

1988 February 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 691/86).

Public Officers—Promotions—Confidential reports—Whole career of officers should be taken into consideration, but more weight should be attached to the more recent confidential reports.

Public Officers—Promotions—Head of Department—Recommendations of—Significance.

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The applicant challenges the decision to promote the interested party, to the post of Senior Auditor in the Audit Office.

The decision was taken by majority. The respondent made analytical reference to the reports of the candidates since 1979 and found that the interested party was superior to the applicant except in the last two reports, where the applicant was slightly better. Both parties were rated as "very good" in their last two reports. The slight superiority of the applicant is in the rating on the specific items.

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The applicant, who was senior to the interested party by one year and had, also, longer service, had been recommended for promotion by the Head of the Department.

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Held, *annulling the sub judice decision*: (1) The whole career of candidates for promotion should be taken into consideration but more weight

should be attached to the last reports. The recommendations of the Head of the Department count in favour of the candidate so recommended, going to his merit.

- 5 (2) In this case more weight was placed by the respondents on the past reports of the candidates than on the most recent ones. It also seems that the recommendations of the Head of the Department were not duly weighed.

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

- 10 *Philotheou and Others v. Republic* (1985) 3 C.L.R. 662;
Soteriadou v. Republic (1985) 3 C.L.R. 300;
Gava v. The Republic (1985) 3 C.L.R. 1390;
Makris v. The Republic (1985) 3 C.L.R. 1103;
Republic v. Haris (1985) 3 C.L.R. 106.

15 **Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Senior Auditor in the Audit Department in preference and instead of the applicant.

A. S. Angelides, for the applicant.

- 20 *A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

- 25 SAVVIDES J. read the following judgment. The applicant hereby challenges the decision of the respondent to promote N. Argatides, the interested party, to the post of Senior Auditor in

the Audit Office, which was published in the official Gazette of the Republic dated 26th September, 1986.

The applicant and the interested party were holding the post of Auditor at the material time. As a result of a request made to the respondent for the filling of a vacancy in the post of Senior Auditor a Departmental Committee was set up, which by its report submitted to the respondent by letter dated the 2nd June, 1986, recommended four candidates for the post, amongst whom the applicant and the interested party. 5

The respondent met on the 3rd July, 1986 and heard the views of the Auditor-General (the Head of the Department) who recommended the applicant for promotion to the vacant post. 10

The respondent then, after making analytical reference to the confidential reports of the candidates since 1979, and taking also into account the factor of seniority, proceeded to fill the vacancy. Two of the four members present, including the Chairman, preferred the applicant, while the other two preferred the interested party. In view of the fact that no decision was reached, the respondent decided to reconsider the matter at another meeting, with the participation of its absent member so that a decision could be reached. 15 20

The respondent met again on the 14th July, 1986, with the participation of all its five members and heard once again the views of the Head of the Department which were as follows:

"The performance of the candidates during the current year is approximately on the same level as in the last year. 25

Taking into consideration the merit, qualifications and seniority, he recommended Andreas Ioannou for promotion".

The respondent then went again analytically through the reports of the candidates for the years 1979 - 1985 and having also noted the order of seniority of the candidates proceeded to the se- 30

lection, by majority of three to two, of the interested party. The two dissenting members found that the applicant should have been preferred.

5 The sub judge decision was published in the official Gazette of the Republic dated the 26th September, 1986 as a result of which the applicant filed the present recourse.

10 Counsel for the applicant argued that the applicant should have been preferred for promotion in view of his seniority, his superiority over the interested party in the last two reports which have more bearing than the previous ones and the recommendation of the Head of the Department which goes to the merit of the applicant.

15 Counsel for the respondent maintained that the respondent acted within the limits of its discretionary power and that the sub judge decision was reasonably open to it.

20 Before dealing with the issues raised I consider it necessary to make a brief reference to the contents of the sub judge decision, as set out in the minutes of the respondent dated the 14th July, 1986, and more specifically to the reasons given by the members of the respondent for making their respective selections.

25 *Mr. Hadjiprodrinou*, who voted in favour of the applicant, stated that he did not find Argatides (the interested party) to be superior to the applicant, whose performance was better in the last two years and also during the current year. As a result he found that there was no reason to disregard the applicant's seniority and the recommendations of the Head of the Department.

30 The Chairman of the respondent took the same view and added that in accordance with our case law the confidential reports as a whole should be taken into consideration but special emphasis should be placed on the last two. He concluded by stating that the interested party was superior in the previous reports, but taking

into consideration the superiority of the applicant in the last two reports, his seniority and the fact that he has longer service than the interested party there was no reason to disregard the recommendations of the Head of the Department.

The other three members stated that the superiority of the applicant in the last two reports was small in comparison with that of the interested party in the previous reports and found that the small seniority of the applicant (being only one year) was not such as to persuade them to follow the recommendation of the Head of Department. 5

The paramount duty of the respondent organ is to select the best candidate for promotion and this Court will not interfere with its discretion provided such discretion was exercised properly after the respondent has duly taken into consideration and weighed properly all relevant factors. The respondent must also give special reasons for disregarding the recommendations of the Head of the Department. 10 15

It is evident from the contents of the sub judice decision that all material factors pertaining to the candidates were taken into consideration by the respondent. The fact that the sub judice decision was taken by a majority is immaterial. What has to be considered is whether such decision was reasonably open to the respondent, after all material factors were properly weighed by it. 20

The respondent made analytical reference to the reports of the candidates since 1979 and found that the interested party was superior to the applicant except in the last two reports, where the applicant was slightly better. Both parties were rated as "very good" in their last two reports. The slight superiority of the applicant is in the rating on the specific items. That is the applicant was rated as "excellent" in four items and as "very good" in eight in 1984 whilst the interested party was rated as "excellent" in three items and as "very good" in nine, for the same year. In 1985 the applicant was rated as "excellent" in six items and as "very good" in another six whilst the interested party 25 30

was rated as "excellent" in five and as "very good" in seven.

5 It has been stated in a number of cases by this Court that although the whole career of candidates for promotion should be taken into consideration, more weight should be attached to their last reports. (See *Philotheou & others v. The Republic* (1985) 3 C.L.R. 662; *Soteriadou v. The Republic* (1985) 3 C.L.R. 300). It has also been stressed that the recommendations of the Head of the Department count in favour of the candidate so recommended, going to his merit. (See *Gava v. The Republic* (1985) 3 C.L.R. 1390; *Makris v. The Republic* (1985) 3 C.L.R. 1103; *Republic v. Haris* (1985) 3 C.L.R. 106).
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The applicant was slightly better than the interested party in his last two confidential reports, he has been recommended by the Head of the Department, was senior by one year and had also longer service than the interested party.
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With the above in mind I find that more weight was placed by the respondents on the past reports of the candidates in reaching the sub judge decision instead of the most recent ones. It also seems that the recommendations of the Head of the Department were not duly weighed. If the members of the Commission were in any doubt as to these recommendations, they could have invited the Head of the Department to give more explanations before proceeding to reach their decision. I therefore find that the sub judge decision has to be annulled.
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25 In the result this recourse succeeds and the sub judge decision is hereby annulled with no order for costs.

*Sub judge decision annulled.
No order as to costs.*