

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS J. CHRISTOFI

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

ANTONIS J.
CHRISTOFI
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

(Case No. 252/66).

Public Officers—Promotions—Appointments—Promotions to the post of Assistant Labour Officer—A first entry and promotion post—No advertisement of vacancies quite proper in the circumstances—Discretion—Basis of evaluating candidates—Confidential Reports—Annual Confidential Reports—Views ad hoc of the Director-General of the Ministry concerned—Interview of candidates—In the circumstances of this case it was quite open to the Respondent Commission to take the view it had taken i.e. that it was not necessary to interview itself the candidates—Seniority—Not the decisive factor in effecting promotions—But one of the many factors which should be taken duly into account in assessing overall suitability for promotion—In the present case there has been no excess or abuse of powers by the Respondent Commission in effecting the promotions complained of—Onus—Onus on the Applicant to satisfy the Court that the Respondent acted in excess or abuse of powers—Such onus not discharged in the present case.

Administrative Law—Discretion—Excess and abuse of powers—Onus etc.—See above.

Public Service—See above under Public Officers.

Seniority—Promotions—Seniority not the decisive factor but one of the factors which should be duly taken into account in assessing the overall suitability of the candidate for promotion—See also, under Public Officers, above.

Discretionary powers—Proper exercise—See above.

Abuse and excess of powers—See above under Public Officers.

Excess and abuse of powers—See above under Public Officers.

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Onus—Onus on the Applicant to satisfy the Court that there has been an excess or abuse of powers—See above under Public Officers.

Interview—Interviewing candidates—Non-interviewing candidates—Discretion—See above under Public Officers.

Promotions—See above under Public Officers.

The Applicant in this recourse under Article 146 of the Constitution complains against a decision of the Respondent Public Service Commission dated the 12th July, 1966, by virtue of which the Interested Parties (seven in all) were appointed as Assistant Labour Officers in the Ministry of Labour and Social Insurance instead of and in preference to himself. The post of Assistant Labour Officer is, according to the relevant scheme of service, a first entry and promotion post; at the material time, the Public Service Commission, being entitled at its own discretion to decide whether or not it was necessary to advertise the relevant vacancies, proceeded to treat the said post as a promotion post only and made the appointments concerned (ten in all) out of personnel already in service, without inviting applications from outsiders. It considered as candidates for the purpose all Labour Assistants as well as Insurance Clerks, these two posts being equivalent in grade.

It is clear from the relevant minutes, that the Commission relied, in evaluating the candidates, on their qualifications, experience, seniority and merits as reflected in the Annual Confidential Reports on them, as well as on the views expressed at the relevant meeting of the Commission by the Director-General of the Ministry of Labour.

The main complaints of the Applicant were to the effect that the Respondent Commission overlooked unjustifiably his seniority over the greater number of the Interested Parties and, also, that in view of character traits required by the scheme of service, namely, "tact, patience, personality and alertness", the Respondent Commission ought to have interviewed the candidates and not to have relied only in that regard on the said Confidential Reports and the views of the Director-General.

In dismissing the recourse, the Court :

Held, (1) it was up to the Respondent Commission to decide whether or not it was necessary to interview the candidates; in my opinion in a case such as the present one, where the Commission had before it recent Confidential Reports on the candidates and had, also, the benefit of the views of the

Director-General of the Ministry concerned, it was reasonably open to it to decide that it was not necessary to interview the candidates, after all, the possession or not by the candidates of the required character traits could be much more reliably ascertained through the views of their superiors, who knew them well because of frequent contacts, rather than in the relatively short duration of an interview by the Commission. In the circumstances, I am of the view that the non-interviewing of the candidates by the Commission does not involve a wrong exercise of its discretion in the matter (see, also, *Petsas and The Republic*, 3 R S C C 60)

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(2) (a) Coming now to the question of the Applicant's seniority, it is quite clear that the difference in seniority in the relevant grade, between the Applicant and two of the Interested Parties was indeed a small one, but there can be no doubt that the Applicant was considerably senior to four of the Interested Parties

(b) It has been laid down that seniority is not the decisive factor, but one that should be duly taken into account in assessing overall suitability, and after considering all that has been put forward in the present case, I have reached the conclusion that the Respondent Commission was reasonably entitled, on the material before it, to appoint the Interested Parties instead of the Applicant, notwithstanding the fact that he was considerably senior to some of them

(c) On the basis of the most recent Confidential Report on *the Applicant and of the views of the Director-General of the Ministry*, I really fail to see how the Respondent Commission could have preferred him to any but two of the Interested Parties

(d) Those two Interested Parties, I and E, were junior to the Applicant and, though recommended for promotion by the Director-General, did not have wholly unblemished recent Confidential Reports in their favour. Perhaps the Respondent Commission could have properly decided, in the circumstances, to lean in favour of the Applicant because of his seniority. But in the exercise of its discretion it did not choose to do so, and I am not in a position to hold that the course it has adopted, in preferring the said two Interested Parties, I and E to the Applicant, was not reasonably open to it, when one bears in mind that in the relevant Confidential Reports they are described as keen and hardworking officers, while the Applicant, on the

contrary, is said to have been adopting an indifferent and unproductive attitude towards his work.

(3) For all the foregoing reasons I am not satisfied—and it was on the Applicant to satisfy me—that the Respondent Commission, in effecting the promotions complained of, acted in excess or abuse of powers ; therefore, this recourse fails. No order as to costs.

Application dismissed. No order as to costs.

Cases referred to :

Petsas and The Republic 3 R.S.C.C. 60.

Recourse.

Recourse against the validity of a decision of the Respondent by virtue of which ten persons were appointed as Assistant Labour Officers in the Ministry of Labour and Social Insurance in preference and instead of the Applicant.

A. HadjiIoannou, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: The Applicant complains in this Case against a decision of the Respondent Public Service Commission by virtue of which ten persons were appointed as Assistant Labour Officers in the Ministry of Labour and Social Insurance.

The said decision of the Commission was taken on the 12th July, 1966 (see the minutes *exhibit* 1).

The Applicant has, by the motion for relief in the Application, challenged the validity of such decision to the extent to which it relates to the appointments of only eight out of the said ten persons; and at the hearing of the Case counsel for the Applicant has stated that the recourse was not being proceeded with any further in so far as Interested Party E. Nicolaides (described wrongly as "E. Michaelides") was concerned; thus, those whose appointments are in issue—the Interested Parties—are only seven, namely, G. Thalassinos, Chr. Messaritis, S. Piperis, G. Ioannou, S. Economou, Ph. Ioannides and D. Christou.

The post of Assistant Labour Officer is, according to the relevant scheme of service (see *exhibit 2*), a first entry and promotion post; at the material time, the Commission, being entitled at its own discretion to decide whether or not it was necessary to advertise the relevant vacancies, proceeded to treat the said post as a promotion post only and made the appointments concerned out of personnel already in service, without inviting applications from outsiders.

It considered as candidates for the purpose all Labour Assistants and Insurance Clerks, the posts of Labour Assistant and Insurance Clerk being equivalent in grade.

It is clear from the relevant minutes of the Commission that it relied, in evaluating the candidates, on their qualifications, experience, seniority and merits as reflected in the annual Confidential Reports on them, as well as on the views expressed by Mr. M. Sparsis, the Director-General of the Ministry of Labour and Social Insurance, who was present at the meeting of the Commission on the 12th July, 1966.

The said Confidential Reports have been produced and are *exhibit 3* in this Case.

Mr. Sparsis, in giving evidence in these proceedings, told the Court that he had recommended for promotion on the 12th July, 1967 a number of candidates, among whom the Applicant was not included; he stated, further, that the appointments made by the Commission were fully in accordance with his recommendations; it can, therefore, be taken as a fact that he did recommend for promotion all the Interested Parties in this Case.

Counsel for the Applicant has submitted that in view of the character traits required by the scheme of service (*exhibit 2*), namely, "tact, patience, personality and alertness" it was necessary for the Commission to interview the candidates and it should not have relied only on the Confidential Reports and the views of Mr. Sparsis.

It was up to the Commission to decide whether or not it was necessary to interview the candidates; in my opinion in a case such as the present one, where the Commission had before it recent Confidential Reports on the candidates and had, also, the benefit of the views of the Director-General of the Ministry concerned, it was reasonably open to it to decide that it was not necessary to interview the candidates; after

all, the possession or not by the candidates of the required character traits could be much more reliably ascertained through the views of their superiors, who knew them well because of frequent contacts, rather than in the relatively short duration of an interview by the Commission. In the circumstances I am of the view that the non-interviewing of the candidates by the Commission does not involve a wrong exercise of its discretion in the matter (see, also, *Petsas* and *The Republic* 3 R.S.C.C. p. 60).

Another contention of counsel for the Applicant has been that the persons whose appointments have been attacked in these proceedings did not possess the knowledge of English required under the scheme of service, i.e. knowledge of English of the standard of the English Higher examination (Credit Level).

The scheme of service requires only knowledge of English of a certain standard and not actually a Credit Level pass of the relevant examination; and I am satisfied, on the basis of the evidence of Mr. Sparsis regarding what he told the Commission on this point, that the Commission was properly entitled to find that all the candidates before it possessed the requisite knowledge of the English language.

I come now to the main complaint of the Applicant, namely, that his seniority over the Interested Parties, and his consequential greater experience than theirs, were unjustifiably overlooked.

As a matter of fact the Applicant has been holding the post of Insurance Clerk since the 18th December, 1957. The Interested Parties have been holding the post of Insurance Clerk or the post of Labour Assistant, as the case may be, as from the following dates: Thalassinos as from the 1st December, 1956; Messaritis as from the 27th December, 1957; Piperis as from the 13th January, 1958; Ioannou as from the 15th May, 1961; Ioannides, Economou and Christou as from the 13th May, 1963—except that Christou had, previous to the 13th May, 1963, been acting temporarily as an Insurance Clerk since the 17th October, 1960.

In the relevant Confidential Reports' files it appears that Interested Parties Economou, Ioannou and Messaritis were appointed as Assistant Labour Officers as from the 1st March, 1965; actually, they were so appointed by means of a decision of the Public Service Commission of the 12th February, 1965, which, however, was annulled on the 24th May, 1966—by

means of a judgment given in Cases 45/65, 77/65 and 95/65—on the ground that it was taken without a proper quorum of the Commission being present (see (1966) 3 C.L.R. 515). Thus, at the time material to the present proceedings the said Interested Parties were no longer Assistant Labour Officers but had reverted to their previous posts.

The difference in seniority, in the relevant grade, between the Applicant and Interested Parties Thalassinos Messaritis and Piperis was indeed quite a small one; but there can be no doubt that the Applicant was considerably senior to Interested Parties Ioannou, Economou, Ioannides and Christou.

It has been laid down that seniority is not the decisive factor, but one that should be duly taken into account in assessing overall suitability; and after considering all that has been put forward in the present Case I have reached the conclusion that the Respondent Commission was reasonably entitled, on the material before it, to appoint the Interested Parties instead of Applicant, notwithstanding the fact that he was considerably senior to some of them.

On the basis of the on him most recent Confidential Reports (dated the 30/7/65 and the 12/4/66) the Applicant appeared to be an intelligent and efficient officer who, after he was not promoted to the post of Assistant Labour Officer in February, 1965, had lost interest in his work and became undependable.

As Mr. Sparsis, according to his own evidence, told the Commission on the 12th July, 1966, the Applicant's Head of Section, Mr. Avraamides, wrote to him—Mr. Sparsis—on the 1st December, 1965 (see *exhibit* 6) informing him that the Applicant was in the habit of coming late to his work and disappearing during working hours and that though he appeared to have the ability to do work of good quality he did not seem to have enough interest to concentrate on his work; Mr. Sparsis told the Commission, further, that both the previous Head of Section of the Applicant Mr. Nacouzi and the said Mr. Avraamides were of the opinion that the Applicant was not interested and productive in his work. Actually, it is to be noted that on the 20th March, 1966, Mr. Avraamides, in preparing a Confidential Report on the Applicant, rated his performance as ranging between "poor" and "good" only. As already stated earlier in this Judgment, Mr. Sparsis did not recommend the Applicant for promotion at the meeting of the Commission of the 12th July, 1966.

In the face of the foregoing I really fail to see how the Respondent Commission could have preferred the Applicant to Interested Parties Thalassinos and Piperis, who had more or less equal seniority with him but had very favourable recent Confidential Reports to their credit and were recommended for promotion by Mr. Sparsis; and I cannot, either, hold that it was not reasonably open to the Commission to prefer Interested Party Messaritis to the Applicant, when this officer was practically of equal seniority with the Applicant, and, though rated only as "an average officer of limited capabilities", had nothing against him such as the negative attitude of the Applicant towards his work; moreover, he was recommended for promotion by Mr. Sparsis.

Likewise, I am of the opinion that it was reasonably open to the Commission to promote instead of the Applicant Interested Parties Christou and Ioannides because, though they were junior to the Applicant, they had very favourable recent Confidential Reports to their credit and were recommended for promotion by Mr. Sparsis.

There remain the cases of Interested Parties Ioannou and Economou who were junior to the Applicant and who, though recommended for promotion by Mr. Sparsis, did not have wholly unblemished recent Confidential Reports in their favour. Perhaps the Commission could have properly decided, in the circumstances, to lean in favour of the Applicant because of his seniority. But in the exercise of its discretion it did not choose to do so; and I am not in a position to hold that the course it has adopted, in preferring Interested Parties Ioannou and Economou to the Applicant, was not reasonably open to it, when one bears in mind that in the relevant Confidential Reports they are described as keen and hardworking officers, while the Applicant, on the contrary, was adopting an indifferent and unproductive attitude towards his work.

Regarding Interested Party Economou I must state that I have, indeed, noted that in the Confidential Report on him of the 12th April, 1966, Mr. Sparsis, as Countersigning Officer, observed that he needed "patience"; bearing in mind that the same Mr. Sparsis has stated on oath, in his evidence, which I accept, that all the candidates whom he had recommended for promotion—(one of whom was this Interested Party, too.)—possessed the qualifications required under the relevant scheme of service, I think that the fair inference to be drawn from the

abovementioned observation in the Report is not that Interested Party Economou lacked the character trait of patience, required as a qualification by the said scheme of service, but that he did need more of it.

For all the above reasons I am not satisfied—and it was up to Applicant to satisfy me—that the Respondent Commission, in effecting the promotions complained of, acted in excess or abuse of powers; therefore, this recourse fails and has to be dismissed.

But in all the circumstances of the matter I have decided to make no order as to costs.

Application dismissed.
No order as to costs.

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