

1988 December 15

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GLAFKOS GEORGHIOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE PUBLIC SERVICE COMMISSION,  
2. THE MINISTRY OF FINANCE,

*Respondents.*

(Case No. 858/87).

5 *Public Officers—Combined establishment—Scheme of service providing for 3 years "service" in the lower post as a qualification for promotion to the higher post—In computing the period of "service" it was reasonably open to the respondents to exclude the period, when applicant was serving as a casual officer—The Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law 160/85)—The definition therein of "casual officers" is special and applies only for the purpose of such law.*

10 *Constitutional Law—Equality—Constitution, Art. 78—Does not exclude reasonable distinctions—Scheme of service for a post in the Public Service requiring "service" in a lower post, whilst other schemes for other posts require "experience"—Does not infringe the principle of equality.*

15 On 8.11.85 the applicants were appointed in virtue of Law 160/85 as Town Planning Officer, Class II. Town Planning Officer, Class II and Class I are combined establishment. The scheme of service for the higher post provided, inter alia, for at least three years service in the post of Town Planning Officers, Class II.

The questions that arose for determination in this recourse were: a) Whether the period of applicants' service as casual officers should have

been taken into consideration in deciding whether applicants possessed the aforesaid qualification, and (b) Whether the scheme in question is repugnant to Art. 28 of the Constitution in that, whilst other schemes require "experience", it requires "service".

Held, dismissing the recourse: (1) The decision of the Full Bench in *Savva and Another v. The Public Service Commission* (1988) 3 C.L.R. 102 in which it was said no distinction is made under section 2 of the Public Service Law between holding a post on a "temporary" or "permanent" basis, does not help the applicants, because they were not holding before 8th November, 1985, either a permanent or a temporary post: They were simply performing duties on a casual basis. They had not been appointed by the Public Service Commission. 5 10

2) The definition of "casual officer" in Law 160/85 is a special definition for the purposes of that law only.

3) "Service" in the context of the scheme of service means service as defined in section 2 of Law 33/67, after the appointment of a public officer by the Public Service Commission. 15

The interpretation given was reasonably open and the Court does not interfere.

4) The difference in the scheme of service of the one post from the other is not an arbitrary differentiation, but a distinction reasonably justifiable and does not infringe the principle of equality, as the posts are different. 20

*Recourse dismissed.*  
*No order as to costs.*

*Cases referred to:*

*Savva and Another v. Public Service Commission* (1988) 3 C.L.R. 102; 25

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

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

*Iacovides v. The Republic* (1966) 3 C.L.R. 212;

*Fekka v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173; 30

*Republic v. Arakian* (1972) 3 C.L.R. 294;

*Angelides and Others v. The Republic* (1982) 3 C.L.R. 774;

*Papaxenophontos and Others v. The Republic* (1982) 3 C.L.R. 1037;

*Trakoshis v. The Republic* (1988) 3 C.L.R. 2118;

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*Panayi v. The Republic* (1988) 3 C.L.R. 2338.

### Recourse.

Recourse against the refusal of the respondents to promote applicants to the post of Town Planning Officer, Class I.

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

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

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicants are Town Planning Officers, Class II, in the Town Planning and Housing Department. They were appointed to the post on 8th November, 1985, in virtue of the provisions and the procedure envisaged by the Casual Public Officers (Appointment to Public Offices) Law, 1985, (Law No. 160/85). Before their said appointment they were performing duties as casual officers.

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Town Planning Officers, Class II, and Class I, are combined establishment.

Under the relevant scheme of service, which was approved by the Council of Ministers on 13th May, 1982, for the post of Class I, amongst the required qualifications are: At least five years post-graduate experience, out of which at least three years service at the post of Town Planning Officer, Class II.

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Promotion in cases of officers with a combined establishment is governed by the proviso to section 44(1) (a) of the Public Service Law, 1967 (Law No. 33/67), which reads as follows:-

"44.- (1) No officer shall be promoted to another office, unless -

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(a) a vacancy exists in that office:

Provided that in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office 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;"

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The Council of Ministers by its decision 21.311 of 21st January, 1982, issued General Directions governing the promotion of officers in a combined establishment. The material parts of these Directions run as follows:-

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"(1) Μετά την υπό του υπαλλήλου συμπλήρωση της περιόδου υπηρεσίας την οποίαν απαιτεί το οικείον Σχέδιον Υπηρεσίας εις την κατωτέραν τάξιν ή θέσιν, ο Τμηματάρχης θα αποστέλλη εις την Επιτροπή Δημοσίας Υπηρεσίας βεβαίωσιν κατά πόσον:-

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(α) ο υπάλληλος εξετέλεσεν ικανοποιητικώς τα καθήκοντα της θέσεως του.

(β) συνεπλήρωσε την περίοδον υπηρεσίας την οποίαν απαιτεί το Σχέδιον Υπηρεσίας.

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(γ) ικανοποιεί τας οιασδήποτε άλλας απαιτήσεις του Σχεδίου Υπηρεσίας και

(δ) συνιστά αυτόν δια παραγωγήν:

.....

(3) Η τελική απόφασις διά προαγωγήν του υπαλλήλου  
εναπόκειται εις την Επιτροπήν Δημοσίας Υπηρε-  
σίας συμφώνως προς τους περί Δημοσίας Υπηρε-  
σίας Νόμους 1967-1981.

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(4) Οι οικείοι Τμηματάρχαι δεόν όπως προβαίνουν εις  
συστάσεις δι' όλους τους υπαλλήλους οι οποίοι πλη-  
ρούν τα Σχέδια Υπηρεσίας, είτε αυτοί κρίνονται κα-  
τάλληλοι διά προαγωγήν είτε όχι.

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.....

(6) Αι ως αρχαί θα εφαρμόζονται δι' όλους τους δημο-  
σίους υπαλλήλους οι οποίοι διωρίσθησαν υπό της  
Επιτροπής Δημοσίας Υπηρεσίας και υπηρετούν εις  
συνδεδυασμένας τάξεις ή θέσεις."

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("(1) After the completion by the officer of the period of  
service required by the relevant Scheme of Service of  
the lower class or post, the Head of Department will  
forward to the Public Service Commission a certificate  
as to whether:-

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(a) the officer performed satisfactorily the duties of his  
post;

(b) has completed the period of service which is re-  
quired by the Scheme of Service;

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(c) satisfies any other requirements of the Scheme of  
Service; and

(d) recommends him for promotion:

.....

(3) The final decision for the promotion of an officer rests on the Public Service Commission in accordance with the Public Service Laws, 1967-1981.

(4) The respective Heads of Department must make recommendations for all the officers who satisfy the Schemes of Service, whether they are considered suitable for promotion or not.                    5

(6) The aforesaid principles shall apply for all the public officers who were appointed by the Public Service Commission and serve in combined offices or grades."                    10

No matter of selection of the best suitable candidate arises in the case of combined establishment.

The applicants on 6th May, 1987, requested the Head of their Department to forward to the Public Service Commission the relevant certificates for their promotion, having taken into consideration the years of their service as casuals.                    15

The Head of the Department did not accede to their request, as the applicants were appointed on 8th November, 1985, and "service" means public service in an organic post and not in a casual capacity.                    20

On 23rd May, 1987, he forwarded the aforesaid letter of the applicants to the Chairman of the Public Service Commission requesting advice.

On 28th July, 1987, a letter emanating from the office of the Public Service Commission and signed for the Chairman of the Commission was sent to the Head of the Department. The material part of this letter reads as follows:-                    25

"Έχω οδηγίες να αναφερθώ στην επιστολή σας με αρ. 200/14, 200/3/134 και ημερ. 23.5.87 και να σας πληροφορήσω ότι ορθά αναφέρετε στην παράγραφο 3 της επιστολής                    30

σας ότι υπηρεσία σημαίνει υπηρεσία σε οργανική θέση και όχι απασχόληση πάνω σε έκτακτη βάση.

2. Ύστερα από τα πιο πάνω και βάση του Σχεδίου Υπηρεσίας της θέσης Λειτουργού Πολεοδομίας, 1ης Τάξης, που ισχύει δεν υπάρχει στο παρόν στάδιο δυνατότητα προαγωγής στη θέση Λειτουργού Πολεοδομίας, 1ης Τάξης, των πιο κάτω από τους υπαλλήλους, που αναφέρετε στην επιστολή σας:"

10 The Head of the Department replied to the request of the applicants of 6th May, 1987, in writing on 27th August, 1987. He referred to the post, to the extract of the letter of the Chairman of the Public Service Commission that "υπηρεσία σημαίνει υπηρεσία σε οργανική θέση και όχι απασχόληση πάνω σε έκτακτη βάση" (service means service in organic post and not employment on a casual basis), and informed them that at present 15 it was not possible for them to be promoted to the post of Town Planning Officer, Class I.

The applicants being aggrieved filed this recourse.

Counsel for the applicants based his case on two legs:-

- 20 (a) The term "service" in the scheme of service was erroneously interpreted; and
- (b) If the first ground fails, then this part of the scheme of service is invalid, as it violates the principle of equality enunciated and safeguarded by Article 28 of the Constitution.

25 A scheme of service is made and/or approved by the Council of Ministers under the powers vested in it by section 29(1) of the Public Service Law.

"Service" in that Law means public service and "public service" is defined in the same section.

Counsel for the applicants submitted that the term "service" in the scheme of service had to be interpreted as to cover the period the applicants were casually employed by the State. He relied on section 46 of Law 33/67, as amended by section 5 of the Public Service (Amendment) Law, 1983, (Law No. 10/83), which governs the seniority of the public officers and which reads as follows:-

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"1. Η αρχαιότης μεταξύ υπαλλήλων κατεχόντων την αυτήν μόνιμον ή προσωρινήν θέσιν ή τάξιν της αυτής θέσεως, είτε μόνιμως είτε προσωρινώς είτε από μηνός εις μήνα είτε επί αποσπάσει, είτε επί συμβάσει, κρίνεται βάσει της ημερομηνίας της ισχύος του διορισμού, της προαγωγής ή αποσπάσεως των εις την συγκεκριμένην θέσιν ή τάξιν, αναλόγως της περιπτώσεως, ανεξαρτήτως του τρόπου κατοχής αυτής."

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He, also, relied on the definition of "casual officer" in the Casual Public Officers (Appointment to Public Offices) Law, 1985. He, also, referred to Revisional Appeals Nos. 480 and 484 - *Constantinos Savva, and Another v. The Public Service Commission*, (1988) 3 C.L.R. 102 in which it was said that no distinction is made under section 2 of the Public Service Law between holding a post on a "temporary" or "permanent" basis.

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I have no reason to disagree with the Judgment of the Full Bench, in which I participated. The applicants, however, were not holding before 8th November, 1985, either a permanent or a temporary post. They were simply performing duties on a casual basis. They had not been appointed by the Public Service Commission. The definition in Law 160/85 is a special definition for the purpose of that Law only and has no relevance for the purpose of the construction of the scheme of service in this case.

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"Service" is clearly distinguished from experience, the latter term containing the notion of knowledge acquired through acting in a certain capacity. Experience may be acquired by discharging duties.



"Service" in the context of the scheme of service means service as defined in section 2 of Law 33/67, after the appointment of a public officer by the Public Service Commission.

5 The Interpretation given was reasonably open and the Court does not interfere - (*Papaleontiou v. Republic* (1987) 3 C.L.R. 211, in which all the previous cases of this Court are cited).

10 A number of schemes of service for other post require three years experience. It was canvassed that this was a differentiation adverse to the applicants and was infringement of their right to equal treatment.

15 This Court has dealt exhaustively, for more than a quarter of a century, with the principle of equality in numerous cases, starting from *Argiris Mikrommatis and The Republic (Minister of Finance and Another)*, 2 R.S.C.C. 125, at p. 131 - (see, inter alia, *Iakovos L. Iacovides and The Republic of Cyprus through The Republic Service Commission* (1966) 3 C.L.R. 212, at p. 224; *Yiannis Fekka v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173, at p. 182; *Republic (Ministry of Finance) v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, at p. 20 302; *Angelides and Others v. Republic* (1982) 3 C.L.R. 774, at p. 784; *Papaxenophonotos and Others v. Republic* (1982) 3 C.L.R. 1037; *Neophytos Trakoshis v. The Republic of Cyprus, through the Attorney-General and Another*, (1988) 3 C.L.R. 2118 and *Ioannis Panayi v. The Republic of Cyprus, through The Public Service Commission*, (1988) 3 C.L.R. 2338).

25 Having given due consideration to the matter, I hold the view that the difference in the scheme of service of the one post from the other is not an arbitrary differentiation. It is a distinction reasonably justifiable and does not infringe the principle of equality, 30 as the posts are different. All the holders of the same post are treated equally.

I find no merit in the submission of counsel.

**For the foregoing, this recourse fails. It is hereby dismissed.**

**Let there be no order as to costs.**

*Recourse dismissed.*

*No order as to costs.*