

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR AND
JOSEPHIDES, JJ.]

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REVISIONAL JURISDICTION
IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
GEORGE S. CONTOPOULLOS,
and
THE REPUBLIC OF CYPRUS THROUGH
THE PUBLIC SERVICE COMMISSION
(AN INDEPENDENT BODY),

Applicant,

Respondent.

GEORGE S.
CONTOPOULLOS
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE PUBLIC
SERVICE
COMMISSION

(Case No. 299/62)

Administrative and Constitutional Law—Public Service Commission—Duties of, under Article 125 of the Constitution—Public Officers—Vacancies in the post of Land Officer, Department of Lands and Surveys—Filling of those vacancies by promotion—Request by the competent Executive Branch of Government (viz. in this case the Ministry of Interior) to the Public Service Commission not to fill the said vacancies pending re-organization of the Department concerned—The duties of the Public Service Commission under Article 125.1 of the Constitution are limited to matters concerning officers and not the offices involved—It is not for the Commission to decide when a vacancy is to be filled as the matter lies within the competency of the Executive Branch of Government—It is only when such a vacancy is to be filled that the Commission has exclusive jurisdiction under Article 125.1 to decide on who is to be promoted—Therefore, the Commission acted quite properly in the instant case in taking into account the request of the Minister of Interior not to fill the said vacancies pending re-organization of the department involved.

Costs—Part of costs awarded to the losing applicant in view of the hardship suffered and other special circumstances of the case.

Administrative Law—Public Officers—Observations by the court as to the need of enactment of special provisions regulating questions of appointments, promotions, disciplinary proceedings and the like.

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Paragraph 1 of Article 125 of the Constitution reads as follows :

“ Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers.”

The applicant by this recourse, made under Article 146 of the Constitution, complains against the decision of the Public Service Commission made on the 14th September, 1962, and communicated to him by letter dated 19th September, 1962, to the effect that his application for promotion to the post of Land Officer, from the post of Land Clerk, 1st Grade, was turned down.

By his letter of the 28th August, 1962, the applicant had brought to the notice of the Commission that he had been serving in the Department of Lands and Surveys since 1950, that he was the most senior Land Clerk, 1st Grade, and in his opinion entitled to be promoted to the post of Land Officer ; he stated that vacancies in the said post had occurred since February, 1959, if not earlier, and that he had since then been waiting to be promoted thereto ; that as he was due to retire on the 1st December, 1962, he was seeking to be promoted before retirement in order to avoid the financial loss involved in not having been promoted in due time to the higher post of Land Officer and also in order to be given moral satisfaction to which he thought he was entitled after a service of 42 years.

In fact there have existed vacancies in the post of Land Officer for some time, since before February, 1962, and applicant's Head of Department had made representations for the filling of such vacancies. As a result, on the 8th February, 1962, the Public Service Commission considered the question and called for interview a number of Land Clerks, 1st Grade, one of whom was the applicant. Before, however, the Commission had effected any promotions a letter was written by the Ministry of Interior to the Commission, on the 9th May, 1962, requesting them not to pro-

ceed with the filling of vacancies in certain posts, including the post of Land Officer, in view of the impending re-organization of the Lands and Surveys Department ; the said Department comes under the Ministry of the Interior. As a result of, the applicant, who taking into account his seniority and other factors, could probably have been promoted to the post in question was not promoted and he eventually retired being still a Land Clerk, 1st Grade.

It has been argued before the court by Counsel for applicant that the Ministry of Interior was not entitled to interfere with the public duty of the Public Service Commission, under Article 125 of the Constitution, to make promotions to posts in the public service and that, therefore, the decision of the Commission taken on the 14th September, 1962, was invalid because it must have been based on the request contained in the letter of the Ministry of Interior, dated 9th May, 1962.

Held, (1) the duties of the Public Service Commission under Article 125 are limited to matters concerning the *officers* and not the *offices* involved.

(2) It is not for the Public Service Commission to decide when a vacancy is to be filled by way of promotion as this matter lies within the competence of the Executive Branch of the Government. It is only when such a vacancy is to be filled that the Commission has exclusive competence to decide on who is to be promoted or appointed to the post in question.

(3) In the present case, the Commission quite properly took into account the request of the Ministry of Interior not to fill the vacancies in the post of Land Officer pending the re-organization of the Department concerned.

(4) Awarding costs in favour of an unsuccessful applicant is a course which is not to be adopted except for very grave reasons and on very rare occasions ; but this case seems to be one of such cases. We award him £25 towards his costs.

Recourse dismissed. Order for costs as aforesaid.

Per curiam : The court would like to observe that it is most necessary that matters pertaining to the discharge of the functions of the Public Service Commission in rela-

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tion to questions of appointments, promotions, disciplinary proceedings and the like should be regulated by specific provisions, so as to enable public officers to know exactly what is their position with regard to their prospects in the service and the manner in which such prospects are to be taken care of by the appropriate authorities.

Cases referred to :

Papapetrou and The Republic, 2 R.S.C.C. p. 61 at p. 66.

Recourse.

Recourse against the decision of the Public Service Commission made on the 14th September, 1962, and communicated to applicant by letter dated 19th September, 1962, to the effect that his application for promotion to the post of Land Officer, from the post of Land Clerk, 1st Grade, was turned down.

L. N. Clerides, for the applicant.

K. C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the court.

ZEKIA, P.: The judgment will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: In this case the applicant is complaining, by a recourse under Article 146 of the Constitution, against the decision of the Public Service Commission made on the 14th September, 1962, and communicated to him by letter dated 19th September, 1962, to the effect that his application for promotion to the post of Land Officer, from the post of Land Clerk, 1st Grade, was turned down.

It must be stated at once that the court found some difficulty with the relevant decision of the Public Service Commission, as framed in its minutes of the 14th September, 1962. It appeared to be worded in a rather general and summary manner. In view, however, of the fact that this decision was taken on the basis of an application to the Commission made by applicant, dated 28th August, 1962, the Court is of the opinion, in the particular circumstances of this case, that the said application and the decision in question of the Commission may be read together so as to ascertain the exact reasons relied upon by the Commission in reaching its decision.

By his letter of the 28th August, 1962, the applicant had brought to the notice of the Commission that he had been serving in the Department of Lands and Surveys since 1950, that he was the most senior Land Clerk, 1st Grade, and in his opinion entitled to be promoted to the post of Land Officer, he stated that vacancies in the said post had occurred since February, 1959, if not earlier, and that he had since then been waiting to be promoted thereto ; that as he was due to retire on the 1st December, 1962, he was seeking to be promoted before retirement in order to avoid the severe financial loss involved in not having been promoted in due time to the higher post of Land Officer and also in order to be given moral satisfaction to which he thought he was entitled after a service of 42 years.

As a matter of fact there have existed vacancies in the post of Land Officer for some time, since before February, 1962, and applicant's Head of Department had made representations for the filling of such vacancies. As a result, on the 8th February, 1962, the Public Service Commission considered the question and called for interview a number of Land Clerks, 1st Grade, one of whom was the applicant. Before, however, the Commission had effected any promotions a letter was written by the Ministry of Interior to the Commission, on the 9th May, 1962, requesting them not to proceed with the filling of vacancies in certain posts, including the post of Land Officer, in view of the impending re-organization of the Lands and Surveys Department ; the said Department comes under the Ministry of the Interior. As a result of the applicant, who taking into account his seniority and other factors, could probably have been promoted to the post in question, was not promoted and he eventually retired being still a Land Clerk, 1st Grade.

It has been argued before the court by Counsel for applicant that the Ministry of Interior was not entitled to interfere with the public duty of the Public Service Commission, under Article 125 of the Constitution, to make, *inter alia*, promotions to posts in the public service and that, therefore, the decision of the Commission taken on the 14th September, 1962, was invalid because it must be obviously taken to have been based on the request contained in the letter of the Ministry of Interior, dated 9th May, 1962.

In the opinion of the court the duties of the Public Service Commission under Article 125 are limited to matters concerning the *officers* and not the *offices* involved (*vide Papa-*

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petrou and the Republic, 2 R.S.C.C. p. 61 at p. 66). It is not for the Public Service Commission, therefore, to decide when a vacancy is to be filled by way of promotion as this matter lies within the competence of the Executive Branch of the Government. It is only when such a vacancy is to be filled that the Commission has exclusive competence to decide on who is to be promoted or appointed to the post in question.

In the present case, therefore, the Commission quite properly took into account the request of the Ministry of Interior not to fill the vacancies in the post of Land Officer pending the re-organization of the Department concerned.

It is quite true that through what has happened the applicant, a public servant with long and devoted service, has suffered grave hardship, but which, unfortunately, in the circumstances, is not by itself a ground for judicial redress.

Counsel for applicant has also relied on the case of another employee of the Lands and Surveys Department who had earlier been promoted to the post of Land Clerk, 1st Grade (from the 2nd Grade) just before his retirement, having applied to the Public Service Commission for the purpose. But that case is different in that such promotion took place before the letter of the 9th May, 1962, was addressed by the Ministry of Interior to the Public Service Commission. It follows, therefore, that the principle of equality has not been infringed because the case of the applicant and of the other officer in question are not on the same basis. But this is a matter which may be relevant to any *ex gratia* action that the Executive might see fit to take *vis a vis* applicant.

In conclusion the court would like to observe that it is most necessary that matters pertaining to the discharge of the functions of the Public Service Commission in relation to questions of appointments, promotions, disciplinary proceedings and the like should be regulated by specific provisions, so as to enable public officers to know exactly what is their position with regard to their prospects in the service and the manner in which such prospects are to be taken care of by the appropriate authorities.

For the above reasons this recourse fails and is dismissed accordingly.

The Court, however, feels that this is a proper case (in view of the hardship suffered by applicant and in view of the fact that he was actually interviewed for promotion and

then such promotion did not materialise due to wider interests of the administration), for the payment by respondent to applicant of a sum towards his costs, *viz.* £25. The court feels that this is a case which the applicant had every reason to bring before the court in an effort to vindicate what he considered to be his legitimate interests arising out of a service in Government of 42 years. Awarding costs in favour of an unsuccessful applicant is a course which is not to be adopted except for very grave reasons and on very rare occasions but this seems to be indeed one of such cases. After all, had the appointments to the post of Land Officer been made by the Commission reasonably soon after the interviews in February, 1962, the letter of the Ministry of Interior of the 9th May, 1962, would not have sealed the fate of applicant by preventing promotions. Moreover, this is a case where the public interest in general appeared to have required to have the issues raised considered by this court.

*Recourse cannot succeed
and is dismissed accordingly.
Order for costs as aforesaid.*

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