

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MILIA PANAYIOTOU AND ANOTHER,
Applicants,
and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,
Respondent.

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AND ANOTHER
v.
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(Case No. 200/67).

Public Officers—Appointments and Promotions—Appointments to the post of Assistant Nurses (Female) 2nd Grade—Recourse against decision of the Respondent Commission to appoint to such posts the five Interested Parties instead of, and in preference to, the Applicants—Recourse dismissed—On the ground that the decision complained of was reasonably open to the Commission and their discretion has not been exercised in a defective manner—Recommendations by the representatives of the Department concerned—Duly weighed by the Respondent Commission and rightly followed—Interested Parties rather better qualified than Applicants as regards academic qualifications—Performance of candidates during the relevant interview—Personality of candidates—Important factor to be weighed inasmuch as the persons to be appointed were to work as nursing staff, especially at the Psychiatric Institution—Seniority of Applicants over Interested Parties, amounting to six to eight months, not a decisive factor in this case—In any event the Respondent Commission took, inter alia, into account the length of part service of the candidates—See, also, herebelow.

Public Officers—Appointments and Promotions—Examinations held about two years prior to the decision complained of—Not specifically held for the purpose of choosing the most suitable candidate in the present case—Results thereof not put before the Respondent Public Service Commission when dealing with the said appointments—Validity of the exercise of the relevant discretion not vitiated thereby.

Appointments and Promotions—See above.

Discretion of the Public Service Commission in making such appoint-

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ments or promotions—Properly exercised—Sub judge decision reasonably open to the Commission—Relevant factors duly considered—See, also, above under Public Officers.

Seniority—See above.

Personality of candidates—See above.

Interview of candidates—Performance of candidates—See above.

Recommendations by the representatives of the Department concerned properly taken into account by the Respondent Commission in making the sub judge appointments—See, also, above.

Academic Qualifications—See above.

By this recourse under Article 146 of the Constitution the Applicants challenge the validity of the decision of the Respondent Commission dated the 24th July, 1967 to appoint to posts of Assistant Nurses (Female), 2nd Grade, the five Interested Parties instead of, and in preference to, the Applicants.

The Court dismissed the recourse, holding that the decision complained of was reasonably open to the Respondent Commission which has exercised its discretion in a proper manner having duly taken into account all relevant factors such as the recommendations made by the representatives of the Department concerned, and the candidates' academic qualifications, merits, personality, seniority and performance at the relevant interview.

Recourse dismissed. No order as to costs.

The facts sufficiently appear in the Judgment of the Court.

Recourse.

Recourse against the decision of the Respondent Public Service Commission to appoint to the post of Assistant Nurses (Female), 2nd Grade, the five Interested Parties in preference and instead of the Applicants.

L. Papaphilippou, for the Applicants.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this case the Applicants complain, in effect, against the decision of the Respondent Public Service Commission to appoint to posts of Assistant Nurses (Female), 2nd grade, the five Interested Parties (Fyrilla, Philippidou, Tsiani, Lazarou and Moyseos) instead of the Applicants.

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The relevant decision of the Commission was taken on the 24th July, 1967 (see its minutes *exhibit 7*).

The scheme of service for the said post (see *exhibit 8*) lays down that the post is a "first entry and promotion post" and that the qualifications required are "Cyprus Registered Assistant Nurse. A working knowledge of English"; furthermore, that the relevant duties and responsibilities are "Nursing duties under the supervision of a Nursing Sister or Staff Nurse in a ward or some other department of a General or Special Hospital. Any other duties which may be assigned to him or her".

The vacancies in question were advertised in the official Gazette on the 2nd March, 1967, and all the Interested Parties and both the Applicants were among the candidates, having had duly applied for appointment (see their applications, *exhibits 2, 3, 4, 5, 9, 10, 11*).

As it appears from a comparative table, which gives particulars of the, at the material time, service and qualifications of the Applicants and of the Interested Parties (see *exhibit 1*), Applicant Panayiotou was a Temporary Nurse Aid (serving since the 20th June, 1963) Applicant Papalazarou and Interested Parties Fyrilla, Tsiani, Lazarou and Moyseos were Permanent Female Attendants (Applicant Papalazarou serving since the 1st April, 1963 and the Interested Parties serving since the 2nd December, 1963) and Interested Party Philippidou was a Temporary Student Nurse, (serving since the 1st June, 1963).

They were all serving, at all material times, at the Psychiatric Institution at Athalassa.

Both the Applicants and all the Interested Parties possess education of the secondary education level.

The Applicants and Interested Parties Philippidou and Lazarou appear, from the aforementioned comparative table,

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to have qualified as Cyprus Registered Assistant Nurses in 1965. But, in this respect, counsel for the Respondent has, at the hearing, stated that only Interested Party Philippidou did so qualify in 1965; all the remaining Interested Parties qualified as Cyprus Registered Assistant Nurses in 1966.

All the Interested Parties, but not the Applicants, have passed the First Aid Examinations.

As it appears from its minutes (*exhibit 7*) the Commission, in deciding to prefer for appointment the Interested Parties, took into account the views of the Director of the Department of Medical Service, Dr. Panos, of the Matron, Miss Shellish, and of Dr. Drymiotis, who is a Medical Officer at the Psychiatric Institution; the Commission based itself, also, on the merits, qualifications and experience of each of the candidates interviewed—(both the Applicants as well as the Interested Parties were all interviewed)—and on their performance during the interviews, noticing things such as “alertness of mind, correctness of answers to questions put to them, etc.”

It is a fact that the Applicants had six to eight months' longer service than the Interested Parties—except for Interested Party Philippidou who was appointed practically contemporaneously with Applicant Panayiotou and about two months after Applicant Papalazarou. I might state, at once, that, in my opinion, no decisive consideration of seniority could be said to arise in the present case; in any event it is quite clear that the Commission took, *inter alia*, into account the length of past service of the candidates, because there is express reference in its minutes to their “experience”.

As the persons to be appointed were to work as nursing staff, and especially at the Psychiatric Institution, it is obvious that their personalities were important factors to be weighed by the Respondent Commission; nurses dealing with patients have to possess a suitable personality in many material respects. So, rightly, in my view, the Commission paid due regard to the evaluation of the candidates made through the interviews and was, to a certain extent, guided accordingly in reaching its decision; in the present instance I would say that the results of the interviews were more important than they would have ordinarily been.

The Commission based itself, also, on the recommendations

of the representatives of the Department concerned; and there is no allegation that the recommendations of such representatives were contrary to the conclusions of the Commission. The said representatives, and particularly Dr. Drymiotis, had plenty of time to assess the merits of the Applicants and of the Interested Parties, while in service since 1963.

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Counsel for Applicants has argued that the Applicants passed the examinations for Cyprus Registered Assistant Nurse with much better results than the Interested Parties, and that these results were not before the Commission, though—as submitted by counsel—they were very material factors in relation to the choice of the most suitable candidates for appointment.

Regarding this issue it is common ground that the said results were not before the Commission. But, I do not agree that this fact vitiates the validity of the exercise of the relevant discretion of the Commission; because such results, did not, in my opinion, constitute, in the circumstances of the present case, a material factor, for the following reasons:—

The examinations in question were not specifically held for the purpose of choosing the most suitable candidates for appointment; they were merely qualifying examinations which took place in June 1965, and February, 1966; and, in any case, they were not proximate enough to the *sub judice* decision so that their results could be of a material effect; the appointments challenged by this recourse were made quite later, and in the meantime—as well as in the past—the performance of the Applicants and the Interested Parties had been watched, in actual practice, by the representatives of the Department concerned; and such performance led to their relevant recommendations, which were, indeed, a most material factor, duly weighed by the Commission and rightly followed by it.

Moreover, as regards academic qualifications, all the Interested Parties were rather better qualified than the Applicants, because they had passed the First Aid Examinations too, whilst the Applicants had not done so.

In the light of all the foregoing, I find that the *sub judice* decision was reasonably open to the Commission, on the

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basis of the material before it, and its relevant discretion has not been exercised in a defective manner in any way.

As a result this recourse fails and is dismissed accordingly; but, in all the circumstances of the matter, there shall be no order as to costs.

Application dismissed.
No order as to costs.