

1988 February 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. CHRISTOS CHRISTOUDIAS,
2. CHARALAMBOS CHRISTODOULIDES,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 701/84).

Judicial control—Of the interpretation and application of a scheme of service in respect of a post in the public service—Principles applicable.

5 *Due inquiry—Appointments/Promotions of Public Officers—First entry and promotion post—Complaint to the Public Service Commission by a candidate of his non recommendation by the Departmental Board—Examination of such complaint—In the circumstances due inquiry was carried out.*

10 The applicants impugned by means of this recourse the decision whereby the 13 interested parties were appointed and/or promoted to the post of Administrative Officer, General Administrative Staff, in preference to and instead of the applicants.

15 Applicant No. 1 raises a general ground for annulment, notably failure of the respondent P.S.C. to consider his candidature for the post in question, in spite of the fact that he possessed all the qualifications envisaged by the relevant scheme of service.

15 Applicant 1 was not among those recommended for appointment to the post in question by the Departmental Board set up under section 36(2) of the Public Service Law, 1967 (33/67). As a result he complained of his exclusion from the list of those recommended. The Public Service Commis-

sion examined his complaint, but, at the end, it turned down the objection. The relevant part of the decision reads as follows:

"(1) Bearing in mind (a) that the Departmental Board arrived at its recommendations after considering, apart from the results of the examination in writing, the performance of the candidates at the interviews before it, and

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(b) that the Departmental Board recommended 52 candidates for the 13 vacant posts, that is, the greatest number possible according to the Relevant Regulations.

(2) After examining all the material before it, including the applications of the candidates, as well as the confidential reports and personal files of applicant No. 1, who was already in the service, the results of the special examination in writing, as well as the recommendations of the Departmental Board."

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Held, *dismissing the recourse*: (1) The respondent P.S.C. did not fail to consider the candidature of applicant No. 1 for the post in question, but on the contrary took into consideration all the relevant material before it, plus the recommendations of the Departmental Board, which carried out a due inquiry and complied absolutely with the law and the relevant Regulations. It is important to note that in examining the aforesaid complaint of applicant No. 1, the P.S.C. carried out a thorough inquiry themselves and reached their own decision which cannot otherwise be faulted.

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(2) As regards the issue raised by applicant 2 in respect of the qualifications of interested party 2, this Court reached the conclusion that in the circumstances it was reasonably open to the respondent Commission to interpret and apply the relevant scheme of service as it has done.

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(3) The applicants failed to establish striking superiority over the interested parties.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

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Andreou v. Republic (1979) 3 C.L.R. 379.

Recourse.

Recourse against the decision of the respondent to appoint and/or promote the interested parties to the post of Administrative Officer in preference and instead of the applicants.

5 *C. Loizou*, for applicants.

A. Vassiliades, for the respondent.

X. Xenopoulos, for interested parties 1, 2, 5, 8, 10 and 12.

A. Tryfonos (Mrs.), for interested party 3

K. Talarides, for interested party 4.

10 *M. Papapetrou*, for interested party 9.

N. Panayiotou, for interested parties 6 and 11.

M. Vassiliou, for interested party 13,

Cur. adv. vult.

15 LORIS J. read the following judgment. Both Applicants impugn by means of the present recourse, the decision of the respondent P.S.C., published in the Official Gazette of the Republic on 19.10.84, whereby the 13 interested parties were appointed and /or promoted to the post of Administrative Officer, General Administrative Staff, in preference to and instead of the applicants.
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Applicant No. 1 raises a general ground for annulment, notably failure of the respondent P.S.C. to consider his candidature for the post in question, in spite of the fact that he possessed all the qualifications envisaged by the relevant scheme of service.

25 He maintains that he was not considered as a candidate by the

respondent P.S.C. relying on the fact that he was not called by the P.S.C. for an interview.

Before ruling on the above submission of applicant No. 1, I consider it necessary to examine the facts connected with this issue as they emerge from the material before me:

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Applicant No. 1 in the above intituled recourse entered the public service in 1964 and was at the material time holding the post of Clerical Officer (P), having been promoted to the aforesaid post on 15.12.83.

Applicant No. 2, entered the public service in 1970 and was holding the post of Clerk 2nd Grade as from 1.11. 80.

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Interested party No. 13 entered the public service in 1981 and was holding the post of Clerk 2nd Grade (P.) as from 1.7.83; the remaining interested parties have no confidential reports as four of them, notably interested parties 1, 2, 6 and 11, were serving at the material time on casual basis, whilst all the remaining were outsiders.

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The post of Administrative Officer, General Administrative Staff, is a first entry and promotion post; for this reason the respondent P.S.C. decided at its meeting of 30.7.82 to advertise the posts in question in the Official Gazette of the Republic; in fact they were so advertised in the official Gazette of the Republic of 20.5.83.

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It is significant to note that sub-paragraph (4) of paragraph 3 (required qualifications) of the aforesaid advertisement provides that:

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"(4) Candidates must be successful in a special examination in writing, for this post."

Pursuant to the advertisement aforesaid, inviting applications for the aforesaid 13 posts, 447 candidates including both appli-

cants and the interested parties, applied for appointment to the posts in question.

5 The Secretary of the respondent P.S.C. forwarded inter alia, to the Chairman of the Departmental Board set up under s. 36(1) of Law 33/67 - in order to advise the Commission in respect of appointments or promotions to any office which is not a specialized office (and the post in question is not a specialized one) - the applications of all 447 candidates, together with the confidential reports and personal files of candidates already in the service
10 (vide Appendices 4 and 5 attached to the opposition).

15 It must be emphasized at this stage that the applications of both applicants (vide Nos. 437 and 432 - for applicants 1 and 2 respectively - in catalogue of applicants appended to Appendix 4 attached to the opposition), as well as their confidential reports and personal files (vide Nos. 29 and 28 - for applicants 1 and 2 respectively - in Appendix "B" attached to Appendix 4) were likewise forwarded to the Chairman of the Departmental Board.

20 I feel duty bound to mention here, by way of parenthesis, that the Council of Ministers has approved Regulations for the composition, functions and procedure of Departmental Boards pursuant to the provisions of s. 36(2) of Law 33/67. These Regulations were embodied in Circular No. 490 dated 20th March 1979, of the Ministry of Finance - Department of Personnel, and came into force as from 1.6.1979.

25 The aforesaid circular is appended to recourse No. 180/85, as Appendix 33; the aforesaid recourse in which judgment was delivered by me shortly ago, refers to the same sub-judice decision but it was not heard together with the present case as learned counsel appearing for both applicants in the case under consideration, insisted that the case in hand should be dealt with separately
30 as presenting an idiomatic situation, due to the general ground for annulment raised in connection with applicant No. 1 in the present recourse.

Reverting to the facts of this case:

Both applicants took the examination in writing for this post (envisaged by the publication in the Official Gazette - para 3(4)) on 8.10.83; the output in the said examinations of both applicants, is set out in Appendix 6 attached to the opposition. 5

The Departmental Board at its meeting of 22.3.84 having before it, inter alia, the applications of all candidates (including the applicants), the confidential reports and personal files of the candidates already in the service (including those of both applicants), the results of the examination in writing for the post (including those of both candidates), and bearing in mind the performance of the candidates at the interviews held before it, between 9.2.84 up to 21.2.84, decided to recommend pursuant to Regulation 6 of the aforesaid Regulations, 52 out of the 447 candidates, that is not more than 4 candidates for each one of the 13 vacant posts of Administrative Officer, to be filled. 10 15

The Departmental Board submitted its detailed report to the respondent P.S.C., as envisaged by the Regulations aforesaid.

As it appears from the relevant catalogue appended (vide page 5) to Appendix No. 6, both applicants (vide Nos. 159 and 154 for applicants 1 & 2 respectively) were held (a) to possess the required qualifications envisaged by the relevant scheme of service; 20

(b) to have passed the required examination in writing for the post.

It is also apparent from Schedule II (page 7) attached to Appendix 6 that applicant No. 2 in the present recourse was included in the 52 candidates recommended for promotion, whilst it is clear that applicant No. 1 was included in Schedule III of Appendix 6 (vide p. 4 serial No. 104) which contains the names of candidates not recommended and the reasons for adopting such course. 25 30

Although I could not trace from the material before me the source of information of applicant No. 1, in connection with his non recommendation by the Departmental Board, there remains the fact that the applicant addressed on 3.7.84 a letter to the respondent P.S.C. (vide red 112Δ in his personal file which is Exhibit "N" before me) complaining for the decision of the Departmental Board and inviting the Commission to fix an interview for him.

It is apparent from the minutes of the meeting of 24.7.84 (Appendix 23 attached to the opposition) that the respondent P.S.C. rejected the aforesaid request of applicant No. 1:

(1) Bearing in mind (a) that the Departmental Board arrived at its recommendations after considering apart from the results of the examination in writing, the performance of the candidates at the interviews before it, and

(b) that the Departmental Board recommended 52 candidates for the 13 vacant posts, that is, the greatest number possible according to the Relevant Regulations.

(2) After examining all the material before it, including the applications of the candidates, as well as the confidential reports and personal files of applicant No. 1, who was already in the service, the results of the special examination in writing, as well as the recommendations of the Departmental Board.

The aforesaid decision of the Respondent P.S.C. was communicated to applicant No. 1 by letter dated 10.8.84 (vide Red 112Γ in Exh. "N").

Thus it is apparent from the above that the respondent P.S.C. did not fail to consider the candidature of applicant No. 1 for the post in question, but on the contrary took into consideration all the relevant material before it, plus the recommendations of the Departmental Board, which carried out a due inquiry and complied absolutely with the law and the relevant Regulations. It is im-

portant to note that in examining the application of applicant No. 1 dated 3.7.84 the P.S.C. carried out a thorough inquiry themselves and reached their own decision which cannot otherwise be faulted.

In the result the general ground for annulment raised by applicant No. 1 is doomed to failure.

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With regard to applicant No. 2, I may repeat that he was recommended by the Departmental Board.

The Respondent P.S.C. after examining the material before them, including the personal files and the confidential reports of the candidates already in the service and the results of the special examination in writing envisaged by sub-para (4) of para. 3 of the required qualifications (Vide Appendix 3), and after considering the recommendations of the Departmental Board and the performance of the candidates at the interviews held by the P.S.C., in the light of the views of the Acting Director of Personnel selected as the most suitable candidates for the aforesaid 13 posts the 13 interested parties.

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In delivering shortwhile ago, the judgment of this Court in recourses Nos. 586/84 and 587/84* (tried together) which were challenging the same sub-judice decision of the Respondent P.S.C., I had the opportunity of dealing at length with the nature of the "first entry and promotion post" as well as with complaints similar to the ones advanced in the recourse under consideration, in connection with alleged "undue weight attributed to the impressions created by the candidates at the interviews" and complaints with respect to superiority of applicants over interested parties.

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I do not intend repeating what I have stated in delivering the judgment in the aforesaid cases. I shall confine myself in adopting my stand in those cases, and the authorities therein cited.

I should perhaps deal briefly only with the issue raised in this case in respect of interested party No. 2, notably the alleged non

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** (See p. 310 in this part ante).*

possession by her of the required Academic qualification envisaged by the relevant scheme of service. In the first place it is within the province of the respondent P.S.C. to interpret and apply the relevant scheme of service. As stated by the learned President of this Court in *Andreou v. The Republic* (1979) 3 C.L.R. 379 at pp. 386, 387:

"It is well established that it is up to the appointing authority - in this case the respondent Commission - to interpret and apply the relevant scheme of service in the circumstances of each particular case, and this Court will not interfere with an appointment made by such authority if it is not satisfied that it was not reasonably open to the authority in question to interpret and apply the scheme of service in the way in which it has done (see *Papapetrou v. The Republic*, 2 R.S.C.C. 61, 69, *Josephides v. The Republic*, 2 R.S.C.C. 72, 77, *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, *Neophytou v. The Republic*, 1964 C.L.R. 280, 299, *Georghiades and others v. The Republic*, (1967) 3 C.L.R. 653, 668, *Tryfon v. The Republic*, (1968) 3 C.L.R. 28, 40, *Kyriakou and others v. The Republic*, (1975) 3 C.L.R. 37, 44, 45").

In the instant case having considered the relevant material before me, bearing in mind as well the extensive inquiry by the respondent on this issue, I am of the view that it was reasonably open to the respondent Commission to interpret and apply the relevant scheme of service as it has done.

Having given to the present case my best consideration, I hold the view that applicant No. 2 has failed, as well, to establish striking superiority over the interested parties; and as repeatedly stated, an Administrative Court will not interfere unless it is established that an applicant is strikingly superior to the candidate selected.

In the result present recourse fails in its entirety and is hereby dismissed. Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*