

(1988)

1988 April 23

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS ZYNGAS AND OTHERS,

v.

Applicants,

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 274/86, 349/86, 350/86).

Public Officers—Promotions—Seniority—Substantial seniority of 12 and 11 1/2 years—Interested parties had by far better confidential reports—Special reasoning why applicant's such seniority was disregarded.

Public Officers—Promotions—Annulment of, by this Court, on ground that one of the candidates (applicant in the previous case) was wrongly excluded from consideration—Argument that as the annulment was based "on a matter of procedure" the annulled promotions should have been, in the absence of new facts, repeated—Such argument is without merit.

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The facts of this case appear in the judgment of the Court.

Recourse dismissed. 10
No order as to costs.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Agricultural Officer in preference and instead of the applicant.

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Chr. Triantafyllides, for applicant in Case No. 274/86.

A. *Haviaras*, for applicants in Cases Nos. 349/86 and 350/86.

A. *Vladimerou*, for the respondent.

A.S. *Angelides*, for interested party Iordanou.

G. *Triantafyllides*, for interested party Melifronides.

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Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicants seek a declaration of the Court that the decision of the respondent Commission to promote the interested parties, Iordanou and Melifronides to the permanent post of Senior Agricultural Officer (Permanent Budget) retrospectively, as
10 from 1st May, 1982, is null and void and of no legal effect whatsoever.

The factual background to this recourse is as follows:

As a result of the decision of this Court in recourse No. 323/
15 82, filed by Iordanou (interested party 1 in the present recourses), the promotion of Zyngas (applicant in recourse No. 274/86) and P. Michaelides (applicant 2 in recourse No. 249/86), to the post of Senior Agricultural Officer was annulled, as the respondent Commission wrongly considered that the aforesaid I. Iordanou
20 did not satisfy the requirements of the scheme of service. At the time when the request for the filling of the post of Senior Agricultural Officer was made (27th January 1982), there was only one vacant post of Senior Agricultural Officer. A second vacancy came into existence on the 1st May, 1982, as a result of the promotion of a Senior Agricultural Officer to the post of Head of Agriculture. By such a date the applicant satisfied all the requirements of the scheme of service and was, therefore, entitled to be
25 considered for promotion. As both posts were filled at the same time by the promotion of interested parties Zyngas and Michaelides and as it was not mentioned in the sub judice decision that
30 one of them was promoted to the vacant as on 27th January 1982

post and the other to the other post, both sub judice promotions were annulled.

The respondent Commission re-examined the matter on the 4th February 1986. The list of those eligible, including now Iordanou was placed before it. The Head of the Department of Agriculture, Mr. Louca gave his recommendations in respect of both posts, disregarding the interviews that had previously taken place before the respondent Commission and taking into Consideration the confidential reports up to and including 1981, as well as the qualifications and seniority of the candidates. He also advised as to which candidates possessed at the relevant time the additional qualifications as required by the scheme of service.

The respondent Commission, having heard the views and recommendations of Mr. Louca, examined the material factors from the file for the filling of the post as well as the personal files and the confidential reports of the candidates, and having considered the conclusions of the Departmental Board and the views and recommendations of Mr. Louca and also having disregarded the interviews which had previously taken place, selected for promotion Melifronides, to the first post and Iordanou to the second post: Hence the present recourse.

It was argued on behalf of applicant Zyngas in recourse No. 274/86, that since there were no new facts before the respondent Commission than there were when its first decision was reached and since the Court annulled such decision only on a matter of procedure and not on the merits of the case, the respondent Commission was not justified in reaching a different decision. Furthermore it was argued that the head of the Department wrongly and without reason changed his recommendations.

Such arguments are without merit. Primarily it is not correct that there were no new facts before the respondent Commission for the simple reason that the list of the candidates had been altered by the addition in it of interested party Iordanou as an eligible candidate. Secondly, the original decision of the respondent Commission was also reached by taking into consideration the in-

interviews of the candidates before it whereas this time such interviews were disregarded. Nor do I find any discrepancies in the recommendations of the Head of the Department, as alleged, as the original recommendations were made in the light of the relevant interviews and also without considering Iordanou.

As regards interested party Iordanou it was further contended that he had not been recommended by the Departmental Board the first time, and that the respondent Commission wrongly considered that he possessed the additional qualification as specified in the scheme of service.

These arguments must also fail. It is correct that the Departmental Board had not recommended Iordanou but as it has already been held by the Court it failed to do so having wrongly considered that he did not possess the required qualifications.

As far as the evaluation of his additional qualification is concerned, such is within the discretion of the respondent Commission and as long as it is considered by the Court that in the circumstances it was reasonably open for the respondent Commission to decide as it did, the Court cannot interfere. In the present instance I consider that it was reasonably open to the respondent Commission to consider that this applicant's training abroad amounted to "post graduate training of at least one academic year"

Coming now to a comparison of the parties all possess more or less the same qualifications. Both interested parties have by far better reports to the applicant in this recourse. The applicant is, however, substantially senior to interested party Iordanou by about twelve years and to Melifronides by about eleven and a half years, but special reasoning does appear in the sub judice decision for disregarding such seniority of his.

In the circumstances I find therefore that as this applicant has failed to establish any striking superiority over the interested parties, the conclusions of the respondent Committee were on the material before it fully justified, this recourse must therefore fail.

As far as the applicants in Case No. 349/86 are concerned, their qualifications are more or less the same to the interested parties. Both interested parties have slightly better reports than applicant Michaelides and by far better reports than applicant Kyriakou, who has also not been recommended.

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Applicant Michaelides is senior to Iordanou by two years and to Melifronides by one year, but all other things not being equal, his seniority is not substantial so as to tip the scales in his favour.

Applicant Kyriakou on the other hand is senior to Iordanou by seven years and to Melifronides by six years and in view of his not having been recommended and of course all other things not being equal, his seniority cannot prevail.

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As far as the complaint of applicant Kyriakou that his confidential reports for the years 1972, 1973 and 1974 were wrongly prepared by a certain A. Soteriadou who at the time held the same post as the applicant, it was held by the Court in recourse No. 553/85 (but now subject to appeal No. R.A. 756), that it was not to be considered as a material irregularity and in any case and most important as regards the present promotions, the reports for the years in question, being more than seven years prior to the sub judice decision, even if they were to be considered as irregular, are too distant in time to be considered as having materially affected the sub judice decision.

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As the applicants in this recourse have failed to establish any striking superiority over the interested parties, their recourse must also be dismissed.

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Finally it was argued on behalf of applicant in recourse No. 350/86, as far as interested party Iordanou is concerned that his duties did not involve "wide administrative experience" and "organising ability". This cannot be deduced from the file of this interested party, but in any case it is an established principle of Administrative Law that is no fault of an officer nor can it be held against him if he was not assigned such duties by his superiors.

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It was also contended that, and no reasons were given in respect of certain alterations effected in Jordanous confidential reports for the year 1979, such reports are irregular. There is no requirement for such reasons to be given except only in the event
5 of there being a disagreement to that effect between the countersigning and the reporting officers, but in any case in this instance the countersigning and reporting officer are one and the same person.

Before concluding it must also be pointed out that the applicant
10 in this recourse has no recommendation for promotion by his Head of Department. His recourse therefore also fails.

For the reasons stated above, I find that the sub judice decision was properly reached and in accordance with the law. In the result the recourses must fail and are hereby dismissed, with no order
15 as to costs.

*Recourses dismissed.
No order as to costs.*