

[VASSILIADES, P., TRIANTAFYLLOIDES, JOSEPHIDES, STAVRINIDES,
L. LOIZOU, JJ.]

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REPUBLIC
(PUBLIC
SERVICE
COMMISSION)
v.
ALEXANDROS
AIVALIOTIS

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

and

ALEXANDROS AIVALIOTIS,

Respondent.

(Revisional Jurisdiction Appeal No.75).

Public Officers—Appointments—Scheme of service—Interpretation thereof by the Public Service Commission—Post of Assistant Accountant Treasury Department—Qualifications required—“Membership of a recognised body of professional accountants”—Construed by the Public Service Commission to include only “Chartered Accountants” and “Certified Accountants”, both such qualifications being English professional qualifications—Interpretation reasonably open to the Public Service Commission—Consequently, it cannot be interfered with judicially (see Papapetrou and The Republic, 2 R.S.C.C. 61, at p. 69).

Scheme of service—Interpretation of such scheme by the Public Service Commission—Principles applicable—Papapetrou case (supra), followed.

Public Service Commission—Powers vested in it regarding interpretation of schemes of service—Principles applicable—Papapetrou case (supra) followed.

Per curiam : It is, indeed, in the interest of both the public service and all persons who are applying for appointment to posts therein, as well as in the interests of good administration in general, that there should be as much certainty as possible regarding the qualifications required or other essential matters laid down by a scheme of service for a post in the public service. We trust that the attention of the responsible authority having been drawn to this matter, the scheme of service for the post of Assistant Accountant (*supra*), as well as any other scheme suffering from a similar uncertainty, will, in due course, be re-examined with a view to removing doubts about the qualifications required for the appointment thereto.

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The salient facts of this case are briefly as follows :

A vacancy in the post of Assistant Accountant was advertised on May 18, 1967 ; in response two candidates applied for appointment ; one of them was the respondent. The Public Service Commission excluded from consideration, as a candidate, the respondent, on the ground that he was not duly qualified for appointment under the relevant scheme of service, in that he, not being a chartered accountant or a certified one, did not possess the required qualifications of " Membership of a recognized body of professional accountants ". It would appear that the Public Service Commission, taking into consideration the advice given to them as far back as 1962 by the then Accountant-General as well as expert advice given subsequently by other high public officers, took the view that the expression in the relevant scheme of service " membership of a recognized body of professional accountants " included only chartered accountants and certified accountants ; both qualifications being English professional qualifications.

The respondent challenged the aforesaid decision of the Public Service Commission excluding him from consideration as a candidate for appointment to the aforesaid post of Assistant Accountant. The learned trial Judge eventually annulled the subject decision, *inter alia*, on the ground that the construction placed by the Commission on the expression " recognized body of professional accountants " (*supra*) was wrong in that it should not have been limited to " chartered accountants " and " certified accountants " only but it should have been such as to embrace all those belonging to the profession of accountants.

It is against this judgment that the Public Service Commission now appeals. Allowing the appeal, and setting aside the judgment whereby the learned Judge annulled the subject decision of the Public Service Commission and confirming such decision of the Commission, the Supreme Court :—

Held, (1). It was laid down in *Papapetrou and The Republic*, 2 R.S.C.C. 61, at p. 69, that " in deciding whether or not the Public Service Commission in a given case has conformed with the relevant scheme of service, the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission, provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question ".

(2) On the totality of the material before us we have reached the conclusion that the Public Service Commission, acting in the light of all the factors before it, took a view of its own regarding the interpretation of the particular qualification in the scheme of service ; and as such interpretation was reasonably open to it in the circumstances, its decision cannot be interfered with judicially (see the *Papapetrou* case *supra*).

(3) In the result the appeal succeeds and the annulment of the *sub judice* decision of the Commission is set aside, such decision being confirmed.

*Appeal allowed. No order
as to costs.*

Cases referred to :

Papapetrou and The Republic, 2 R.S.C.C. 61, at p. 69.

Appeal.

Appeal by the Public Service Commission (Respondent in the recourse) from the judgment of a Judge of the Supreme Court of Cyprus. (Hadjianastassiou, J.) given on the 15th June, 1970 (Case No. 219/67) whereby, on a recourse by applicant, respondent's decision refusing to appoint Applicant to the post of Assistant Accountant was annulled.

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

L. Demetriades, for the respondent.

Cur. adv. vult.

VASSILIADES, P. : The judgment of the Court will be delivered by Mr. Justice Triantafyllides. Mr. Justice Josephides is not on the Bench today as he is busy with another case ; but he authorized me to say that he concurs with the judgment which will be delivered.

TRIANTAFYLLIDES, J. : In this appeal the appellants Public Service Commission appeals against a first instance decision* given in recourse 219/67 by a Judge of this Court.

By the decision in question it was held that the Commission had to reconsider and decide on the matter of the filling of a vacancy in the post of Assistant Accountant in the Accountant-General's Office, for appointment to which the respondent had applied.

* Reported in (1970) 3 C.L.R. 149.

The learned trial Judge held that the Commission erred in not treating the qualifications of the respondent as rendering him eligible for appointment under the relevant scheme of service.

The salient facts of the case are as follows :—

As appears from the relevant file of the Commission (32/1964)—which, unfortunately, was not produced, as it ought to have been, at the hearing of the recourse—a vacancy in the post of Assistant Accountant was advertised on the 18th May, 1967 ; in response two candidates applied for appointment ; one of them was the respondent and the other a certain Mr. V. Ioannou.

The Commission excluded from consideration, as a candidate, the respondent, on the ground that he was not duly qualified for appointment under the relevant scheme of service, in that he did not possess the required qualification of “membership of a recognized body of professional accountants”.

Under section 33 (c) of the Public Service Law, 1967 (Law 33/67), the Commission could only have appointed the respondent to the post in question and, a fortiori, could only have considered him as being eligible for the purpose, if he possessed that qualification.

Actually, the Commission, having, as aforesaid, found the respondent not to be qualified, decided to offer appointment to the other candidate, Mr. Ioannou, who was qualified, but he, eventually, decided not to accept the offer and, therefore, the post remained vacant.

The respondent filed a recourse (No. 219/67) complaining that he was wrongly treated as not being qualified for appointment to the post in question ; and, as stated, we are now dealing with an appeal from a first instance determination of that recourse.

There can be no doubt that the wording of the scheme of service involved in this case, in so far as it relates to the qualification of “membership of a recognized body of professional accountants”, is not very clear for anyone who does not possess specialized knowledge regarding the profession concerned. It appears from the material before us that regarding this particular qualification, which was, or is, found in more than one scheme of service for similar posts, the Commission itself felt in the past that the said wording was vague and so, as far back as 1962,

it sought the expert advice of the then Accountant-General, Mr. Stephani, who expressed the view that the expression "recognized body of professional accountants" included only chartered accountants and certified accountants; both qualifications being English professional qualifications.

It appears, further, that the Commission consulted, also, on other occasions, about the same matter, Mr. Stephani's successor in the post of Accountant-General, Mr. Ioannides, and the now retired Commissioner of Inland Revenue, Mr. Ionides. Both seemed to agree with Mr. Stephani, and as a matter of fact Mr. Ionides was called as a witness before the trial Judge and expressed in evidence the same view.

The judgment appealed from has annulled the *sub judice* decision of the Commission mainly on three grounds: Firstly, that the Commission failed to consider any other reasonable interpretation of the scheme of service because it felt bound by the advice given to it in 1962 by Mr. Stephani; secondly, that the Commission failed to take into account that after Cyprus became independent, in 1960, any practising accountant in the Republic may, under the relevant legislation, be authorized by the Minister of Finance to prepare accounts and computations for income tax purposes; and, thirdly, that the construction placed by the Commission on the expression "recognized body of professional accountants" was wrong in that it should not have been limited to chartered accountants and certified accountants only but it should have been such as to embrace all those belonging to the profession of accountants.

We do appreciate that, like the Commission, the trial Judge was worried by the relative uncertainty of the expression "membership of a recognized body of professional accountants" and he tried, when faced with this uncertainty, to do substantial justice in the case before him.

The trial Judge expressly referred, in his judgment, to the principle which was laid down in *Papapetrou and The Republic*, 2 R.S.C.C. 61, at p. 69, to the effect that "in deciding whether or not the Public Service Commission in a given case has conformed with the relevant scheme of service the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question".

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Judicial opinions are bound to differ occasionally and, with all due respect for the carefully expressed views of the trial Judge, we are of the opinion that the *sub judice* decision of the Commission ought not to have been annulled because the respondent failed to discharge the onus, which was cast upon him, of showing that the Commission has applied to his case the relevant scheme of service in a manner which was not reasonably open to it.

Actually, in forming such an opinion on this matter we have had the benefit of deriving considerable assistance from the contents of the aforementioned file of the Commission (32/1964), which, as stated, was not produced before the trial Judge.

On the totality of the material before us we have reached the conclusion that the Commission did not feel so bound by the advice given by Mr. Stephani in 1962 as to be prevented from duly forming a view of its own ; and, though it accepted Mr. Stephani's advice at the time, it did keep the matter of the wording of the scheme of service under consideration and, as already mentioned, it consulted other persons also in a position to give expert advice in this respect.

In our view, therefore, the Commission reached a conclusion of its own, in the light of all the factors before it, regarding the interpretation of the particular qualification in the scheme of service, and, as such interpretation was reasonably open to it in the circumstances, its decision cannot be interfered with judicially (see the *Papapetrou* case, *supra*).

The powers of the Minister of Finance to authorize, under the relevant legislation, accountants to prepare accounts and computations for income tax purposes, which has been referred to in the judgment appealed from, is a power given for a purpose not decisively related to the issue arising from the interpretation of the said scheme of service and, thus, not something which would persuade us that the view taken by the Commission as to the effect of such scheme of service is erroneous.

In the light of all the foregoing and bearing in mind also the duties of a person holding the post of Assistant Accountant, we have reached the conclusion that the decision of the Commission to treat the respondent as not being qualified for appointment—in view of the fact that, though he possesses other accountancy qualifications, he is not a

chartered or certified accountant—is not one which can be interfered with by this Court in the exercise of its competence under Article 146 of the Constitution.

In the result this appeal succeeds and the annulment of the *sub judice* decision of the Commission is set aside, such decision being confirmed.

We would like to repeat, however, that, like the Commission, we, too, have not found the relevant qualification in the scheme of service, to be clearly stated; and it is, indeed, in the interests of both the public service and all persons who are applying for appointment to posts therein, as well as in the interests of good administration in general, that there should be as much certainty as possible regarding the qualifications required or other essential matters laid down by a scheme of service for a post in the public service. We trust that the attention of the responsible authority having been drawn to this matter, the scheme of service for the post of Assistant Accountant, as well as any other scheme suffering from a similar uncertainty, will, in due course, be re-examined with a view to removing doubts about the qualifications required for appointment thereto:

Before concluding we would like, also, to add that in the present case, as the respondent had an English qualification in accountancy which, however, did not render him a member “of a recognized body of professional accountants”, we did not have to deal with the more complex issue as to whether if an accountant has obtained a qualification in accountancy in another country, equivalent to that of a certified accountant or a chartered accountant in England, it would be reasonably open to the Commission to limit its interpretation of the relevant scheme of service so as to render eligible for appointment only persons possessing either of two English accountancy qualifications, *viz.* being chartered accountants or certified accountants.

This may be another reason why the appropriate authority should examine this scheme of service and clarify the position as much as possible.

Due to the nature of this case we have decided to make no order as to costs.

Appeal allowed. No order as to costs.

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