

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

—
AVGI KEPHALA
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

AVGI KEPHALA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 147/68).

Public Officers—Promotions—Promotion by the Public Service Commission to the post of Clerical Assistant, General Clerical Staff—Three out of the four Appointees (Interested Parties) with service not so decisively less than Applicant and with better qualifications—Consequently, it was reasonably open to the Respondent Commission to prefer them—On the other hand, Applicant with considerably longer service than the fourth appointee (Interested Party)—Both candidates working under the same superior officer—Applicant with better recommendations by the superior officer—Applicant's knowledge of typing an advantage under the relevant scheme of service—Passing by the said fourth Interested Party of clerical and other services qualifying examination—Cannot outweigh vastly longer experience of the Applicant—Therefore, it was not reasonably open to the Respondent in the absence of any cogent reason therefor, to prefer the aforesaid fourth appointee (Interested Party) to Applicant—See also herebelow.

Public officers—Examinations—Clerical and other services qualifying examinations—Nature and scope of—They cannot outweigh vastly longer experience of another candidate.

Public Officers—Promotions—Material document relating to past service of a candidate not put before the Respondent Commission—Thus, the Commission was prevented from exercising its discretion on the basis of all material considerations—Which vitiates its decision complained of.

Promotions—Promotions of public officers—See above.

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*Examinations—Clerical and other services qualifying examinations—
Scope of—See above.*

*Administrative Law—Administrative decision—Decision not taken on
the basis of all material considerations—See above.*

Public Service Commission—See above.

Cases referred to:

Vonditsianos and Others v. The Republic (reported in this
Part at p. 83 *ante*,) *distinguished*.

The facts sufficiently appear in the judgment of the Court.

Recourse.

Recourse against the decision of the Respondent to appoint
to the post of Clerical Assistant in the General Clerical Staff,
the four Interested Parties instead of the Applicant.

D. Papachrysostomou, for the Applicant.

A. Frangos, Senior Counsel of the Republic, for the Respond-
ent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLIDIS, J.: In this case the Applicant complains
against the decision of the Respondent Public Service Commis-
sion to appoint to the post of Clerical Assistant, in the General
Clerical Staff, with effect as from the 1st May, 1968, the four
Interested Parties, namely, Chrystalla Anastassiou, Varnavas
HjiDemetriou, Theognosia Christodoulou and Antonia
Georghiadou, instead of the Applicant, who, too, had applied
for appointment.

The first two Interested Parties were appointed to permanent
posts and the last two Interested Parties were appointed to
temporary posts.

There were, in all, 132 relevant vacancies to be filled, and
all but one of them were filled by the *sub judice* decision of
the Commission, which is dated the 6th April, 1968 (see the
minutes *exhibit 4A*); the remaining vacancy was filled on
the 25th April, 1968 (see the minutes *exhibit 4C*).

Prior to the 6th April, 1968, the Applicant and the Interested Parties were, already, employed as Clerical Assistants, but on a daily paid basis.

Out of all five persons involved in this case, the Applicant had, at the material time, the longest service as a Clerical Assistant on a daily paid basis; she had commenced working in such a capacity in August, 1963. Interested Party Georghiadou was first employed, in such capacity, in June 1964; Interested Party Christodoulou in July 1964; Interested Party Anastassiou in June 1965; and Interested Party Hji-Demetriou in October 1967—having worked before then for about two weeks, only, as a daily paid Assistant Controller in the Nicosia Airport Control Centre (see the comparative table showing the service and qualifications of the Applicant and the Interested Parties, *exhibit 6*).

On the basis of the material before me I have no difficulty in dismissing this recourse in so far as Interested Parties Georghiadou, Christodoulou and Anastassiou are concerned; in particular, they all seem to possess more qualifications than the Applicant and their service as Clerical Assistants, on a daily paid basis, is not so decisively less than that of the Applicant as to render them strikingly inexperienced, as compared to the Applicant, regarding the work of a Clerical Assistant.

In the circumstances I cannot but find that it was reasonably open to the Commission to prefer these Interested Parties to the Applicant, even if it might be said that the Applicant could reasonably, too, have been preferred to any one of them; I cannot substitute by own decision, in this connection, in the place of that of the Respondent.

Coming next to the question of the appointment of Interested Party HjiDemetriou, it is to be noted that he had, at the material time, only six months' experience as a Clerical Assistant on a daily paid basis, whereas Applicant had nearly five years' experience in this respect; and, the Applicant and this Interested Party had the same qualifications, namely, they had both graduated from a school of secondary education.

It is correct that the Interested Party did pass the Clerical and Other Services Qualifying Examination required under the relevant scheme of service (see *exhibit 3*); the Applicant did not pass such Examination because she was entitled to

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exemption from doing so, in view of the fact that she had completed three years' service on a daily paid basis before the 7th September, 1967 (see a relevant circular, No. 126, dated the 21st September 1967, marked *exhibit 2*); therefore, both the Applicant and the Interested Party were eligible for appointment to the post in question.

The nature of the said Examination can be judged by a simple perusal of the contents of a Notice published, in relation thereto, on the 21st January, 1967, in the official Gazette (see Not. 55—and not “Not. 550” as erroneously stated in the circular *exhibit 2*): It is a very elementary examination designed to ensure that those seeking appointment to some of the relatively lower posts in the public service possess *general* knowledge of a standard adequate to entitle them to be treated as eligible for appointment; it is not a *specialized* examination destined to ensure that a candidate is qualified for promotion from one grade to a higher one (as was the position with the relevant examination in *Vonditsianos and Others and the Republic* (reported in this Part at p. 83 *ante*); and that is why in the cases of the Applicant and others the requirement for the passing of the aforementioned Examination was dispensed with, on the basis of their past three years' service on a daily paid basis; such service being regarded presumably as ensuring the possession by them of the necessary standard of knowledge; and it is not required either to pass such Examination within a specified time after appointment, as it is usually the position where a public officer is, exceptionally, in view of past service, promoted without having passed a specialized examination for the purpose.

Thus, if the Respondent regarded the passing of the Examination in question as constituting an additional qualification in favour of Interested Party HjiDemetriou, outweighing the vastly longer service of the Applicant on a daily paid basis, the Respondent must be regarded as having, in this respect, based its *sub judice* decision on an erroneous assumption.

If, on the other hand, such a consideration did not influence the Respondent in preferring this Interested Party to the Applicant, I can see no valid reason—and none is stated in the minutes of the Respondent—which could be treated as properly entitling the Respondent to prefer the Interested Party to the Applicant, in spite of the fact that the latter had

about five years' experience as a Clerical Assistant on a daily paid basis, and the former only six months' such experience.

But the matter does not end here; there are further factors which, on the basis of the material at present before me, impair the validity of the course of action adopted by the Respondent:—

The Interested Party was serving, at the material time, as a Clerical Assistant on a daily paid basis—since the 4th October, 1967—in the office of the Transport Control Officer, Mr. Alexandrou, who forwarded his application for appointment, to the Respondent, on the 9th February, 1968, stating that, in spite of the short period during which he—the Interested Party—had served, he had shown great interest in his work and everything indicated that he was going to develop into a very good public officer; it was added, by Mr. Alexandrou, that the Interested Party was behaving politely both to his superiors and subordinates, and to the public; and for these reasons Mr. Alexandrou had no hesitation in recommending his appointment.

In the same office, under Mr. Alexandrou, there was working, also, at the material time, as a Clerical Assistant on a daily paid basis, the Applicant herself. Mr. Alexandrou, in forwarding her application for appointment, to the Respondent, on the 5th February, 1968, stated that the Applicant had been working under him since the 19th July, 1967; that she was being employed as a typist, both in the English and the Greek languages; and that she was carrying out her duties conscientiously; Mr. Alexandrou stressed that she was industrious, experienced and of a very good character and that she was being recommended for appointment (see *exhibit 8*).

Thus, it is abundantly clear, from the views expressed by Mr. Alexandrou, that whereas the Applicant was an *experienced* officer of proven qualities, the Interested Party was, as yet, only an officer with very promising future prospects.

Moreover, on the basis of what had been stated by Mr. Alexandrou, the Respondent knew, when it reached its *sub judice* decision, that the Applicant was being employed, and was experienced, in doing Greek and English typing; and under the relevant scheme of service (*exhibit 3*) it is expressly provided that "ability to type in Greek and/or English will be an advantage".

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On the other hand, nothing of the sort was mentioned by Mr. Alexandrou in relation to the Interested Party; and this was, obviously, due to the fact that—as it appears from the evidence of Mr. Alexandrou—the Interested Party was not a typist, like the Applicant, but was doing general clerical duties.

Nor does it appear from the application for appointment of the Interested Party (see his personal file which is part of *exhibit 7*) that he has any typing qualification in respect of either the Greek or English language; and on reading together paragraphs (a) and 2 of the aforementioned circular No. 126 (*exhibit 2*) with the contents of the relevant Notice in the official Gazette of the 21st January, 1967 (Not. 55) it is perfectly clear that the qualifying Examination which the Interested Party passed in December, 1967, (see his application for appointment) did not include Greek or English typing among its subjects.

In the light of the views of Mr. Alexandrou, who knew the qualities, as public officers, of both the Applicant and of Interested Party HjiDemetriou; in view of the considerably long past experience of the Applicant, as a Clerical Assistant on a daily paid basis, and of the extremely short such experience of the Interested Party; bearing in mind, too, that the Applicant possesses ability to type in Greek and English, which is an advantage under the relevant scheme of service, I cannot see how it was reasonably open to the Respondent Commission—in the absence of any cogent reasons therefor, and none is recorded in its minutes—to prefer the Interested Party to the Applicant.

Furthermore, in deciding this matter the Respondent was severely handicapped in that an important document, relating to the past service of the Applicant on a daily paid basis, was not before it.

The document in question is a letter dated the 10th October, 1967, of the Minister of Justice (directly under whom the Applicant had worked as a Clerical Assistant on a daily paid basis from the 1st August, 1963 to the 18th June, 1967) to the Director-General of the Ministry of Communications and Works (see *exhibit 10*).

It is quite clear from what counsel for Respondent has stated to the Court that this document was not before the Respondent at the material time; though her application for appointment

was forwarded to the Respondent, by Mr. Alexandrou, through the Director-General of the Ministry of Communications and Works, and though in such application the Applicant had mentioned that this document existed, it was not, apparently through an oversight, placed before the Respondent by the Ministry of Communications and Works; and the document in question having been marked "confidential", no copy thereof was, presumably, in the possession of the Applicant, so that it could be attached by her to her application for appointment.

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Consequently, the Respondent was prevented from having before it, and paying due regard to, a full picture of the nature and quality of most of the past service of the Applicant as a Clerical Assistant, with the result that it did not exercise its discretion on the basis of all material considerations; and the overwhelmingly longer past service of the Applicant on a daily paid basis, as compared to that of the Interested Party, was, no doubt, a most material consideration regarding the choice between him and the Applicant.

For all the foregoing reasons I have decided to declare *null* and *void* and of no effect whatsoever the appointment of Interested Party HjiDemetriou; otherwise, this recourse fails, and it is dismissed, as regards the appointments of the other Interested Parties; in the circumstances there shall be no order as to costs.

*Appointment of Interested
Party HjiDemetriou annul-
led; otherwise recourse dis-
missed; no order as to costs.*