

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MENELAOS GEORGHIADES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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(Case Nos. 165/65, 166/65).

Public Officers—Appointments—Promotions—Appointments to the post of Agricultural Officer, Class II—Validity of the appointments or promotions—Discretion of the Public Service Commission, the respondent—Properly exercised in the matter, the Commission having acted on the basis of the relevant criteria viz. the required specialized knowledge and experience of the candidates—And without resorting to arbitrary or extraneous criteria—See, also, hereafter.

Public Service—Vacancies—Filling of vacancies—Advertisement—“First entry and promotion posts”—Public Service Commission—The Commission is entitled to adopt the practice not to advertise such vacancies, if satisfied that there are candidates in the service eligible and suitable for promotion—The Commission is not bound to adopt the procedure laid down by any general order—See, also, herebelow.

Vacancies—Vacancies in the public service—Filling of, by the Public Service Commission under Article 125 of the Constitution—Powers of the Council of Ministers to ask the Commission, for good reason, not to proceed to fill a vacant post.

Public Service—Unestablished officer—An unestablished officer is, nevertheless, a “public officer” because he is the “holder of a public office” within the provisions of Article 122 of the Constitution—Therefore, the Public Service Commission, in the exercise of its competence under Article 125 of the Constitution, is entitled in its discretion to consider an unestablished officer for purposes of promotion to a vacant public office—Although a permanent officer is to be preferred for purposes

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of such promotion to an unestablished officer, all other things being equal—But in the present case all other things were not equal—Therefore it was reasonably open to the respondent Commission to select an unestablished officer in preference to a permanent one such as the applicants

Promotions—Promotion of an unestablished (temporary) public officer in preference to a permanent one—See under Public Service, immediately above

Permanent officer—Promotion—Must be preferred to an unestablished officer all other things being equal—See above

Temporary officer—Unestablished public officer—Members of the public service—Promotion etc —See above

*Promotions—The purpose of an appointment for promotion is to place the most suitable officer in the post concerned—In the present case it was reasonably open to the respondent Commission to act as it did in selecting for appointment the Interested Parties in preference to the applicants—Seniority
Seniority in service is only one of the relevant considerations and not the decisive factor—See also under Public officers Public Service above and herebelow*

Seniority —See under Promotions above

Scheme of Service— Some years experience —Meaning—Interpretation—So long as an interpretation given by the respondent Commission was reasonably open to it the Court will not interfere by substituting therefor its own interpretation

Alien—Non-citizen of the Republic—Public Service—A non-citizen of the Republic (in this case a Greek subject) is not eligible for appointment etc to any public office by the Public Service Commission—This does not preclude the Council of Ministers from employing on contract a non-citizen of the Republic—Such employment however would not render the person concerned a member of the public service within Articles 122 and 125 of the Constitution- Nor would it amount to an appointment or nomination in the sense of the Public Bodies and Public Offices (Appointment) Law Cap 80

Public Service— Alien—A person who is not a citizen of the Republic is not eligible for appointment etc to a public office by the Public Service Commission—Powers of the Council of Ministers to employ on contract such person— See under Alien above

and under Public Service Commission, Council of Ministers, below.

Public Service Commission—Competence—Articles 125, 186 and 2 of the Constitution—Read together, those Articles leave no doubt that the Public Service Commission has no competence and, therefore, cannot proceed to appoint or promote to public offices a person not a citizen of the Republic—See, also, under Alien above; and under Public Service Commission herebelow.

Public Service Commission—Competence—The Council of Ministers and its competence in relation to public service—The Public Service Commission is vested under the Constitution with only those powers which it has been expressly given under Article 125 of the Constitution—And any other powers in relation to the Public Service are vested in the Council of Ministers—See, also, under Alien, Public Service, and Public Service Commission, above.

Council of Ministers—Its powers and competence in relation to public service—See above under Alien; and under Public Service Commission immediately above.

Council of Ministers—Vacancies—Powers of the Council of Ministers to ask the Public Service Commission for good reason not to proceed to fill a vacant post—See, also, under Vacancies above.

Competence—Competence of the Public Service Commission under Article 125 of the Constitution—See above.

Competence—Competence of the Council of Ministers in relation to the public service—See above.

Presumption of Competence—In favour of the Council of Ministers—See above under Public Service Commission.

Public Service Commission—Free to regulate its own procedure—Not bound to adopt the procedure laid down by the General Orders—Free to adopt such practice and procedure as it may deem fit—So long as they are compatible with proper administration and the due exercise of its competence—Latitude of the Public Service Commission in interpreting schemes of service—See, also, under Public Service, Scheme of Service, above, and under General Orders, below.

General Orders—Their legal force and effect—They have not the

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force of legislation after the coming into operation of the Constitution, viz after the 16th August, 1960—They merely lay down administrative practice and procedure—See, also, under Public Service Commission, immediately above, and under Public Service, above—General Orders—General Orders II/I 3, II/I 14, II/I 17.

Administrative Law—Constitutional Law—Article 146—Recourse under Article 146—Time within each recourse has to be filed—Article 146 3—Any doubt on the issue of such time must be resolved in favour of the applicant

Time—Time within which a recourse under Article 146 has to be filed—Doubt on this issue of time—Must be resolved in favour of the applicant—See, also, above

Administrative Law—Discretion—Proper exercise thereof on the basis of relevant criteria—Abuse of power—Article 146 1 of the Constitution—Onus on the applicant to establish abuse of powers

Abuse of powers—Onus—See immediately above

Discretionary Powers—See under Administrative Law above, also under Public Officers above.

Constitutional Law—The competence of the Public Service Commission under Article 125 of the Constitution—The competence of the Council of Ministers in relation to public service—Presumption of competence—See above under Alier, Public Service Commission, Council of Ministers Vacancies, above

Evidence—Oral evidence admissible to complete the picture of the proceedings before the Public Service Commission

Practice—One trial—One judgment—Two or more recourses under Article 146 of the Constitution aimed at one and the same administrative decision—And where most of the issues arising therein are common—May be heard together and one judgment may be given in respect of such two or more recourses.

Both these recourses are aimed at a decision of the respondent Public Service Commission dated 6th May, 1965, by virtue of which the five Interested Parties have been appointed to the post of Agricultural Officer, Class II. One of the Interested Parties was appointed to the said post in a permanent capacity, two were seconded to such post, one received

a temporary appointment and the last, G. Grivas, a non-citizen of the Republic (in fact being a Greek subject) received a temporary appointment on contract. The said decision of the Commission was challenged on various grounds, some raising issues common to all Interested Parties, some raising specific issues in relation to Interested Party Phocas, and some in relation to Interested Party Grivas, the above named non-citizen of the Republic.

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Article 125 of the Constitution provides:

"1. Save where other express provision is made.....
....., 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 personal establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

By Article 122 of the Constitution "public office" means an office in the public service; "public officer" means the holder, whether substantive or temporary or acting, of a public office; and "public service" means any service under the Republic other than service in the army..... and includes service under the Cyprus Broadcasting Corporation, the Cyprus Inland Telecommunications Authority and the Electricity Authority of Cyprus and....."

By Article 123, paragraph 1, of the Constitution it is provided:

"1. The public Service shall be composed as to seventy per centum of Greeks and as to thirty per centum of Turks".

On another head Article 2 of the Constitution provides:
"For the purposes of this Constitution—

"(1) The Greek Community comprises all *citizens of the Republic* who are of Greek origin....."

"(2) The Turkish Community comprises all *citizens of the Republic* who are of Turkish origin....."

Article 186 of the Constitution provides:

"1. In this Constitution, unless it is otherwise provided or required by the context—

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(1) Community means the Greek or Turkish Community;

“Greek” means a member of the Greek Community as defined in Article 2:.....”

The Court, in annulling in part the *sub judice* decision and only in so far as it promoted Interested Party Grivas, the aforesaid non-citizen of the Republic, otherwise confirming it:—

Held, (1) as both these recourses were directed against the validity of one and the same decision, dated the 6th May, 1965, and most of the issues arising in them are common to both, they have been heard together and it is now proposed to give one judgment in respect of both of them. (For relevant practice see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 274).

(2)(a) On the evidence before me, I am inclined to the view that the period of 75 days prescribed under Article 146.3 of the Constitution should not be reckoned from any date prior to the 8th July, 1965, and that therefore, the two recourses having been filed on the 20th and 21st September, 1965, respectively, are within time.

(b) And any doubt on the issue of a recourse being within time ought to be resolved in favour of the applicant (See *Neophytou and the Republic* (1964 C.L.R. 280 at p. 290).

(3)(a) It has been argued by counsel for applicants that as the posts concerned are “first entry and promotion posts” under the relevant scheme of service, there ought to have been an advertisement of the vacancies, a thing which, it is common ground, has not been done; reliance has been placed, in this connection, on general Order II/I.17.

(b) It has been held in the past, in unequivocal terms that General Orders have not continued in force, as legislation, after the Independence Day (*viz.* the 16th August, 1960), (see *Loizides and The Republic*, 1 R.S.C.C. 107, at p. 112; *Frangides v. The Republic* (reported in this Part at p. 181, *ante* at p. 189) they only lay down, to a certain extent, administrative procedures which may be adopted as established practice.

(c) The Public Service Commission is, however, free in regulating its own proceedings, to adopt such practice and

procedures as it may deem fit, so long as they are compatible with proper administration and the due exercise of its competence. It is not bound to adopt the procedure laid down by any General Order.

(d) The practice of the Commission, when filling vacancies in "first entry and promotion posts" is not to advertise such vacancies if it is satisfied that there are candidates in the service, entitled to promotion thereto and suitable for such promotion: otherwise, they are advertised.

(e) This practice of the Commission (which is not, indeed, very different from what it is provided for under General Order II/I.17) is, in my opinion, a practice the adoption of which was properly open to the Commission, from all the material points in view. (See, also, *Kyriakou* and C.B.C. (1965) 3 C.L.R. 482 at p. 490).

(f) I find, therefore, that the Commission has not acted in any way invalidly, in deciding, in the present instance, not to advertise the vacancies in question, in view of the fact that there existed, in its opinion, sufficient eligible candidates already in the service.

(4)(a) From the relevant minutes of the Commission it might, at first sight, appear that the applicants were not considered for promotion, at all.

(b) From the evidence, however, of Mr. Demetrios Proestos a member of the Commission, whose evidence I accept as reliable, it is clear that the applicants *were considered* for promotion. Mr. Proestos was not cross-examined on this part of his evidence, which was properly admissible as completing the picture of the proceedings before the Commission (see *Georgiades* (No. 2) and *The Republic* (1965) 3 C.L.R. 473 at p. 481).

(c) True, the Commission limited eventually its search for the most suitable candidates, by considering only those in the Sections concerned, thus, excluding at that final stage, the applicants. The reason for which the Commission adopted such a course appears, from the minutes, to be that those employed in the said Sections "had the required knowledge and experience".

(d) It seems that Agriculture has been evolving towards

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specialization and, thus, specialized knowledge and experience are very material considerations in deciding to fill a particular post, entailing the carrying out of specialized duties

(e) Therefore, nobody could have complained that the Commission acted in this respect on arbitrary or extraneous criteria, because, in effect, the Commission made its selection from among all candidates on the basis of the relevant criteria viz. the required knowledge and experience

(5)(a) It has been repeatedly stressed that the purpose of an appointment on promotion is to place the most suitable officer in the post concerned (See, inter alia, *Theodosiou and The Republic* 2 R S C C 44, at p 47)

(b) In the circumstances of these cases, I am satisfied that it was reasonably open to the Commission within the proper limits of the exercise of its relevant discretion, to act as it did in selecting for appointment the Interested Parties

(6)(a) It has been held more than once that seniority in service is only one of the relevant considerations, and not the decisive factor (See *Theodosiou's* case, supra, and *Evangelou and The Republic* (1965) 3 C L R 292 at p 297)

(b) On the material before me, I am not satisfied that disregarding the respective seniority of the applicants, *vis-a-vis* any of the Interested Parties, resulted in abuse or excess of powers on the part of the respondent Commission, nor can it be said that it was disregarded without due justification. Such justification is that the applicants were not employed, at the time, in the Sections of the Department in which the vacancies existed, and so did not possess the required specialized knowledge and experience

(c) The burden of establishing abuse or excess of powers lay on the applicants, and I cannot find that it has been discharged, in this respect (see, further, *Koukoulitis and The Republic*, 3 R.S C C 134)

(7) *With regard to certain specific issues raised in relation to the appointment of Interested Party Phocas*

(A) (a) It has been argued that he could not have been taken into account as a candidate for promotion, to one of the vacancies, because, being a temporary unestablished officer he was not a member of the "public service"

(b) It is quite clear that the "Public Service Commission" exercises its relevant competence, under Article 125 of the Constitution, in relation to public officers. "Public Officer" is defined in Article 122 of the Constitution to mean "the holder, whether substantive or temporary or acting, of a 'public office'; and "public office" is defined, in Article 122, as "an office in the public service".

(c) I am, therefore, of the view that it was not improper for the respondent Commission, in the exercise of its discretion to decide to consider an unestablished officer, such as Interested Party Phocas, together with established officers such as the applicants, for purposes of promotion to a vacant public office.

(d) It has been argued that such a course was contrary to General Order II/I.14. In the first place, as pointed earlier (supra) General Orders do not have the force of law. Secondly, the context of the particular General Order is such that it does not exclude under all circumstances, promoting a non-permanent officer.

(B)(a) It has, also, been contended in this connection that an unestablished officer, such as Interested Party Phocas, could not be considered for the vacancies in question as long as there existed in the service suitable permanent officers such as applicants.

(b) I quite agree that a permanent officer is to be preferred, for promotion purposes, to an unestablished officer, *all other things being equal*.

(c) But in my opinion in the present case all other things were not equal in view of the qualifications of the Interested Party in question regarding specialized knowledge and experience.

(d) Therefore, on the material before me, I am not prepared to hold that the course adopted in the matter by the respondent Commission, is improper. On the contrary, it was reasonably open to it in the light of all the relevant circumstances.

(C)(a) The next objection taken to the validity of the promotion of this Interested Party is that he did not qualify for appointment to the post of Agricultural Officer,

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Class II, because he did not possess “some years’ experience” as required by the relevant scheme of service.

(b) I quite agree that “some years’ experience” implies experience of at least two years or more. I agree also that experience prior to his entering the Government service in Cyprus, cannot be regarded as “experience” for the purposes of the said scheme of service; it ought to be “experience” in the first entry post from which he was promoted to the post of Agricultural Officer, Class II.

(c) The respondent Commission has, however, taken the view that this period of one year’s spent by the aforesaid Phocas on scholarship in the U.S.A. for further studies in his field of work, could be taken into account and that, therefore, this Interested Party Phocas, has two and a half years’ experience in the post below inasmuch as he served in the Department in Cyprus for an actual period of one and a half year.

(d) It has been held in *Papapetrou and The Republic* 2 R.S.C.C. 61, at p. 69, that so long as an interpretation given to a scheme of service was reasonably open to the Commission (the respondent) the Court will not interfere and will not give it a different interpretation—nor, will the Court interfere with a decision of the Commission, in applying a scheme of service, if the conclusion reached by it was reasonably open to it in the circumstances (see *Josephides and The Republic*, 2 R.S.C.C. 72).

(e) And I am quite satisfied that it was reasonably open to the Commission to take the view which he had and to treat the period spent abroad by Interested Party Phocas as relevant “experience” the more so as his studies in the U.S.A. included practical training. On the contrary I think that it would have been most unreasonable if such an officer, who while holding a certain post, had been sent abroad by Government for further studies in relation to his work, were to be penalized by losing the time he had properly spent abroad, through such time not being taken into account as “experience” for purposes of promotion.

(8) *With regard to certain specific issues raised in relation to the appointment of Interested Party Grivas, a Greek citizen, and not a citizen of the Republic:—*

(a) The main objection of the applicants to the validity

of the appointment of this Interested Party (Grivas) is that he could not be appointed by the respondent Commission for a post in the public service, in view of the fact that he is not a citizen of the Republic. It has been argued, further, that such appointment is excluded both by the Public Bodies and Public Offices (Appointment) Law, Cap. 80 and General Order II/1.3. It has been submitted in reply by counsel for the respondent—and quite correctly—that the General Orders have no longer any binding force; he has argued further, that Cap. 80 has ceased to be in force, under Article 188 of the Constitution, as being inconsistent with the Constitution; and that the context of Cap. 80 is such that it cannot be applied modified, under paragraph 4 of Article 188.

(b) Bearing in mind what has been laid down in *Pelides and The Republic* 3 R.S.C.C. 13, at p. 18, I would be inclined to think that Cap. 80 can, and should be applied, modified under paragraph 4 of Article 188 of the Constitution.

(c) But I need not go into this matter, further because what we should be concerned with, in the first place, is the primary issue of whether or not the Public Service Commission had competence at all to decide on the appointment, on contract or otherwise, of a non-citizen of the Republic to a post in the public service.

(d) The competence of the Commission is to be found laid down in Article 125 of the Constitution (*supra*). It has been held in *Papapetrou and The Republic* (*supra*) at p. 66 that the Commission is vested under the Constitution with only those powers which it has been expressly given under Article 125 and that any other powers in relation to the public service are vested in the Council of Ministers.

(e) Reading together Articles 125, 186 and 2 of the Constitution (*supra*) there can be no doubt that the competence of the Public Service Commission, as far as Greeks are concerned, extends only to those Greeks who are citizens of the Republic of Cyprus. It cannot proceed to appoint or promote to public office a Greek who is not a citizen of the Republic. It follows, also, that it can only exercise its competence as among citizens of the Republic. It cannot consider together, as candidates for promotion, citizens and non-citizens.

(f) For the above reasons the decision of the respondent

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Commission to promote Interested Party Grivas to a post in the public service, should be declared null and void and of no effect whatsoever.

Per curiam: (g) Nothing in the foregoing is intended to exclude the Council of Ministers from employing on contract a non-citizen of the Republic. Such employment would not, however, render the person concerned a member of the "public service"; nor would it amount, either, in my opinion as at present advised to an "appointment" or "nomination" in the sense of Cap. 80.

(9) In the result the sub-judice decision of the Commission is annulled in part, in so far as it promoted Interested Party Givas and is otherwise confirmed.

Order accordingly.

Cases referred to:

Georgiades (No. 2) and The Republic, (1965) 3 C.L.R. 473 at p. 481, followed;

Neophytou and The Republic, 1964 C.L.R. 280 at p. 290, followed;

Loizides and The Republic, 1 R.S.C.C. 107, at p. 112, followed;

Frangides v. The Republic, (reported in this part at p. 181 *ante*, at p. 189 followed);

Kyriakou and C.B.C. (1965) 3 C.L.R. 482 at p. 490, followed;

Theodossiou and The Republic, 2 R.S.C.C. 44, at p. 47, followed;

Evangelou and The Republic (1965) 3 C.L.R. 292 at p. 297, followed;

Koukoullis and The Republic, 3 R.S.C.C. 134, followed;

Papapetrou and The Republic, 2 R.S.C.C. 61, at p. 66 and 69, followed;

Josephides and The Republic, 3 R.S.C.C. 72, followed;

Pelides and The Republic, 3 R.S.C.C. 13, at p. 18;

Contopoulos and The Republic 1964 C.L.R. 347 at p. 352.

Recourses.

Recourses against the decision of the Respondent to appoint the five Interested Parties to the post of Agricultural Officer, Class II.

- L. Clerides* for Applicant in Case No. 165/65.
- A. Triantafyllides* for Applicant in Case No. 166/65.
- L. Loucaides, Counsel of the Republic*, for the Respondent.
- A. HadjiIoannou* for the Interested Parties.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: Both these recourses are aimed at a decision of the Respondent Public Service Commission, dated 6th May, 1965, (see *exhibit 2*), by virtue of which the five Interested Parties have been appointed to the post of Agricultural Officer, class II.

Interested Party S. Sofocleous was appointed to the said post in a permanent capacity; Interested Parties N. Achillides and Chr. Ioannou were seconded to such post; Interested Party C. Phocas received a temporary appointment and Interested Party G. Grivas received a temporary appointment on contract.

The Applicant in recourse 165/65 challenges the validity of the appointments of all five Interested Parties, whereas the Applicant in recourse 166/65 challenges only the validity of the appointments of Interested Parties Phocas and Grivas.

As both these recourses were directed against the validity of one and the same decision of the Commission, and most of the issues arising in them are common to both, they have been heard together and it is now proposed to give one Judgment in respect of both of them. (For relevant practice see Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 274).

The history of events, on the basis of the material before the Court and of evidence which I accept as reliable, is as follows:-

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At the material time, there existed vacant six posts of Agricultural Officer, class II, which were to be filled by the Public Service Commission. Three of them were permanent posts and three of them were temporary posts, created by the Development Budget; one of the permanent posts was to be filled in a permanent capacity, and the other two were to be filled on secondment, in view of the fact that their holders had been seconded elsewhere.

The vacancies were not advertised. The posts in question being first entry and promotion posts, the Commission took the view that no advertisement was necessary, because there appeared to be suitable candidates in service, already. As a result, all those in the immediately lower post of Assistant Agricultural Officer—and both Applicants were, at the time, Assistant Agricultural Officers—and in the equivalent thereto post of Agricultural Superintendent, 1st grade, were considered as candidates for promotion to the post of Agricultural Officer, class II.

It is correct that from the relevant minutes of the Commission, (*exhibit 2*) it appears that the Commission considered the Assistant Agricultural Officers and the Agricultural Superintendents, 1st grade, employed in the Chemistry Section, Plant Protection Section, Extension Section and Water Use Section of the Department of Agriculture; this is repeated in paragraph 2 of the Opposition. The Applicants were both, employed in the Soil and Plant Nutrition Section of the Department and, at first sight, it might, therefore, appear that they were not considered for promotion, at all.

From the evidence, however, of Mr. Demetrios Proestos, a member of the Commission, whose evidence I accept as reliable, it is clear that the Applicants *were* considered for promotion, because they are both holders of relevant degrees and “all Assistant Agricultural Officers and Agricultural Superintendents, 1st grade, who had a degree, were candidates before the Commission. All these candidates were duly taken into consideration. Promotions were decided upon on the basis of the criteria mentioned in *exhibit 2*”. Mr. Proestos was not cross-examined on this part of his evidence, which was properly admissible as completing the picture of the proceedings before the Commission (see *Georghiadès* (No. 2) *and the Republic*, (1965) 3 C.L.R. 473 at p. 481).

It appears, thus, that in the minutes of the Commission, *exhibit 2*, there was recorded the final stage, only, of the selection process, at which the Commission proceeded to short-list those candidates who were employed in the Sections referred to in *exhibit 2*.

That Applicants were considered as candidates is to be derived, also, from the letters addressed to them by the Commission, (see *exhibits 4 and 5*), in answer to their complaints that they were not promoted to the posts in question.

The Commission, eventually, decided to appoint the Interested Parties in five of the existing vacancies, and to advertise the remaining vacancy, in relation to a post in the Water Use Section; and against such decision the Applicants have filed the present recourses.

As counsel for Respondent has raised the question of these recourses being out of time it is convenient to deal with this issue, at this stage:-

These two recourses were filed on the 20th and 21st September, 1965, respectively. The sub judice decision of the Commission was taken on the 6th May, 1965. The appointment and the secondments, respectively, of Interested Parties Sofocleous, on the one hand, and Achillides and Ioannou, on the other hand, were published in the official Gazette on the 8th July, 1965. The temporary appointments of Interested Parties Phocas and Grivas were never gazetted.

As stated earlier, recourse 165/65 attacks the validity of all five appointments. In so far as it relates to the validity of the gazetted ones there is no doubt that it is within time, in the sense of Article 146(3) of the Constitution, having been filed within 75 days after the relevant publications in the Gazette.

In so far as it relates to the non-gazetted ones the position is as follows:- Though the Applicant alleges in the Application that he came to know of them *after* the 8th July, 1965, it appears from a letter which he wrote to the Commission on the 3rd July, 1965, (see *exhibit 3*) that he heard of them as early as the 3rd July, 1965. In such a case his recourse would be, to that extent, out of time, under Article 146(3). In view of the fact, however, that *exhibit 3* is clearly a letter seeking a reconsideration of the matter by the Commission,

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and it cannot be said, without doubt, that this Applicant knew of the decision of the Commission *as final* before he received an answer dated 20th July, 1965, (see *exhibit 4*), or, at any rate, at the earliest, before he saw three of the appointments concerned gazetted on the 8th July, 1965. I am inclined to the view that the period prescribed under Article 146(3) should not be reckoned, in the case of *all* five appointments, from any date prior to the 8th July, 1965, and, therefore, the whole recourse 165/65 is within time; any doubt on the issue of a recourse being within time ought to be resolved in favour of the applicant (see *Neophytou and The Republic*, 1964 C.L.R. 280 at p. 290).

Regarding recourse 166/65 which challenges the validity of two non-gazetted appointments, only, there is nothing to show when the Applicant in that Case came to know of them, in the sense of Article 146(3), except that he wrote a letter complaining about them on the 8th July, 1965 (see *exhibit 5*). I see no reason to impute knowledge thereof to him earlier than then, and I am inclined to the view that this recourse is, therefore, within time too.

In attacking the appointments concerned, counsel for Applicants have raised certain issues which are common to all the Interested Parties, and some which are particular to individual Interested Parties.

It is convenient to deal, first, with the common issues:—

It has been argued by Applicants that as the posts concerned are “first entry and promotion posts” (see the relevant scheme of service, *exhibit 1*), there ought to have been an advertisement of the vacancies, a thing which, it is common ground, has not been done; reliance has been placed, in this connection, on General Order II/I.17.

It has been held in the past, in unequivocal terms, that General Orders have not continued in force, as legislation, after the 16th August, 1960, (see *Loizides and The Republic*, 1 R.S.C.C. p. 107 at p. 112; *Frangides v. Republic*, (reported in this Part at p. 181, *ante*, at p. 189); they only lay down, to a certain extent, administrative procedures which may be adopted as established practice.

The Public Service Commission is, however, free in regulating its own proceedings, to adopt such practice and procedu-

res as it may deem fit, so long as they are compatible with proper administration and the due exercise of its competence. It is not bound to adopt the procedure laid down by any General Order.

It has been stated in evidence by Mr. Proestos that, when filling vacancies in first entry and promotion posts, the Commission's practice is not to advertise such vacancies if it is satisfied that there are candidates in the service, entitled to promotion thereto and suitable for such promotion; otherwise, they are advertised.

This practice of the Commission (which is not, indeed, very different from what is provided for under General Order II/I.17) is, in my opinion, a practice the adoption of which was properly open to the Commission, from all material points in view. (See, also, *Kyriacou and C.B.C.* (1965) 3 C.L.R. 482 at p. 490).

I find, therefore, that the Commission has not acted in any way invalidly, in deciding, in the present instance, not to advertise the vacancies in question, in view of the fact that there existed, in its opinion, sufficient eligible candidates already in service; when it was discovered that no suitable candidate existed for the post in the Water Use Section, then it was decided to advertise the particular vacancy (see *exhibit 2*).

It has been contended, next, that the Commission was improperly influenced by the views of the Director of the Department of Agriculture, Mr. Michaelides, who was present at the relevant meeting on the 6th May, 1965, and who proceeded to tell the Commission that the six vacant posts were to be filled in relation to the already mentioned four Sections of the Department; it has been argued by counsel for Applicants that, as a result, the two Applicants, who were not serving in any one of such Sections, but in a different Section of the same Department, were improperly excluded from promotion to Agricultural Officer, class II, though qualified for the purpose.

It would be useful, I think, to set out here in full the relevant minutes of the Commission (*exhibit 2*):—

“The Director explained to the Commission that the six vacant posts of Agricultural Officer, Class II, whose

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filling had been approved by the Council of Ministers were intended for the following Sections of the Department—

- “1 for the Chemistry Section
- 2 for the Plant Protection Section
- 2 for the Extension Section
- 1 for the Water Use Section

“The Commission after considering the qualifications, experience and merits of the Asst. Agricultural Officers and of the Agricultural Superintendents 1st Grade employed in the above Sections, and who had the required knowledge and experience, decided that the following be appointed to the post of Agricultural Officer, Class II w.e.f. 1.6.65:—

- “1. S. Sophocleous (permanent)
- 2. N. Achillides (secondment)
- 3. Chr. Ioannou (secondment)
- 4. C. L. Phocas (temporary)
- 5. G. Grivas (temporary, on contract).

“The Commission decided that the remaining vacancy in this post which is intended for the Water Use Section be advertised and two weeks be allowed for the submission of applications”.

As found, earlier, the Commission did have before it as candidates all those eligible for promotion, including the Applicants. Eventually, it limited its search, for the most suitable of the candidates, by considering only those in the Sections concerned, thus, at that stage, excluding the Applicants. In other words, the Applicants were not short-listed and they were not in the run during the final stage of selection by the Commission. The reason for which the Commission adopted such a course appears, from the minutes, to be that those employed in the Sections in question “had the required knowledge and experience”.

It seems that Agriculture has been evolving towards specialization and, thus, specialized knowledge and experience are very material considerations in deciding to fill a particular post, entailing the carrying out of specialized duties.

It is useful in this respect to note the relevant scheme of service, for the post of Agricultural Officer, class II (see

exhibit 1). It lays down the following, inter alia, qualifications for promotion:-

“The same qualifications as those required for appointment to the post of Assistant Agricultural Officer plus some years’ experience, and very satisfactory service”.

The scheme of service for the first entry post of Assistant Agricultural Officer (see, again, *exhibit 1*) lays down the following, inter alia, qualifications:-

“An appropriate University diploma or degree. The nature of the diploma or degree will vary according to the requirements of the Department e.g. general agriculture, chemistry, economics, soils, engineering etc.”.

It appears, therefore, that, in effect, the Commission, in selecting, finally, for promotion the Interested Parties, out of those who had the required knowledge and experience, acted in accordance with a notion of specialization recognized by the relevant schemes of service, themselves.

Had the Commission not made its final choice from among those employed in the Sections concerned, but had it made its selection from among all the candidates before it, and had it preferred, again, the Interested Parties, because of their possessing the required knowledge and experience, in relation to the work of the particular Sections, this would no doubt have been a course reasonably and properly open to the Commission; nobody could have complained that it had acted on arbitrary or extraneous criteria. The fact that, before making its final selection, the Commission did limit its choice to only those possessing the required knowledge and experience, and has recorded this in its minutes, does not, in my opinion, render the position materially different from what it would have been had the Commission made its selection from among all the candidates, but again on the basis of the same criteria viz. the required knowledge and experience.

It has been repeatedly stressed that the purpose of an appointment on promotion is to place the most suitable officer in the post concerned. (See, inter alia, *Theodossiou and The Republic*, 2 R.S.C.C. p. 44 at p. 47). Personal prospects of promotion cannot be allowed to override the interests of the service.

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In the circumstances of these Cases, I am satisfied that it was reasonably open to the Commission, within the proper limits of the exercise of its relevant discretion, to act as it did in selecting for appointment the Interested Parties.

It has, also, been contended that the Commission unjustifiably disregarded the seniority of the Applicants over the Interested Parties, or, at any rate, over some of them. It appears that the Applicant in Case 165/65 is more senior in the service than all the Interested Parties except Sofocleous. This Applicant was first appointed to the post of Assistant Agricultural Officer on the 1st January, 1958, whereas Phocas, who seems to be the most junior in the group of the Applicants and the Interested Parties, was appointed, in an unestablished capacity, on the 1st November, 1962. The Applicant in Case 166/65, is, relatively, one of the more junior in the group, having been appointed to his present post on the 15th February, 1965. So, in effect, it is mostly the disregarding of the seniority of the Applicant in Case 165/65 that has to be gone into as a possible ground of annulment of the sub judice decision.

It has been held more than once (see *Theodossiou and The Republic, supra; Evangelou and The Republic* (1965) 3 C.L.R. 292 at p. 297) that seniority in service is only one of the relevant considerations, and not the decisive factor.

On the material before the Court, I am not satisfied that disregarding the respective seniority of the Applicants, vis-à-vis any of the Interested Parties, resulted in abuse or excess of powers on the part of the Commission; nor can it be said that it was disregarded without due justification. Such justification, which has been dealt with earlier in this Judgment, is that the Applicants were not employed, at the time, in the Sections of the Department in which the vacancies existed, and so did not possess the required knowledge and experience. The burden of establishing abuse or excess of powers lay on the Applicants; and I cannot find that it has been discharged, in this respect (see, further, *Koukoullis and The Republic*, 3 R.S.C.C. p. 134).

We come, now to certain specific issues raised in relation to the appointment of Interested Party Phocas:-

It has been argued that he could not have been taken into account as a candidate for promotion, to one of the

vacancies, because, being a temporary unestablished officer, he was not a member of the "public service".

It is quite clear that the Public Service Commission exercises its relevant competence, under Article 125 of the Constitution, in relation to public officers. "Public officer" is defined, in Article 122 of the Constitution, to mean "the holder, whether substantive or temporary or acting, of a 'public office'"; and "public office" is defined, in Article 122, as "an office in the public service".

I am, therefore, of the view that it was not improper for the Commission, in the exercise of its discretion, to decide to consider an unestablished officer, such as Interested Party Phocas together with established officers, such as the Applicants, for purposes of promotion to a vacant public office.

It has been argued that such a course was contrary to General Order II/I.14. In the first place, as pointed out already earlier in this Judgment, General Orders do not have the force of law. Secondly, the context of the particular General Order is such that it does not exclude, under all circumstances, promoting a non-permanent officer.

It has been contended also, in this connection, that an unestablished officer, such as Interested Party Phocas, could not be considered for the vacancies in question so long as there—allegedly—existed in the service suitable permanent officers such as Applicants.

I quite agree that a permanent officer is to be preferred, for promotion purposes, to an unestablished one, all other things being equal. But in my opinion all other things in the present instance were *not* equal. The Commission was dealing with vacancies in posts requiring specialized knowledge and experience and Interested Party Phocas, though unestablished, had already been on a Government scholarship in the U.S.A. to study Agronomy and related subjects (as shown in *exhibit 11*). He was at the material time employed in one of the Sections for the purposes of which the vacancies in question were to be filled, whereas the Applicants were not so employed. He was, by the sub judice decision of the Commission, promoted and appointed to a *temporary post*, created by the Development Budget *not to a permanent one*. On the material before me I am, indeed, not prepared to hold that the course adopted by

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the Commission, in this matter, is improper; on the contrary, in my opinion, it was reasonably open to it in the light of all relevant circumstances.

The next objection taken to the validity of the promotion of this Interested Party is that he did not qualify for appointment to the post of Agricultural Officer, class II, because he did not possess "some years' experience", as required by the relevant scheme of service.

Having been appointed in November 1962, he was sent on Government scholarship to the U.S.A. in December, 1963; he returned and resumed duties in January, 1965. In effect, he served in the Department, prior to his promotion, for an actual period of about one and a half year, having been away for a year in the meantime. I quite agree with Mr. Proestos who stated in evidence that "some years' experience" implies experience of at least two years or more. So, if we were to regard as "experience" only the time of one and a half year, when he was actually serving in Cyprus, it would appear that he was not qualified for promotion to Agricultural Officer, class II, under the relevant scheme of service; and I would agree in this respect, also, with counsel for Applicants—and Mr. Proestos too—that previous experience, prior to his entering the Government service in Cyprus, cannot be regarded as "experience" for the purposes of the relevant scheme of service; it ought to be "experience" in the first entry post from which he was promoted to the post of Agricultural Officer, class II.

The Commission has, however, taken the view that the period spent on Government scholarship in the U.S.A., for further studies in his field of work, could be taken into account as relevant "experience" and that, therefore, Interested Party Phocas had two and a half years' experience in the post immediately below that of Agricultural Officer, class II.

It has been held in *Papapetrou and The Republic* (2 R.S.C.C. p. 61 at p. 69) that so long as an interpretation given to a scheme of service was reasonably open to the Commission the Court will not give it a different interpretation. Nor will the Court interfere with a decision of the Commission, in applying a scheme of service, if the conclusion reached by it was reasonably open to it in the circumstances (see *Josephides and The Republic* 2 R.S.C.C. p. 72). I am quite

satisfied that it was reasonably open to the Commission to take the view which it did and to treat the period spent abroad by Interested Party Phocas as relevant "experience", the more so as his studies in the U.S.A. included practical training, (see *exhibit 11*). On the contrary, I think that it would have been most unreasonable if such an officer, who, while holding a certain post, had been sent abroad by Government for further studies in relation to his work, were to be penalized by losing the time he had properly spent abroad, through such time not being taken into account as "experience" for purposes of promotion.

We come, next, to deal specifically with the validity of the appointment of Interested Party Grivas:-

Being a Greek citizen, and not a citizen of the Republic, he was appointed on a two-year contract, on the 1st January, 1957, in the post of Agricultural Superintendent, 2nd grade, and employed in soil survey work. As from the 1st January, 1958, he was given the post of Agricultural Superintendent, 1st grade.

In 1959 he was sent, on Government scholarship, to Holland to study interpretation of aerial photographs, in connection with soil survey work.

His contract was being renewed, from time to time, and the last renewal was for a year as from the 1st January, 1965, by decision of the Public Service Commission, dated 1st October, 1964, (see *exhibit 8*), to which the matter was referred by the Council of Ministers by decision No. 4141 dated the 22nd September, 1964 (see *exhibit 7*).

While Interested Party Grivas was serving on contract, as above, the question of the filling of the posts, in question, of Agricultural Officer, class II, came up before the Commission, as aforesaid, on the 6th May, 1965. According to the evidence of the Director of the Department of Agriculture, Mr. Michaelides, who was present at the relevant meeting of the Commission, it was really *he* who pointed out to the Commission the said Interested Party as a candidate for the vacancies concerned, in view of his qualifications; as a result, as it appears from its minutes (*exhibit 2*), the Commission decided to appoint him as temporary, on contract, to one of the vacant posts of Agricultural Officer, class II.

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As Mr. Protestos, a member of the Commission, has put it, in evidence before this Court:- "We knew at the time when we appointed Mr. Grivas that he was serving on contract. So, at the time, what we did, in effect, was to select Mr. Grivas for promotion and then request authority from Government to appoint him on contract to the new post". The matter was, then, referred to the Council of Ministers, by the Ministry of Agriculture, on the 12th June, 1965, (see the relevant submission, *exhibit 10*).

On the 17th June, 1965, the Council of Ministers took the following decision (see *exhibit 6*):-

"With reference to Decision No. 4141, the Council decided that the Public Service Commission should be asked to consider the amendment of the existing contract of employment of Mr. Georghios Grivas, Agricultural Superintendent, 1st Grade, as follows:-

- (a) the title of the post to be offered to Mr. Grivas should be changed to Agricultural Officer, 2nd Grade;
- (b) the duration of the contract should be until the 31st December, 1966, renewable from year to year; and
- (c) the salary scale of the post should be £900x30-£1020x36-£1200. Mr. Grivas will continue to receive his present salary, i.e. £930 p.a., and the payment of his increments will be in accordance with the existing regulations".

After such decision, the Commission did not, apparently, take any further formal decision, because, as stated by counsel for Respondent, there was an already taken decision of the Commission, dated 6th May, 1965, (*exhibit 2*) appointing Interested Party Grivas to the post concerned. So, on the 9th July, 1965, the "Chairman Public Service Commission for and on behalf of the Government of the Republic" proceeded to sign a new contract with Interested Party Grivas (*exhibit 10A*), relating to his appointment to the post of Agricultural Officer, class II, for a period ending, initially, on the 31st December, 1966, but renewable from year to year.

The main objection of the Applicants to the validity of the appointment of this Interested Party is that he could not be appointed by the Commission to a post in the public service, in view of the fact that he is not a citizen of the Republic. It has been argued, further, that such appointment is excluded both by the Public Bodies and Public Offices (Appointment) Law, Cap. 80 and General Order II/I.3.

It has been submitted in reply by counsel for Respondent—and quite correctly—that the General Orders have no longer any binding force; he has argued, further, that Cap. 80 has ceased to be in force, under Article 188, as inconsistent with the Constitution; and that the context of Cap. 80 is such that it cannot be applied modified, under paragraph 4 of Article 188.

Bearing in mind what has been laid down in *Pelides and The Republic* (3 R.S.C.C. p. 13, at p. 18), I would be inclined to think that Cap. 80 can, and should be applied, modified under paragraph 4 of Article 188. But I need not go into this matter, further, because what we should be concerned with, in the first place, is the primary issue of whether or not the Public Service Commission had competence at all to decide on the appointment, on contract or otherwise, of a non-citizen of the Republic to a post in the public service.

It is abundantly clear from *exhibit 2* that the Commission did decide, itself, to appoint Interested Party Grivas to the post of Agricultural Officer, class II; then the matter was placed before the Council of Ministers in order to secure implementation of the appointment; the Council of Ministers did not, at that stage, take any decision to appoint, but it referred the matter back to the Commission, for consideration along certain lines (see *exhibit 6*); the Commission, regarding the matters raised by the Council as being already, in effect, decided upon by its previous decision of the 6th May, 1966 (*exhibit 2*), did not take any new decision in the matter, and its Chairman proceeded to sign the relevant contract.

The competence of the Commission is to be found laid down in Article 125 of the Constitution. It has been held in *Papapetrou and The Republic* (*supra*, at p. 66) that the Commission is vested under the Constitution with only those powers which it has expressly been given under Article 125 and that any other powers in relation to the public service are vested in the Council of Ministers.

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Reading together Articles 125, 186 and 2 of the constitution there can be no doubt that the competence of the Commission extends, as far as Greeks are concerned, only to those Greeks who are citizens of the Republic of Cyprus. It cannot proceed to appoint or promote to public office a Greek who is not a citizen of the Republic. It follows, also, that it can only exercise its competence as among citizens of the Republic. It cannot consider together, as candidates for promotion, citizens and non-citizens.

For the above reasons I have reached the conclusion that the decision taken by the Commission on the 6th May, 1965, (*exhibit 2*), to promote Interested Party Grivas to a post in the public service, should be declared to be null and void and of no effect whatsoever, as a decision beyond the competence of the Public Service Commission, and thus, unconstitutional and in excess and in abuse of powers.

Nothing in the foregoing is intended to exclude the Council of Ministers from employing on contract a non-citizen of the Republic. Such employment would not, however, render the person concerned a member of the "public service"; nor would it amount, either—in my opinion, as at present advised—to an "appointment" or "nomination" in the sense of Cap. 80.

Counsel for the Interested Parties has submitted that, as Interested Party Grivas was appointed on contract, the post in question could be deemed as being all along vacant; and that in any case this Court cannot in these proceedings annul the contract of employment of the said Interested Party (*exhibit 10A*). I agree that the said contract is not a subject-matter of these recourses and I need not pronounce on its effect and validity; in any case its renewal would have to be reconsidered at the end of 1966. Nor can I decide now in this Judgment, whether, if such contract is to be renewed, on the same terms, then, in such a case, the relevant post of Agricultural Officer, class II, may be regarded as being vacant.

It may well be that—because of budgetary requirements—a person employed on contract can only be so employed in relation to a particular vacant post. It is up to the appropriate authorities to decide, in the light of this Judgment, whether or not there exists in fact a vacant post of Agricultural Officer, class II, and if so to proceed to fill it in the proper

manner; in other words, if the Council of Ministers were to decide to continue employing Interested Party Grivas, on contract, and such employment, for budgetary reasons, can only be made as against a vacant post, then the temporary post in question of Agricultural Officer, class II, created by the Development Budget, would not have to be filled at all by the Commission in the exercise of its powers under Article 125; and the Council of Ministers may ask the Commission, for good reason, not to proceed to fill a vacant post (see *Contopoulos and The Republic*, 1964 C.L.R. 347 at p. 352); if, on the other hand, the employment on contract of Interested Party Grivas does not continue, or continues without affecting the existence of the vacancy in question, then it is up to the Public Service Commission to fill such vacancy in the proper manner and within the limits of its competence.

In the result the sub judice decision of the Commission, *exhibit 2*, is annulled in part, in so far as it promotes Interested Party Grivas, and is otherwise confirmed.

Regarding costs I order, in all the circumstances, that the Respondent shall pay each Applicant £15 towards costs.

Order and order as to costs in terms.

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