

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERA BARGILLY,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

—
SOTERA
BARGILLY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 305/68).

Public Officers—Promotions—Promotions to the post of Assistant Labour Officer—Based on the result of an examination set up for the purpose, on the merits, qualifications and experience of the candidates, their performance during the relevant interview and on the recommendations of the Director General of the Ministry concerned—Reasonably open to the Respondent Public Service Commission to prefer for promotion all appointees (Interested Parties) except one—The latter candidate-appointee was not fully qualified for promotion in a material respect under the relevant scheme of service viz. he did not possess the required knowledge of English—Respondent Commission not entitled to disregard such material factor—Consequently the promotion of this appointee shall be annulled as having been made contrary to law i.e. the principles of administrative law and in excess and abuse of powers.

Promotions—See supra.

Public Service Commission—Meeting and interviewing candidates for promotion—Presence of the Director-General of the Ministry concerned as “head of Department”—Presence at the invitation of the Commission—Nothing improper.

Promotions in the public service—Approach of the Court to the question—Principles applicable—The Respondent Commission has to be allowed in such cases the appropriate wide margin of discretion.

Cases referred to:

Vonditsianos and Others v. The Republic (1969) 3 C.L.R. 83;

The same case on appeal: (1969) 3 C.L.R. 445.

1970
Jan. 24

—
SOTERA
BARGILLY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

The facts sufficiently appear in the judgment of the Court.

Recourse.

Recourse against the validity of the decision of the Respondent to promote to the post of Assistant Labour Officer in the Ministry of Labour and Social Insurance the Interested Parties in preference and instead of the Applicant.

L. Papaphilippou and *E. Montanios*, for the Applicant.

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

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: The Applicant by this recourse attacked the appointments to the post of Assistant Labour Officer of ten persons, who thus became Interested Parties in these proceedings.

By another recourse (No. 278/68) another person attacked only two out of the said ten appointments.

The present case and the other one were being heard together, in view of their nature, when the latter case was withdrawn and was struck out. Also, during the hearing the Applicant discontinued her recourse as regards the appointments of four out of the ten Interested Parties, with the result that we are now concerned only with the validity of the appointments of Interested Parties I. Michaelides, A. Georghiades, P. Miltiadou, K. Kyprianou, A. Efstathiou and P. Savva.

The Applicant and the said Interested Parties were, at the material time, in the service of the Ministry of Labour and Social Insurance and were all of them candidates for appointment to the then vacant posts of Assistant Labour Officer.

The Respondent Public Service Commission conducted a written examination for the purpose of evaluating the suitability of candidates for appointment.

On the 12th January, 1968, it was decided by the Respondent that in case of a first entry and promotion post—(such as the

one involved in the present case)—candidates who were not in the public service would be called for an interview only if they were successful in passing the relevant examination; but candidates who were already serving officers—(such as the Applicant and the Interested Parties)—would be interviewed irrespective of the result of the examination and their promotion would “then depend on their performance at the examination, their Annual Confidential Reports and their performance at the interview” (see the minutes *exhibit 12*).

1970
Jan. 24
—
SOTERA
BARGILLY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

The examination results are *exhibit 16* in these proceedings; and there have also been produced the Confidential Reports files in respect of the Applicant and the Interested Parties (as *exhibit 17*).

At its meeting of the 24th May, 1968, the Respondent completed the interviews of candidates for the post in question, which had commenced on the 23rd May, 1968, and having based itself on “the merits, qualifications and experience of the candidates interviewed..... as well as their performance during the interview” and, also, on the recommendations of the Director-General of the Ministry of Labour and Social Insurance, Mr. Sparsis, who was present, it decided to appoint the six Interested Parties and another sixteen persons as Assistant Labour Officers; it decided, further, that “the remaining officers”—including the Applicant—“were not found to be suitable for appointment to the post of Assistant Labour Officer” and as a result quite a large number of vacancies in the post in question remained unfilled.

Counsel for the Applicant have, at first, complained about the fact that the Applicant was required by the Respondent to sit for the said examination; later on, however, this complaint was abandoned. I, therefore, need not deal at any length, in this judgment, with this aspect of the matter. I might simply state, very briefly, that in my opinion the holding of the examination was a course properly open to the Respondent in the discharge of its duty to select the best candidates.

Counsel for the Applicant have laid stress on the fact that the Applicant has had much longer service, and experience, in various Sections of the Ministry, and that she is, also, much older in age, than the Interested Parties.

Having, however, read the relevant Confidential Reports and bearing, also, in mind the results of the aforementioned

1970
Jan. 24
—
SOTERA
BARGILLY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

examination I have reached the view that it was reasonably open to the Respondent Commission to prefer for promotion, instead of the Applicant, all the Interested Parties, except P. Savva. My approach, in this connection, has been the same one which was adopted in *Vonditsianos and Others v. The Republic* ((1969) 3 C.L.R. 83; see also on appeal, on the 14th October, 1969, in Revisional Appeal No. 57, not reported yet*) viz. that the Respondent has to be allowed, in a case such as this one, the appropriate wide margin of appreciation. I do, therefore, confirm the appointments of all Interested Parties except that of Interested Party Savva.

The reason for which I have decided on a different course in the case of Interested Party Savva is that it was shown by means of the examination that he did not possess the required knowledge of English, as laid down in the relevant scheme of service (*exhibit 13*), viz. "Knowledge of English of the standard of English Higher (Credit Level)".

I take it that the English paper set at the examination was intended to test the candidates regarding the required knowledge of English; this Interested Party was given, in this connection, only 25 out of 100 marks—on the strength of which he clearly cannot be deemed to have passed such examination—while the Applicant (who was by eight years his senior, see *exhibit 9*) was given 60 out of a 100 marks for her performance on the basis of the same paper.

Moreover, from the Confidential Reports on this Interested Party it can be gathered without any doubt that his knowledge of English was not considered to be really adequate.

Once it was established, by his performance at the examination and by the Confidential Reports, that this Interested Party was not fully qualified for promotion, in a material respect, under the relevant scheme of service, I cannot see how the Respondent was entitled to disregard this factor and decide to promote such Interested Party. His promotion was made in abuse and excess of powers and contrary to law and it is hereby declared to be *null* and *void* and of no effect whatsoever.

I have not taken the same view in the case of Interested Party Michaelides, who got only 40 out of 100 marks when

* Now reported in (1969) 3 C.L.R. 445.

examined in English: My reason for not doing so is that I could not regard this result which is, after all, close enough to 50% of the possible marks—as a definite indication that such Interested Party did not qualify for promotion under the scheme of service, especially as there were no comments, about his English being inadequate, in the Confidential Reports on him.

1970
Jan. 24
—
SOTERA
BARGILLY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Before concluding I would like to deal with a contention of counsel for the Applicant to the effect that the Respondent was carried away by the views of Mr. Sparsis, the Director-General of the Ministry concerned, who, also, according to counsel, was not the proper person to be invited to attend the meetings of the Respondent as the Head of Department. I think that as the candidates were posted in different Sections of the Ministry it was not at all improper for the Respondent to decide to have present Mr. Sparsis who, as the Director-General, was in position to evaluate all such candidates.

Furthermore, having gone through the minutes of the Respondent, I cannot agree that the Respondent did not make up, duly, its mind, but was carried away by the views of Mr. Sparsis.

In the light of the foregoing this recourse is dismissed in so far as it concerns the appointments of all Interested Parties, except that of Interested Party P. Savva in relation to which it succeeds.

In the circumstances there shall be no order as to costs.

*Appointment of Interested Party
P. Savva annulled; otherwise
recourse dismissed; no order as
to costs.*