides, for applicants in Cases Nos. 237/87 and 340/87.

K. Talarides, for applicant in Case No. 252/87.

A. Papasavvas, Senior Counsel of the Republic, for the respondents. 20

Ch. Ierides, for interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The post of Director of General Laboratory of the Ministry of Health became

vacant by retirement of its holder.

5 During the period of the leave, prior to retirement, the process of the filling of the post commenced. As this is a first entry and promotion post, it was advertised in the Official Gazette of 12th September, 1986, Notice 2480.

10 On 10th March, 1987, the Public Service Commission ultimately promoted to the post Ioannis Lovarides (the interested party) - a Senior Analyst of the General Laboratory, a post just below that of the Director-with effect from 15th March, 1987. This promotion was published in the Official Gazette on 10th April, 1987.

Two of the candidates, Lakis Zotiades, who was not a public officer, and Antonios Charalambides, a public officer, challenged the validity of the aforesaid promotion.

15 Zotiades filed two recourses - Recourse No. 237/87 on 28th March, 1987 and Recourse No. 340/87 on 28th April, 1987, after the publication of the decision. This was certainly done as a precautionary measure lest the first recourse would have been considered as premature. They are identical.

20 The sole ground on which this applicant seeks the annulment of the sub judice decision is that the Commission laboured under a misconception of fact, in concluding that the interested party possessed the additional qualification prescribed in the scheme of service, whereas in fact he lacked such qualification.

25 The applicant in Recourse No. 262/87 challenged the validity of the sub judice decision on the same ground and on the further grounds that the Commission erred on the proper evaluation of the qualifications of the applicant and that it did not attribute the appropriate weight to them; it erred in the evaluation of the confidential reports of the applicant and the interested party, who both
30 were public officers, and finally, the Commission, did not select the best suitable candidate for the post, who in all the circum-

stances, was this applicant who is strikingly superior to the interested party.

ADDITIONAL QUALIFICATION:

Postgraduate qualification in Chemistry is, under the scheme of service, an additional advantage. (Μεταπτυχιακό προσόν στην Χημεία θα αποτελεί πλεονέκτημα). 5

It was contended by the applicants that on a previous occasion and particularly on 21st April, 1986, the Commission in the process of filling the same post decided that this interested party was not possessed of this additional qualification. (See minutes of the Commission - 21st April 1986, p.4). 10

On that occasion the Commission was differently composed. Furthermore, they reached their conclusion only by going through the documents in the personal file of the interested party. In the present instance they carried a further inquiry with the British Council. 15

In *Frangoullides and Another v. Public Service Commission* (1985) 3 C.L.R. 1680, Triantafyllides, P. , in delivering the unanimous Judgment of the Full Bench, said at p. 1685:-

"It is correct that on an earlier occasion when the two appellants were again candidates for promotion to the post of Principal Welfare Officer the respondent Commission, which was at the time differently composed, treated both of them as being qualified under the same scheme of service but, in our view, this did not prevent the Commission from reaching a different conclusion on the present occasion after a much more thorough inquiry into the matter. Irrespective of what had been done on the said earlier occasion the Commission could not lawfully, and in a proper exercise of its relevant powers, consider as eligible for promotion to the post of Principal Welfare Officer either of the appellants once it was not satisfied that they were qualified for promotion under the rele-

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vant scheme of service."

5 On 23rd January, 1987, the Director-General of the Ministry of Health sent written communication to the Commission with his observations on two matters: The postgraduate qualification and the confidential reports.

With regard to the interested party he wrote that in his opinion the courses followed by him did not constitute postgraduate qualification in Chemistry as required by the scheme of service.

10 The Commission on 27th January, 1987, considered the matter and decided to carry out an inquiry by applying to the British Council.

15 The respondent Commission applied to the British Council attaching the two certificates held by the interested party, issued to him by the Tropical Products Institute of London and the Shirley Institute, Manchester, respectively and inquired whether these programmes of study are postgraduate courses.

20 The British Council in Nicosia referred this request to their London office and the reply is contained in a letter, dated 24th February, 1987 - Appendix 14 of the Opposition. I quote verbatim the material part of this letter:-

"Thank you for your letter of 4 February file No 23/81 concerning the programmes of study offered by Tropical Products Institute London and Shirley Institute Manchester.

25 Your request has been referred, to our London Office and their reply is as follows:

30 Shirley Institute: is a Textile research centre. Within Textile Trade considered educational body. Do not classify programmes as under or postgraduate level. No formal qualifications needed except for basic Lab Techniques to go on the

10 week programme.

Tropical Products Institute Centre is part of overseas Development Admin. and is concerned with/to study of Post-Harvest problems in Plant and Animal Resources in the Developing World. A high priority in the Institute is special training of personnel from Developing Countries in this field. The course you quote in your minute is taught at the institute. 5

I hope the above is of help to you."

On 10th March, 1987, the Commission on the basis of all the material before it, including the letter of the British Council, in the exercise of its discretionary power, reached the conclusion that the Courses of the Shirley Institute and the Tropical Products Institute Centre constitute the advantage laid down in the scheme of service. 10
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Applicant Zotiades, long after the filing of these recourses, on 11th September, 1987, applied to the Overseas Development Natural Resources Institute and the Royal Society of Chemistry for their opinion. The replies, dated 15th September, 1987 and 22nd September, 1987 are Appendices 2 and 3 to the written address of his advocate. 20

According to the Training Officer of the Overseas Development Natural Recourses Institutte certificates issued to trainees who have studied at the Overseas Development Natural Resources Institute, or any of its predecessors, are certificates of attendance only and in no way a formal qualification. 25

The answer of the Royal Society of Chemistry reads as follows:-

"The Society does not formally evaluate short training programmes such as those you describe. Neither lead to a formal recognised qualification and I am told that the programme of 30

training at the Shirley Institute would have contained very little chemistry. The training at the Tropical Products Institute, which would have been more chemically based, led only to a certificate of completion and not an assessed award. I do not therefore consider that the two programmes of studies, even taken together would be regarded by the Society as the equivalent of a postgraduate qualification in chemistry."

The interpretation and application of the scheme of service is within the discretionary power of the Commission. The power of the Supreme Court is limited to reviewing the exercise of their discretion. So long as their decision was one that was reasonably open, both as a matter of construction of the scheme of service and as respects its application to the situation of the candidates, there is no room for interference, notwithstanding a different opinion on the part of the Court on either of two subjects. The Court will not give to such scheme a different interpretation other than that given to it by the Commission, provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question - (*Theodoros G. Papapetrou and the Republic (Public Service Commission)*, 2 R.S.C.C. 61; at p. 69; *Christoforos G. Petsas and the Republic (Public Service Commission)*, 3 R.S.C.C. 60; *Athos G. Georghiades and Others v. Republic (Public Service Commission)* (1967) 3 C.L.R. 653; *Andreas Tryfon v. Republic (Public Service Commission)* (1968) 3 C.L.R. 28; *Costis Kyriacou v. Republic (Public Service Commission)* (1975) 3 C.L.R. 37; *Skarparis v. Republic* (1978) 3 C.L.R. 106; *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096; *Republic and Another v. Kastellanos* (1988) 3 C.L.R. 2249).

The application by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations - (*Athos G. Georghiades and Others v. Republic (Public Service Commission)*) (supra) at p. 668).

The Commission has a statutory obligation to inquire and de-

cide for itself whether a candidate possesses the additional qualification provided in the scheme of service. This is a sine qua non to any further steps in the process of the exercise of its discretion and such an inquiry has to be apparent in the minutes of the Commission - (*Michael and Another v. Public Service Commission* 5 (1982) 3 C.L.R. 726; *Karis v. Republic* (1985) 3 C.L.R. 496).

In *Philippides v. Republic* (1986) 3 C.L.R. 160 Savvides, J. said at p. 166:-

"The interpretation and application of the scheme of service as well as the evaluation of the qualifications of candidates are matters within the discretionary power of the P.S.C. and this Court will not interfere if it was reasonably open to the P.S.C to decide as it did," 10

And at pp. 168-169:-

"The P.S.C. is an administrative organ vested with a discretionary power to interpret and apply the schemes of service and in consequence to evaluate the qualifications of candidates and decide who is qualified under such schemes. In exercising such discretion, however, an administrative organ should conduct a proper inquiry into the particular matter, the nature of which varies according to the circumstances of each particular case. The P.S.C., unless otherwise provided by law (which is not the case in the present instance), is free to decide what procedure to follow in order to ascertain and evaluate the qualifications of candidates." 15 20 25

In the present case the respondent Commission applied to the British Council, which in its turn sent the two certificates of the interested party to the Central Office of the British Council in London. They laboured on the two certificates and the reply of the British Council. This was a perfectly valid procedure for them, which was reasonable under the circumstances. They carried out a due and sufficient inquiry. On the material before them, the challenged conclusion was reasonably open to them and, 30

therefore, this Court cannot interfere with it.

It had to be noted that the scheme of service does not require any "formal" postgraduate qualification such as M.Sc. and Ph. D. The wording is "μεταπτυχιακό προσόν".

5 QUALIFICATIONS OF APPLICANT IN CASE NO. 262/87:

The applicant in Case No. 262/87 complains that the Commission failed to evaluate properly his qualifications and did not attribute to them the appropriate weight.

In the minutes of the Commission we read:-

10 " Η Επιτροπή απόδωσε επίσης τη δέουσα σημασία στα
προσόντα όλων των υποψηφίων και σημείωσε ότι οι Χα-
ραλαμπίδης και Μιχαήλ υπερτερούν σ' αυτά, αφού διαθέ-
τουν Ph.D. Ωστόσο, όπως είναι διατυπωμένο το Σχέδιο
Υπηρεσίας, το πλεονέκτημα το διαθέτουν όχι μόνο αυτοί
15 αλλά και άλλοι, οι οποίοι και αναφέρονται πιο πάνω."

The contention of counsel for this applicant, that the Commission did not pay due regard to the superior qualifications of his client, is not born out from the minutes of the Commission. On
20 the contrary, the Commission gave cogent reasons why the inter-
ested party was preferred.

It is well established that possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission which would decide
25 in selecting the best candidate on the totality of the circumstances before them - (*Hjiloannou v. Republic* (1983) 3 C.L.R. 1041).

CONFIDENTIAL REPORTS:

It was submitted by counsel of applicant in Case No. 262/87 that the sub judge decision is faulty in that the Commission erred in the evaluation of the confidential reports of the applicant and the interested party, who are both public officers.

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The Commission had before it the personal files and the confidential reports of the candidates, who are public officers.

This applicant joined the Public Service as Chemist, Class II, in the Department of Geological Survey on 1st August, 1978. On 1st November, 1981, he was promoted to the combined post of Geological Officer, Class I.

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The interested party, born on 2nd January, 1928, entered the Service on 20th September, 1956, as Assistant Analyst in the Medical Department. He was emplaced in the post of Analyst, Class I, with effect 1st January, 1972. He was promoted to the post of Senior Analyst in the General Laboratory, with effect from 1st October, 1981.

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The confidential reports of the applicants - public officers - were before the Commission.

There were no confidential reports for 1986 as they could not be prepared for the reasons stated in the documents and in the material placed before the Commission.

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The Commission approached the confidential reports, as stated in its minutes, with special care. Having regard to the fact that the interested party as from 1982 was evaluated in the confidential reports in the post of Senior Analyst, whereas the other public officers - candidates were holding lower post, no absolute comparison (απόλυτη σύγκριση) could be made on the basis of these confidential reports. The Commission, further, noted that when the interested party was serving in the lower post, the one held by the applicant in case No. 262/87, he was rated "excellent". The

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Commission then recorded in their minutes the rating in the confidential reports for the six years 1980 - 1985, inclusive, for each one the candidates.

It was submitted that this approach was erroneous.

5 I am of the opinion that it was within the bound of the power of the Commission, in the process of finding the merits and demerits of the candidates and in making the necessary comparison between them, to resort to this approach. This approach was reasonably open to the Commission. The Commission took into
10 consideration the whole career of the candidates - public officers.

SELECTION OF BEST SUITABLE CANDIDATE - STRIKING SUPERIORITY.

15 The last, but not least of the complaints of Mr. Talarides is that the respondent Commission failed in its duty to select the best suitable candidate, who, in the circumstances was his client, who is strikingly superior to the interested party.

The Commission took into consideration all the factors laid down by law - merit, qualifications and seniority. The seniority of the interested party Lovarides is overwhelming. He was appointed in the Public Service in 1956 and was the holder of the
20 post equivalent to the post presently held by the applicant as from 1st January, 1972, more than six years before the applicant joined the Public Service. As from 1st October, 1981, he was Senior Analyst, whereas the applicant on 1st November, 1981 was em-
25 placed in the scales and the post the interested party was holding nine years earlier.

Part of the merit is depicted in the confidential reports to which reference was made.

30 The scheme of service provides at least ten years post - graduate experience relevant with the various functions (αρμοδιότητες) of the General Laboratory, out of which at least five years admin-

istrative experience. This qualification may be co-related to the duties of the post as set out in the scheme of service.

The Director-General of the Ministry said about the interested party that he has experience very relevant to the post of the Director of the General Laboratory and very satisfactory administrative experience. 5

The notion of striking superiority was defined by the Full Bench in *HjiIoannou v. Republic* (supra). Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority. 10

Hadjianastassiou J., in *Kyriacos G. Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417, at p. 428 observed:-

"Had it been otherwise, I would be inclined to the view that there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the candidates there was a person with higher qualifications." 15

The applicant has not established to the satisfaction of the Court that he was strikingly superior to the interested party.

This case has to be decided on the principles recapitulated in *Republic v. Zachariades* (1986) 3 C.L.R. 852, that an Administrative Court does not annul a decision of an appointing authority, such as the appellant Commission, which, in accordance with the law applicable to, and the facts of, a particular case, was reasonably open to such authority; and secondly, that an Administrative Court does not, in a case of this nature, substitute its own discretion as regards the choice of the most suitable candidate for promotion or appointment in the place of the discretion of the competent organ. 20 25

And at p. 856 it was said:-

"Also, we are of the view that the three criteria which are 30

5 set out in section 44(3) of the Public Service Law, 1967 (Law 33/67), namely merit, qualifications and seniority, have to be weighed together, bearing in mind, too, the performance of the candidates when interviewed, which is a process helping in the evaluation of the candidates, mainly from the point of view of merit and, also, to certain extent, of qualifications as well.

10 An appointing authority, such as the appellant Commission, when weighing together the said three criteria, in order to find the most suitable candidate, may attribute such significance to them as it may deem proper, provided that it exercises correctly, in the course of doing so, its relevant discretionary powers (see the *Georghiou* case, *supra*, 82); and it is not provided by section 44(3) that any one of the three criteria has, in any event, greater importance than the other two."

15 For all the foregoing reasons, the recourses are dismissed and the sub judice decision of the Commission is confirmed, under Article 146.4(a) of the Constitution.

Let there be no order as to costs.

*Recourses dismissed.
No order as to costs.*