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TAKIS
BELLAPAISHIOTIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.
TAKIS BELLAPAISHIOTIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 252/65)

Public Officers—Promotions—Promotions to the post of Accounting Officer, 2nd grade, Treasury—Validity—Seniority—Seniority one of the factors to be taken into account—But not the decisive one—Merits of the respective candidates—Recommendations ad hoc in that regard by the Head of Department concerned—Given due weight as well as the Confidential Annual Reports on the candidates—Reasonably open to the Respondent Commission, in the proper exercise of its discretion, to promote the Interested Parties in preference to the Applicant—Qualifications of one of the Interested Parties unsuccessfully disputed—Scheme of Service—Promotions or appointments in defiance of the relevant scheme of service invalid—But a scheme of service has to be applied properly and interpreted reasonably as a whole.

Administrative Law—Public Officers—Promotions—Seniority of the respective candidates—Merits of—Recommendations ad hoc—Confidential Annual Reports—Must be given due weight—Discretion of the Public Service Commission—Proper exercise thereof—Qualifications—Scheme of service—Effect—Reasonable application and interpretation of schemes of service as a whole—See above.

Discretion—Proper exercise thereof—See above.

Promotions—Promotions of public officers—See above.

Seniority—Seniority of candidates for promotion—See above.

Confidential Annual Reports—Recommendations by the Head of the Department concerned—Due weight must be given—See above.

Qualifications—Qualifications of candidates for appointment or promotion—See above.

Scheme of Service—Effect—Reasonable interpretation and application of a scheme of service as a whole when it has to be applied on a particular occasion—See above.

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By this recourse the Applicant challenges the validity of the promotions to the post of Accounting Officer, 2nd grade, in the Treasury, of the three Interested Parties, on two grounds: (1) That he was senior to all such Interested Parties at the material time, because as accounting officer 3rd grade he was appointed in July 1962, whereas the Interested Parties were so appointed in January 1965; (2) that one of the Interested Parties, Panayiotou, did not possess one of the required qualifications for promotion *i.e.* he had not passed at the time of the promotions the examinations in General Orders and Financial Instructions as required under the relevant scheme of service.

The material parts of the said scheme of service provide:

“Qualifications required:

For first entry:

(a) A university degree in Commercial subjects or other appropriate post-secondary education, or

Note: Persons appointed from outside the Service will be required to pass the examinations in General Orders and Financial Instructions within two years from the date of their appointment and before confirmation”.

It is common ground that the said Interested Party, Panayiotou, when appointed on the 2nd January, 1965, as Accounting Officer, 3rd grade, was a first entrant and was given two years to pass the aforesaid examinations in general Orders etc.; actually he did so on the 20th January and 14th July, 1966, respectively, but this was after the date on which he was promoted to Accounting Officer, 2nd grade, the *sub judice* decision having been taken on the 25th November, 1965. It was not disputed that the said Panayiotou was the holder of a diploma as required by (a) of the relevant scheme of service (*supra*) *i.e.* that he was qualified to a first entry appointment to the post of Accounting Officer, 2nd grade under the first entry part of the relevant scheme of service (*supra*) to which he has been promoted as aforesaid on the 25th November, 1965.

In dismissing the recourse the Court:—

Held, (1). It is well settled that seniority is not the decisive factor in deciding on promotions but it is only one of the factors

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which have to be borne in mind and be given due weight on such occasions. But it was not suggested in the present proceedings that the factor of Applicant's seniority was wrongfully omitted from consideration.

(2) In view of the fact that the Respondent Public Service Commission in promoting the Interested Parties in preference to the Applicant has obviously acted in accordance with the relevant, *ad hoc*, in order of merit, recommendations of the Accountant-General as Head of the Department concerned; and bearing, too, in mind that the Confidential Reports on the Interested Parties and the Applicant were not such as to justify the Commission in not giving due weight to the said recommendations, I cannot but hold that it was reasonably open to the respondent Commission, in the exercise of its discretion, to promote the Interested Parties as the most suitable out of the candidates, notwithstanding Applicant's seniority.

(3) Therefore, the Commission has not acted in excess or abuse of powers.

Held: On the issue of the qualifications of one of the Interested Parties under the relevant scheme of service:

(1) (A) It is common ground that at the time of his promotion (*viz.* on the 25th November, 1965) Interested Party, Panayiotou, had not passed the examinations in General Orders and Financial Instructions. Actually he did so on the 20th January and 14th July, 1966 *i.e.* after his said promotion but within the two years commencing on his first entry appointment to the post of Accounting Officer, 3rd grade, *i.e.* on the 2nd January, 1965 (*supra*).

(B) It is quite correct that an appointment or promotion made contrary to the relevant scheme of service is invalid.

(2) (A) But a scheme of service, when applied on a particular occasion, has to be applied as a whole and has to be interpreted and applied reasonably.

(B) I do not think that the correct application of the relevant scheme of service (*supra*) in the particular circumstances of this case, excludes the promotion of the said Interested Party Panayiotou.

(C) In my view the requirement for the passing, within two years from the date of his first entry appointment of the 2nd January, 1965, of the aforesaid examinations (*supra*) cannot be held to be in force and applicable if the aforesaid period

of two years had not elapsed by the time when he was considered for promotion to the next higher post *i.e.* on the 5th November, 1965, when the said Interested Party was so promoted.

(D) Especially, when the officer in question—as in the case of the aforesaid Interested Party—is qualified for appointment under the first entry part of the relevant scheme (*supra*), by virtue of his diploma of the School of Economic and Business Sciences (Athens), which would entitle him, in any case, to a first entry appointment to the post to which he had been promoted.

Held: For all the above reasons this recourse fails.

Application dismissed.

No order as to costs.

Recourse.

Recourse against the validity of promotions to the post of Accounting Officer, 2nd Grade, in the Treasury Department.

A. Triantafyllides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANAFYLLIDES, J.: By this recourse the Applicant challenges the validity of the promotions to the post of Accounting Officer, 2nd grade, in the Treasury, of three Interested Parties:— Andreas Panayiotou, Joseph Moussa and Chrysostomos Peratikos.

The Applicant and the Interested Parties were Accounting Officers, 3rd grade; the Applicant still holds such post, having not been promoted like the Interested Parties to Accounting Officer, 2nd grade.

The post of Accounting Officer, 2nd grade, is a first entry and promotion post (see the relevant scheme of service, *exhibit 1*); but the Respondent Public Service Commission decided on this occasion to fill the vacancies in question through promotions and such vacancies were accordingly not advertised.

The procedure adopted was as follows:—

On the 2nd November, 1965, the Commission decided (see its minutes *exhibit 4*) to consider at its meeting of the 5th November, 1965, the filling of two vacancies in the post of Accounting Officer, 2nd grade, and to ask the Accountant-General to be present at such meeting and to furnish, in the meantime, reports on all Accounting Officers, 3rd grade, who were eligible for promotion.

On the 5th November, 1965, the Accountant-General addressed a letter (see *exhibit 5*) forwarding the reports requested—which were filed in the Confidential Reports files of the Applicant and of the three Interested Parties; in his said letter the Accountant-General stated that having discussed the matter with the respective supervisors of the various candidates he ventured to list, in order of merit, seven candidates, the first one being Interested Party Panayiotou, the second Interested Party Peratikos, the third Interested Party Moussa and the fourth—on an equal footing with another—the Applicant.

The Commission met on the 5th November, 1965—the Accountant-General being present—and decided, after studying the Confidential Reports on the candidates and hearing the views of the Accountant-General, that Interested Parties Panayiotou and Moussa be promoted to the vacancies in the post of Accounting Officer, 2nd grade, (see its minutes *exhibit 2*).

Then, later, on the 17th December, 1965, when another vacancy in the same post was to be filled, the Commission, basing itself once again on the Confidential Reports and the already made recommendations of the Accountant-General, decided to promote Interested Party Peratikos (see its minutes *exhibit 3*).

Thus, it is in fact two decisions of the Commission—of the 5th November, and 17th December, 1965—which are being attacked in this recourse.

The validity of the promotions of the Interested Parties has been put in issue by Applicant on two main grounds:

That he was senior, at the material time, to all the Interested Parties, and that Interested Party Panayiotou did not possess one of the qualifications required for promotion *i.e.* he had not passed the examinations in General Orders and Financial Instructions, as required under the relevant scheme of service (*exhibit 1*).

As regards the question of seniority it is quite correct that the Applicant was, as Accounting Officer, 3rd grade, senior to the Interested Parties by about two and a half years, having been so appointed in July, 1962, whereas they were so appointed in January, 1965.

It is well settled that seniority is not the decisive factor in deciding on promotions but it is only one of the factors which have to be borne in mind and be given due weight by the Commission on such occasions; and it was not suggested in the present proceedings that the factor of the seniority of the Applicant was wrongfully omitted from consideration.

In view of the fact that the Commission in promoting the Interested Parties in preference to the Applicant has obviously acted in accordance with the relevant, *ad hoc*, in order of merit, recommendations of the Accountant-General, as Head of the Department concerned—and bearing, too, in mind that the Confidential Reports on the Interested Parties and on the Applicant were not such as to justify the Commission in not giving due weight to the said recommendations—I cannot but hold that it was reasonably open to the Commission, in the exercise of its discretion, to promote the Interested Parties as the most suitable out of the candidates, notwithstanding Applicant's seniority; therefore the Commission has not acted in excess or abuse of powers.

Nor can I agree that the Applicant's seniority was overlooked—as suggested by his counsel—due to “adverse” comments in a Confidential Report on him by the Accountant-General, which comments were not brought to Applicant's knowledge, so as to have an opportunity to refute them. The remarks of the Accountant-General were not adverse but only they tuned down what he had considered as a too generous report by the Reporting Officer. This cannot be reasonably taken as being what in fact militated against the promotion of the Applicant; what must have done so—and quite properly in my view—was his position on the *ad hoc* list, in order of merit, prepared as aforesaid by the Accountant-General in consultation with the officers supervising the candidates.

I come next to the issue of the non-possession by Interested Party Panayiotou of a qualification which *prima facie* on the face of the scheme of service, appears to be required to be possessed by one who is to be promoted to the post of Accounting Officer. 2nd grade:

The relevant scheme of service (*exhibit 1*), in its material parts reads as follows:

“Qualifications Required:

For first entry:

(a) A university degree in commercial subjects or other appropriate post—secondary education,

or

(b) (i) Leaving Certificate of a secondary school with a six-year course; and a knowledge of English of the standard of the English Higher; and

(ii) The Higher Accounting Examination of the London Chamber of Commerce or some other examination approved as of equivalent standard; and

(iii) previous experience in accounting or auditing work.

Note: Persons appointed from outside the Service will be required to pass the examinations in General Orders and Financial Instructions within two years from the date of their appointment and before confirmation.

For promotion:

(a) A good knowledge of accounting and book-keeping with a special knowledge of Government accounting methods; a competent knowledge of Government rules and regulations in so far as these relate to finance and accounts. In addition, candidates must possess the Higher Certificate in Accounting of the London Chamber of Commerce or some other examination approved as of equivalent standard. They must have passed the examinations in General Orders and Financial Instructions.

(b) Public servants who joined the public service either in a permanent or in a temporary capacity before the 1st December, 1961, who hold a Leaving Certificate of a five-year secondary school or other equivalent qualification, or who, though not holding such a Certificate, have a general education of a standard regarded as equivalent to that of a five-year secondary school will be considered eligible for appointment or promotion to this post if they are otherwise suitable”.

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It is common ground that at the time of his promotion Interested Party Panayiotou had not passed the examinations in General Orders and Financial Instructions (see in the scheme of service, above, qualifications (a) for promotion).

It is quite correct—and not in dispute, either—that an appointment or promotion made contrary to the relevant scheme of service is invalid.

But a scheme of service, when applied on a particular occasion, has to be applied as a whole and it has to be interpreted and applied reasonably. Did the correct application of the relevant scheme of service, in the circumstances of this particular Case, exclude the promotion of Interested Party Panayiotou?

In considering this question one must bear in mind that this Interested Party, when appointed on the 2nd January, 1965, as Accounting Officer, 3rd grade, was a first entrant (as it appears from the data in his personal Confidential Reports file). At the time of his first appointment on the 2nd January, 1965 he was given—as stated to the Court by counsel for Respondent and not disputed by counsel for the Applicant—two years in which to pass the examinations in General Orders and Financial Instructions; and actually he did so on the 14th July and 20th January, 1966, respectively, as it appears from his said file; but this was after the date on which, by the *sub judice* decision of the 5th November, 1965, he was promoted to Accounting Officer, 2nd grade; he was promoted before the relevant two years' period had elapsed.

I have reached the conclusion that the correct application of the relevant scheme of service to a case of promotion such as that of Interested Party Panayiotou entails that the requirement for the passing of the examinations in General Orders and Financial Instructions cannot be held to be in force and applicable if the period for the passing of the aforesaid examinations, as laid down on appointment of the officer concerned to the post from which he is to be promoted, has not elapsed by the time when he is being considered for promotion to the next higher post, which requires ordinarily the passing of such examinations as a qualification for promotion.

Especially, when the officer in question—as in the case of this Interested Party—is qualified for appointment under the first entry part of the relevant scheme of service, by virtue of a diploma of the Athens School of Economic and Business

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Sciences, which would entitle him, in any case, to a first entry appointment to the post to which he has been promoted; and in my opinion this particular scheme of service (*exhibit 1*) is one of those schemes of service where the first entry appointment qualifications are higher than the promotion qualifications, and the greater, naturally, includes the lesser.

Therefore, I have reached the conclusion that this Interested party Panayiotou was not excluded by the relevant scheme of service from being promoted, as he was, to the post of Accounting Officer, 2nd grade.

For all the above reasons this recourse fails and has to be dismissed; but in view of the fact that the issue regarding the effect of the scheme of service was one which was quite properly brought before this Court for determination I have decided to make no order as to costs.

Application dismissed.
No order as to costs.

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