

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

GEORGHIOS
HJIPANAYIOTOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

GEORGHIOS HJIPANAYIOTOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 60/67).

Public Officers—Promotions—Filling two vacancies in the post of Senior Surveyor, Lands and Surveys Department—Promotion of one Interested Party fully justified in view of his academic qualifications entitling him to preference under the scheme of service—Promotion of the other Interested Party annulled because a past disciplinary offence of the Applicant, which has been erroneously assessed and erroneously approached by the Respondent Commission, had a material influence in deciding not to promote Applicant, and to promote instead the other Interested Party—In other words the Commission exercised its discretion in a defective manner, resulting in a decision contrary to law and in excess and abuse of powers—Moreover, in deciding not to promote Applicant “on this occasion”, the Commission was in effect imposing further disciplinary punishment, a thing which it was not competent to do at the time.

Administrative Law—Discretionary powers of the administration—Exercise thereof in a defective manner—Because the authority concerned acted on a wrong valuation of a material factor—With the result that the decision taken is contrary to law and in excess and abuse of powers—See above.

Discretionary powers—Exercise thereof in a defective manner—See above.

Decision contrary to law—See above.

Abuse and excess of power—See above.

Excess and abuse of power—See above.

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Disciplinary control—Disciplinary offence—Punishment—Non bis in idem—See above under Public Officers.

Promotions—Promotions of public officers—See above.

In this recourse the Applicant seeks to annul the appointments, by way of promotion of Interested Parties G. and K., to the post of Senior Surveyor, in the Department of Lands and Surveys. With regard to the first Interested Party G. the promotion was held to be fully justified in view of the academic qualifications entitling him to preference under the relevant scheme of service. But regarding the promotion of the second Interested Party K., it appears that what had materially weighed in his favour and against the Applicant was the erroneous approach on the part of the Respondent Public Service Commission to a past Disciplinary offence committed by the latter (the Applicant). The relevant minutes of the Commission state:

“Before reaching the above decision (*i.e.* to promote the second Interested Party K.) the Commission considered carefully the case of Mr. HadjiPanayiotou (the Applicant). . . . He was senior to Mr. K. (the second Interested Party) by seven years and one month and his Annual Confidential Reports were good. On the other hand he was reprimanded by the Commission on the 28.7.66. for an irregularity which he had committed whilst performing the duties of Senior Surveyor . . . The Commission considered that Mr. HadjiPanayiotou’s conduct in the matter *showed lack of integrity on his part*. Bearing this in mind the Commission decided that Mr. Hadjipanayiotou should not be promoted on this occasion....”

It is perfectly clear that on that occasion the Commission did not find the Applicant guilty of any misconduct or fraudulent conduct—but *only* of irregularity which does not establish any lack of integrity on his part.

In annulling the promotion of the second Interested Party, (but dismissing the recourse regarding the promotion of the first Interested Party), the Court:-

Held, I. As regards the first Interested Party G.

The Commission was fully justified to select straight-

way this Interested Party for promotion, in view especially of the fact that he possessed an academic qualification which entitled him to preference under the relevant scheme of service.

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Held, II. As regards the second Interested Party K.

(1) In the light of the material before me, I have reached the conclusion that the Commission, when it took on the 13th September, 1966, its *sub judice* decision, made an evaluation of the disciplinary matter concerning the Applicant which was not open to it; it found that the aforesaid disciplinary offence "showed lack of integrity" on the part of the Applicant. Yet, it is perfectly clear that on the occasion concerned the Applicant was not found guilty of any misconduct or fraudulent conduct, but only of irregularity; and for this reason he got off with a mere reprimand.

(2) Moreover, the Commission in deciding not to promote the Applicant "on this occasion", was, in effect imposing further disciplinary punishment on him for his past offence, a thing which it was not competent to do at the time.

(3) There can be no doubt from the minutes of the Commission that the matter of the past disciplinary offence of the Applicant, as erroneously approached by the Commission, had quite material influence on the exercise of its discretion in deciding not to promote the Applicant; and to promote the second Interested Party instead. I find, therefore, that such discretion has been exercised in a defective manner, resulting in the outcome of its exercise being contrary to law and in abuse and excess of powers.

(4)(a) I have no alternative but to annul the promotion of the second Interested Party, which is declared to be *null* and *void* and of no effect whatsoever.

(b) It is now open to the Commission to reconsider the question of filling the vacancy concerned; it is up to it to weigh the respective merits of the candidates; as part of such merits it may, of course, take into account, along with other relevant factors, the previous disciplinary conviction of the Applicant, in its correct context.

*Application succeeds in part.
No order as to costs.*

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Recourse.

Recourse against the decision of the Respondent Public Service Commission to promote the two interested Parties, E. Georghiou and C. Kyprianou, to the post of Senior Surveyor in the Department of Lands & Surveys in preference and instead of the Applicant.

L. Clerides, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this recourse the Applicant seeks to annul the appointments, by way of promotion, of Interested Parties E. Georghiou and C. Kyprianou, to the post of Senior Surveyor, in the Department of Lands & Surveys, which were decided upon by the Respondent Public Service Commission on the 13th September, 1966.

Such appointments were published in the official Gazette on the 21st January, 1967.

This recourse was filed on the 21st March, 1967.

The Applicant and the Interested Parties were, at the material time, Surveyors, 1st Grade — the Applicant since the 1st June, 1956, Interested Party Georghiou since the 1st July, 1963, and Interested Party Kyprianou since the 1st November, 1959, on secondment, and since the 1st July, 1963, in a permanent capacity (see *exhibit 1*).

As regards the appointment of Interested Party E. Georghiou the Commission had this to say in its relevant minutes (see *exhibit 9*):-

“The Commission considered the filling of two vacancies in the post of Senior Surveyor which is a promotion post for Surveyors, 1st Grade. Under the scheme of service for this post, candidates who have passed the Intermediate Examinations of the Royal Institute of Chartered Surveyors (Land Surveying Section) or its approved equivalent, are to be given preference over other candidates. Out of the five serving Surveyors, 1st Grade, only Mr. E. Georghiou had passed this

examination. The Commission after considering his qualifications, experience, seniority and merits as reflected in his Annual Confidential Reports and having regard to the recommendations of the Director of the Department of Lands & Surveys both written and oral, decided unanimously that Mr. Georghiou be promoted to the post of Senior Surveyor w.e.f. 1.10.66".

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The relevant Confidential Reports, with the written views of the Head of Department concerned, have been produced (see *exhibit 12*); I find that the Commission was fully justified to select straightway this Interested Party for promotion, in view especially of the fact that he possessed an academic qualification which entitled him to preference under the relevant scheme of service (see *exhibit 10*).

Regarding the appointment of Interested Party Kyprianou the Commission had this to say in its relevant minutes (*exhibit 9*):

“With regard to the remaining vacancy, the Commission considered the cases of the remaining four Surveyors, 1st Grade. After considering the qualifications, experience, seniority and merits of these four Surveyors, 1st Grade, viz. Messrs. G. Hji Panayiotou, G. Gavriel, C. Kyprianou and G. P. Loucaides, as reflected in their Annual Confidential Reports and taking into consideration the recommendations of the Director of the Department of Lands & Surveys, both written and oral, decided by majority of 4 to 1 (Mr. Theocharis dissenting) that Mr. C. Kyprianou be promoted to the post of Senior Surveyor w.e.f. 1.10.66.

Before reaching the above decision, the Commission considered carefully the case of Mr. G. Hji Panayiotou who was the most senior of these four candidates. He was senior to Mr. Kyprianou by seven years and one month and his Annual Confidential Reports were good. On the other hand, however, he was reprimanded by the Commission on 28.7.66 for an irregularity which he had committed whilst performing the duties of Senior Surveyor and in connection with the division of land into building plots in one of which he had a personal interest. The Commission considered that Mr. Hji Panayiotou's conduct in the matter showed lack of integrity on his part. Bearing this in mind the Com-

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mission decided by majority of 4 to 1 (Mr. Theocharis dissenting) that Mr. Hji Panayiotou should not be promoted on this occasion. The Director of the Department stated clearly before the Commission that in his view Mr. C. Kyprianou was on the whole more suitable for promotion than Mr. Hji Panayiotou and the other three candidates under consideration”.

The record of the disciplinary matter in question has been produced (see *exhibit 11*); also, there have been produced the disciplinary charges preferred, at the time, against the Applicant (see *exhibit 7*), and the letter communicating the relevant decision of the Commission to the Applicant on the 2nd August, 1966 (see *exhibit 8*).

In this connection it must be borne in mind that the views expressed on the 24th May, 1966, by the Head of Department of the Applicant, which are to be found in the Applicant's Confidential Reports file, were expressed before the Commission's decision, on the 28th July, 1966, regarding the aforesaid disciplinary charges.

In the light of all relevant material I have reached the conclusion that, in this case, the Commission has proceeded to make, on the 13th September, 1966 — when it took its *sub judice* decision — an evaluation, of the outcome of the aforementioned disciplinary matter, which was not properly open to it; it found that it “showed lack of integrity” on the part of the Applicant. Yet, it is perfectly clear that on the occasion concerned the Applicant was not found guilty of any misconduct or fraudulent conduct — as originally charged, too — but *only* of irregularity; and for this reason he got off with a mere reprimand; had he been found guilty of any conduct establishing lack of integrity he would, most certainly, have been punished accordingly, and not simply reprimanded.

Moreover, I have reached the conclusion that the Commission, in deciding not to promote the Applicant on “this occasion”, was, in effect, imposing further disciplinary punishment on him for his past offence, a thing which it was not competent to do at the time.

There can be no doubt from the minutes of the Commission that the matter of the past disciplinary offence of the Applicant, as erroneously approached by the Commission,

had quite a material influence on the exercise of its discretion in deciding not to promote the Applicant; and to promote instead Interested Party Kyprianou. In view of what has already been stated in this judgment I find that such discretion has been exercised in a defective manner, resulting in the outcome of its exercise being contrary to law and in abuse and excess of powers.

I have no alternative but to annul the appointment of the said Interested Party, which it is declared to be *null and void* and of no effect whatsoever.

It is now open to the Commission to reconsider the question of filling the vacancy concerned; it is up to it to weigh the merits of the candidates; as part of such merits it may, of course, take into account, along with all other relevant factors, the previous disciplinary conviction of the Applicant, in its correct context.

Regarding costs I have decided to make no order as to costs, as Applicant has been only successful in part, in this recourse.

*Application succeeds in part.
No order for costs.*

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