

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS NISSIS (No. 1),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

CHRISTODOULOS
NISSIS
(No. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 280/66).

Public Officers—Promotions—Paramount duty of the Public Service Commission to select the most suitable candidates—Seniority—It is only a factor to be considered, not the exclusive factor—Seniority becomes the decisive factor in case of equal qualifications and merits—Recommendations of the Head of the Department concerned and the Annual Confidential Reports not to be lightly disregarded—See, also, herebelow.

Public Officers—Promotions—Promotions to the post of Forest Ranger, Department of Forests—Allegations of biased and untrue confidential reports on the Applicant—Not taken seriously by the Court—Failure of Applicant to satisfy the Court that the Respondent Commission failed in any way to discharge properly its paramount duty to select the most suitable candidates—Or that in reaching its sub judice decision the Commission failed to take into consideration all relevant factors—Or that they acted in any way improperly or unlawfully or in excess or abuse of their powers—See, also, above.

Public Service Commission—Promotions—Paramount duty in considering promotions—See above.

Seniority—One of the relevant factors in considering promotions—Not the decisive one, except in case of equal merits and qualifications.

Administrative Law—Discretion—Proper exercise by the Administration of its discretionary powers—Excess or abuse of powers—See above under Public Officers.

Discretion—Discretionary powers of the administration—Proper exercise thereof—See above.

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Promotions—See above under Public Officers.

Recommendations of the Head of Department concerned—Not to be lightly disregarded—See above.

Annual Confidential Reports on candidates for promotion—Not to be lightly disregarded—See above.

This is a recourse under Article 146 of the Constitution whereby the Applicant, a Forester in the public service, Forest Department, seeks a declaration that the decision of the Respondent Public Service Commission to promote the nine Interested Parties to the post of Forest Ranger in preference to, and instead of, himself is null and void and of no effect whatsoever.

There could be no question that the confidential reports on the Applicant have all along been inferior to those of all the Interested Parties. On the question of seniority the position appeared to be that the Applicant was senior to six of the Interested Parties by one year and to one of them by two years.

In dismissing the application the Court :

Held, (1). The Applicant has utterly failed to satisfy me, or indeed to raise the slightest suspicion in my mind, that the Public Service Commission in reaching their decision failed to take into consideration all relevant factors or that they acted in any way in excess or abuse of their powers.

(2) The only advantage which the Applicant had over some of the Interested Parties was on the question of seniority. Seniority is, of course, a factor always to be considered and in case of equal qualifications and merits it may well be decisive but is not the exclusive factor. The recommendations of the Head of Department and the assessment of the officer's capabilities and conduct as contained in the annual confidential reports, on the other hand, are matters that cannot lightly be disregarded (*vide Michael Theodossiou and The Republic*, 2 R.S.C.C. 44).

(3) On the totality of the material in this case I am not satisfied that the Respondent Commission acted improperly or unlawfully or that they failed in the exercise of their paramount duty to select the most suitable candidates for promotion to the post of Forest Ranger and, therefore, I cannot interfere with the *sub judice* decision.

*Application dismissed with
£25 costs.*

Cases referred to :

Michael Theodossiou and The Republic, 2 R.S.C.C. 44, *applied*.

Recourse.

Recourse against the decision of the Respondent Public Service Commission to promote the nine Interested Parties to the post of Forest Ranger in preference and instead of the Applicant.

A. Georghiades, for the Applicant.

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

Cur. adv. vult.

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The following Judgment* was delivered by:

LOIZOU, J.: By this recourse the Applicant seeks a declaration that the decision of the Public Service Commission to promote the nine Interested Parties to the post of Forest Ranger in preference and instead of himself is null and void and of no effect whatsoever.

The grounds on which the application is based, as set out in the application itself, are: (a) that the Respondents disregarded the seniority of Applicant as well as his superior experience, qualifications and merits and (b) that no ground existed for the by-passing of the Applicant, which it is alleged, was arbitrary.

The Respondents in their opposition contend that the decision complained of was properly and lawfully taken having regard to the qualifications, experience, merits and seniority of the candidates as reflected in their annual confidential reports and the recommendations of the Head of the Department.

None of the nine Interested Parties appeared or took part in the proceedings although duly notified.

In the course of the hearing of this case counsel for the Applicant made various other, somewhat conflicting contentions in support of his Application which, as far as I was able to understand them, are as follows:

i. That the Public Service Commission did not examine Applicant's case when filling the vacant posts of Forest Rangers and that they did not act bona fide but acted arbitrarily and in abuse of power.

ii. That the Public Service Commission in reaching their decision relied mainly on the recommendations of the Head of Department and the confidential reports instead of examining

*For final decision on appeal please see p. 671 in this Part *post.*

all the facts of the case such as service, qualifications, seniority and experience.

iii. That although the Interested Parties had better confidential reports than the Applicant this was due to the fact that his superior officers from time to time, were prejudiced against him.

The Applicant has been serving in the Forest Department since 1942. From 1942 to 1954 he served as a Forest Foreman; from 1954 to 1958 as a Forest Guard and in 1958 he was promoted to a Forester. During the period of his service he served at most of the forest stations in the island.

The decision of the Public Service Commission complained of was taken at a meeting held on the 21st July, 1966. The minutes of that meeting are *exhibit 1*. It appears from these minutes that at the same meeting in addition to the nine Interested Parties another 15 persons were either promoted or seconded to the post of Forest Ranger.

The personal file of the Applicant containing the annual confidential reports of his superior officers and those of each of the Interested Parties have also been produced and are *exhibit 3*. All files were placed at the disposal of Applicant's counsel and were perused by him at the commencement of the hearing of this case. There is no question that the confidential reports on the Applicant have all along been inferior to those of all the Interested Parties. On the question of seniority the position is that the Applicant is senior to six of the Interested Parties by one year and to one of them by two years.

With regard to the secondary education of the candidates the Applicant completed the third class of the Lemythou Mitsis Commercial School and has also passed the ordinary examinations in English; in addition, like all other candidates, he graduated the Forestry College of Prodrornos.

It was submitted by counsel for the Applicant that with the exception of one of the Interested Parties all others were less educated than the Applicant with particular stress on the case of Interested Party Polydefkis Kyprianou. In fact it appears from the confidential reports that this Interested Party attended the Practical School of Solea from 1940-1944 in addition to the course at the Forestry College. As particular mention was made of this Interested Party I think I should say that his confidential reports are far superior to those of the Applicant.

On the whole it appears from the personal files produced that Applicant's education cannot be said to be superior to that of any of the Interested Parties and is inferior to most of them.

The Applicant gave evidence on oath mainly for the purpose of establishing his allegation that the confidential reports made by his superior officers from time to time were biased and untrue. He spoke of two incidents which occurred in 1958 at Ayia Forest station, where he was serving at the time, between himself and a colleague of his a certain Tapakoudis; in one of these incidents, he said, he was assaulted by Tapakoudis and as a result he instituted private criminal proceedings against him. The then Assistant Forest Officer at Stavros Forest station was a certain Lambrianides and he repeatedly requested him, he said, to discontinue the proceedings against Tapakoudis; at first he refused and this made Lambrianides angry but later on he did in fact discontinue the proceedings. He went on to say that this incident is the reason why he was not promoted in 1966. It was argued by Applicant's counsel that because of this incident Lambrianides made adverse confidential reports on the Applicant himself and also influenced the other officers to do the same.

I must say that I consider these allegations as frivolous and childish; I cannot for one moment take these allegations seriously or accept the suggestion that any of Applicant's superior officers were biased against him because of the incidents he described. In any case Lambrianides prepared and signed Applicant's confidential reports as a Reporting Officer for the years 1959 and 1960 only and had nothing to do with the subsequent confidential reports which are the more material as being more recent.

Furthermore, the Applicant has utterly failed to satisfy me, or indeed to raise the slightest suspicion in my mind, that the Public Service Commission in reaching their decision failed to take into consideration all relevant factors or that they acted in any way in excess or in abuse of their powers.

It is quite clear to me that the only advantage which the Applicant had over some of the Interested Parties was on the question of seniority. Seniority is, of course, a factor always to be considered and in case of equal qualifications and merits it may well be decisive but is not the exclusive vital factor. The recommendations of the Head of Department and the assessment of the officer's capabilities and conduct as contained in the

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annual confidential reports, on the other hand, are matters that cannot lightly be disregarded. Vide *Michael Theodossiou and The Republic*, 2 R.S.C.C. p. 44.

On the totality of the material in this case I am not satisfied that the Public Service Commission acted improperly or unlawfully or that they failed in the exercise of their paramount duty to select the most suitable candidates for promotion to the posts of Forest Rangers and, therefore, I cannot interfere with the *sub judice* decision.

In the result this recourse fails and is hereby dismissed with costs, which in the circumstances I assess at £25.

*Application dismissed with
£25.- costs.*