

1968  
June 26

[TRIANTAFYLLOIDES, J.]

ANNA PIPERI  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANNA PIPERI AND ANOTHER,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE  
PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 72/67, 85/67).

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*Public Officers—Appointments—Promotions—Filling the post of Assistant Labour Officer—Validity—Seniority—Director-General's recommendations—Sub judice decision annulled as being the product of basic misconceptions of fact—And, therefore, contrary to law (i.e. contrary to basic principles of Administrative Law) and in excess and abuse of powers—See, also, herebelow.*

*Public Service—See above.*

*Appointments and Promotions in the public service—See above.*

*Seniority—One of the factors to be taken into account—It becomes decisive when all other things are equal.*

*Administrative Law—Basic principles of—Administrative decisions—Discretionary powers—Decision taken on the basis of a material misconception—Decision null and void as being contrary to law (i.e. contrary to basic principles of Administrative Law) and in excess and abuse of powers.*

*Principles of administrative law—See above.*

*Discretionary powers—See above.*

*Misconception—Material misconception of fact vitiating an administrative decision—See above.*

*Abuse and excess of powers—See above.*

*Promotions—See above.*

*Administrative decision—Contrary to law i.e. contrary to basic principles of administrative law.*

*Recourse under Article 146 of the Constitution—Decision contrary to law and in excess and abuse of powers—Article 146.1—See above.*

*Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—See above.*

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By these two recourses, heard together, the Applicants challenge the validity of the appointment by way of secondment to the post of Assistant Labour Officer, in the Ministry of Labour and Social Insurance, of the Interested Party P.K.

The Respondent Commission has stated in its minutes that it took its decision to appoint the said Interested Party P.K. “after carefully weighing” the recommendations of Mr. Sparsis, the Director-General of the Ministry of Labour and Social Insurance, “as to the abilities and general behaviour of each one of them”—the candidates—“as observed in actual practice in the execution of their duties”. Now, it has transpired, subsequently, from evidence given before the Court by Mr. Sparsis, too, that he did not, really, have through—direct or indirect—knowledge of “the abilities and general behaviour” of the candidates (i.e. the Applicants and the Interested Party) “as observed in actual practice in the execution of their duties”, when making his recommendations to the Respondent Commission at the material time. It follows that the Commission acted under a material misconception—no doubt *bona fide* on both sides—as to the effect and decisiveness of the recommendations made by Mr. Sparsis.

In annulling the decision complained of the Court:

*Held, (1).* On the material before me, I have come to the conclusion that the *sub judice* decision should be declared *null* and *void* and of no effect whatsoever as being the product of basic misconceptions, which render it contrary to law (i.e. contrary to basic principles of Administrative Law) and in excess and abuse of powers.

(2) The Respondent Commission is now left to consider the matter in the light of all relevant considerations and in the light of the correct facts.

*Sub judice decision  
annulled with costs.*

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*Per curiam*: Seniority is an element to be taken into account when comparing merits, especially as indicating experience; but it can only be treated as decisive when all other things are equal (See *Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 48).

Cases referred to:

*Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 48.

**Recourse.**

Recourse against the validity of the appointment, by way of secondment, to the post of Assistant Labour Officer in the Ministry of Labour and Social Insurance, of the Interested Party P. Kouppanos.

*L. Papaphilippou*, for the Applicants.

*K. Talarides*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:-

TRIANAFYLLIDES, J.: By these two recourses, which have been heard together in view of their common subject-matter and common issues, the two Applicants, A. Piperi and G. Sitarou, challenge the validity of the appointment, by way of secondment, to the post of Assistant Labour Officer, in the Ministry of Labour and Social Insurance, of the Interested Party P. Kouppanos.

Such appointment was decided upon on the 25th January, 1967, by the Respondent Public Service Commission, and its minutes (see *exhibit 3*) read as follows:-

“1. *Filling of vacancy in the post of Assistant Labour Officer, Ministry of Labour & Social Insurance.*

Mr. M. D. Sparsis, Director-General, Ministry of Labour and Social Insurance, present.

The Council of Ministers has authorised (Decision No. 6205 dated 22.12.66) the filling of a vacancy in the post of Asst. Labour Officer created through the absence on scholarship of Mr. T. N. Hamatsos, Asst. Labour

Officer, by the secondment of a Labour Assistant, or an Insurance Clerk.

The Commission, after considering the qualifications, experience and merits of Labour Assistants and Insurance Clerks, as reflected in their Annual Confidential Reports, and after carefully weighing Mr. Sparsis' oral recommendations as to the abilities and general behaviour of each one of them as observed in actual practice in the execution of their duties, decided, having regard to the totality of circumstances pertaining to each one of them, that Mr. Pantelis G. Kouppanos, Insurance Clerk, was the most suitable officer and that he be seconded to the post of Asst. Labour Officer, w.e.f. 1.2.1967".

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An examination of the service data and the qualifications of the Applicants and the Interested Party (see *exhibits 2A and 2B*) shows the following:-

Applicant Piperi was given a permanent appointment as Labour Assistant as from the 1st October, 1961, and Applicant Sitarou was given a permanent appointment as an Insurance Clerk as from the 1st April, 1963 — the two posts being equivalent. The Interested Party was given a permanent appointment as an Insurance Clerk as from the 13th May, 1963.

Previously, the Interested Party had been employed in the Department of Labour, since the 22nd May, 1959, as a Clerical Assistant, on daily wages; on the other hand, Applicant Piperi was first employed in the Department of Labour as Clerical Assistant as from the 17th December, 1956, and then as from the 1st January, 1957, she was appointed as a temporary Labour Assistant; Applicant Sitarou joined the Government service as an Insurance Clerk, unestablished, on the 24th June, 1957.

It has been alleged by counsel for the Applicants, and it does not appear to be contested by Respondent's side, that Applicant Sitarou, having passed the relevant Departmental examinations together with Applicant Piperi, in 1961, could have been given then, as it was done with Applicant Piperi, a permanent appointment, but she was not made permanent because of the fact that she was a married woman and there was then in force a policy against appointing married

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women as permanent officers; so she became a permanent officer, later, in 1963, after such policy had ceased to be followed.

Regarding qualifications, it appears that all three — the two Applicants and the Interested Party — have graduated from secondary education schools in Cyprus; the Applicants have, however, also passed examinations in the English language, whereas the Interested Party has not passed any such examination; and it is to be noted that, under the relevant scheme of service (see *exhibit 1*), a rather high standard of knowledge of the English language is one of the required qualifications.

A comparison of the Confidential Reports on the Applicants and the Interested Party (which have been produced together as *exhibit 4* — the most recent relevant Reports being, at the material time, those filed in 1965 and 1966) shows that all three of them were of, more or less, equal merit.

The Reporting Officer in respect of Applicant Sitarou and of the Interested Party was the Senior Social Insurance Officer, Mr. T. Nacouzi, whereas in the case of Applicant Piperi the Reporting Officer was a Labour Officer, Grade I, Mr. Chr. Eliophotou. On all occasions the Countersigning Officer has been one and the same, viz. the Director-General of the Ministry of Labour and Social Insurance, Mr. M. Sparsis.

Argument has been heard in these proceedings on the issue of what importance ought to have been given by the Respondent Commission to the factor of seniority in the light of the circumstances of these Cases. Counsel for the Respondent has greatly assisted the Court by his diligent research on the point; the outcome thereof appears to be that seniority is an element to be taken into account when comparing merits, especially as indicating experience; but it can only be treated as decisive when all other things are equal. (See, also, *Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 48).

It has been submitted by counsel for the Applicants that seniority was not taken into account at all by the Public Service Commission, because no mention thereof is made in the relevant minutes of the Commission (*exhibit 3*). It is correct that “seniority” is not expressly referred to in such minutes; nor is there to be found therein any direct explana-

tion as to why the seniority, in substance, of Applicant Sitarou, and the seniority, regarding permanent appointment to the post immediately below that of Assistant Labour Officer, of Applicant Piperi, were overlooked in favour of the more junior Interested Party.

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But, in my opinion, a fair reading of the said minutes can only lead to the conclusion that the Commission when referring to “qualifications, experience and merits” must have borne in mind the length of service and seniority of each of the candidates; and it decided in favour of the Interested Party, because, as shown by its minutes, it gave considerable weight to the views expressed orally at its relevant meeting by the Director-General of the Ministry concerned, Mr. Sparsis; otherwise one cannot see how the Interested Party was selected as the most suitable when the Confidential Reports on him were no better than those on the Applicants and when both the Applicants were, indeed, senior to him in the service.

It was, of course, reasonably open, in principle, to the Commission to put the recommendations of Mr. Sparsis in the balance and to let them tip the scales, as to suitability, in favour of the Interested Party.

The Commission has stated, in this respect, in its minutes (*exhibit 3*) that it took its decision “after carefully weighing” the recommendations of Mr. Sparsis “as to the abilities and general behaviour of each one of them” — the candidates — “as observed in actual practice in the execution of their duties”. This can only be taken to mean that the Commission thought that either Mr. Sparsis, himself, had occasion to observe the abilities and general behaviour of the candidates, in actual practice, in the execution of their duties, or that, at least, he had, recently, consulted accordingly immediate superiors of the candidates who had the opportunity to observe them in action.

Unfortunately, it has transpired, subsequently, from evidence given before this Court by Mr. Sparsis, too, that his recommendations could not be the decisive factor which the Respondent Commission took them to be.

Mr. Sparsis has told this Court, very fairly, while giving evidence, the following:-

“As I had nothing to go by,” — for the purpose of evalu-

ating the two Applicants and the Interested Party — “and also I regarded all three of them as average officers, I took into account the fact that Mr. Nacouzi,” — the Senior Social Insurance Officer — “who was in a position to evaluate very well all three of them, as well as the other officers under him, had selected Mr. Kouppanos” — the Interested Party — “for duties as Social Insurance Inspector and I concluded that he must have considered him as a person of ability in the field of Social Insurance, and I, therefore, recommended him as the most suitable to the Public Service Commission”.

Mr. Nacouzi, himself, has stated in evidence that Mr. Sparsis did not consult him before he signed as Counter-signing Officer the Confidential Reports — filed in 1966 — for the Interested Party and Applicant Sitarou, nor did he consult him about these two persons in January 1967, when the relevant meeting of the Public Service Commission, at which Mr. Sparsis made orally his recommendations, took place.

The other Applicant, Mrs. Piperi, was not working under Mr. Nacouzi at the material times (see in this respect also, *exhibit 5*).

It is clear, therefore, that Mr. Sparsis, did not, really, have, thorough, — direct or indirect — knowledge of “the abilities and general behaviour” of the Applicants and the Interested Party “as observed in actual practice in the execution of their duties”, when making his recommendations to the Commission, in January 1967; the Commission, thus, acted under a material misconception — no doubt *bona fide* on both sides — as to the effect and decisiveness of the recommendations of Mr. Sparsis.

Moreover, even the assumption made by Mr. Sparsis, on the basis of which he recommended, as he has stated, the Interested Party to the Commission, appears to have been a mistaken one: From all the material before me, and mainly from the evidence of Mr. Nacouzi, it is not proper to conclude that the reason for which the Interested Party was assigned duties of Social Insurance Inspector, instead of Applicant Sitarou, was necessarily because he was better as an officer than Applicant Sitarou, who was at the time engaged in other work of quite some importance, too; thus, the assignment of the said duties to the Interested Party did not consti-

tute a safe test of overall suitability regarding appointment to the post of Assistant Labour Officer, when comparing the Interested Party and Applicant Sitarou; and it would be of no real relevance to the comparison of the Interested Party and Applicant Piperi, because the latter was not employed under Mr. Nacouzi and he could not have known her abilities, and could not, thus, be taken as considering the Interested Party a better officer than her when he assigned duties of Social Insurance Inspector to the Interested Party.

For all the foregoing reasons I have come to the conclusion that the *sub judice* decision should be declared to be *null* and *void* and of no effect whatsoever as being the product of basic misconceptions, which render it contrary to law (i.e. basic principles of Administrative Law) and in excess and abuse of powers. The Commission is now left to consider the matter in the light of all relevant considerations and in the light of the correct facts.

Regarding costs I have decided to award each Applicant £15.— towards her costs.

*Sub judice decision annulled.  
Order for costs as aforesaid.*

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