

[TRIANTAFYLLOIDES, P.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
ZACHARIAS KTORIDES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS,

Respondents.

(Cases Nos. 29/68, 79/68, 156/68).

Scheme of Service—Interpretation—Interpretation by Public Service Commission—Principles applicable—Commission's discretion in this respect—Control of such discretion by the Administrative Court.

Qualifications—Promotions and appointments—Schemes of service—Interpretation—See supra.

Promotions and Appointments—Qualifications—Schemes of service—Interpretation—See supra.

Redundancy—Due to abolition of posts—Filling of other posts in the same Department—Duty of Public Service Commission—To appoint the most suitable candidate—Principle of "last in first out" and considerations relevant to the status of redundant officers not applicable.

Appointments—Duty to select the most suitable candidate—See supra.

The facts sufficiently appear in the judgment of the learned President dismissing these recourses challenging the validity of a number of appointments to the post of Customs and Excise Officer, 2nd Grade.

Cases referred to :

Petsas and The Republic, 3 R.S.C.C. 60, at p. 63;

Sofocleous (No. 2) v. The Republic (1972) 3 C.L.R. 537;

HadjiGeorghiou v. The Republic (1965) 3 C.L.R. 121,
at p. 129;

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Grimaldi v. The Republic (1965) 3 C.L.R. 443.

Recourse.

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Recourse against the validity of a number of appointments to the post of Customs and Excise Officer, 2nd Grade.

v.

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M. Christophides, for the applicant in Cases Nos. 29/68, 156/68.

L. Papaphilippou, for the applicant in Case No. 79/68.

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

Cur. adv. vult.

The following judgment was delivered by :-

TRIANTAFYLLIDES, P.: In these three cases the applicants challenge the validity of a number of appointments made to the post of Customs and Excise Officer, 2nd Grade; the public officers so appointed are the "interested parties" in these proceedings. Certain other collateral claims of the applicants, which were included in the motions for relief in their Applications were not pressed during the hearing before me and so I need not deal with them specifically in this judgment.

The present cases were heard together with a number of other similar cases which were, however, withdrawn, eventually, and were accordingly dismissed.

Cases 29/68 and 156/68 were filed by one and the same applicant, Z. Ktorides; the second case, 156/68, was filed by him because the appointments of the interested parties were published in the Official Gazette after case 29/58 had been already filed against such appointments. The other case was filed by another applicant, C. Georghiades.

Applicant Ktorides was at the material time an Assistant Inspector in the Preventive Service of the Department of Customs, and had been serving in such capacity since June 1, 1964. Applicant Georghiades was a Customs and Excise Officer, 3rd Grade, and had been so serving since April 1, 1964.

Both the said posts of the applicants were abolished by

operation of the Supplementary Budget Law (No. 11), 1967 (Law 45/67), in the course of the re-organization of the Department of Customs.

As it appears from the relevant minutes of the respondent Public Service Commission (*exhibit 2*), the Commission considered, first, on October 24 and 25, 1967, as candidates for appointment to vacant posts of Customs and Excise Officer, 2nd Grade, ten Assistant Inspectors, whose posts had been abolished by Law 45/67, and decided to appoint nine out of them.

The tenth Assistant Inspector, applicant Ktorides, was not appointed, because the Commission found that he "was not covered by the scheme of service in that he did not possess education equivalent to that of a five-year secondary school".

It was submitted on behalf of this applicant that the Commission's view as to the level of his education was erroneous, especially as in the past, when he was promoted to Assistant Inspector, he must have been found to possess education equivalent to that of a five-year secondary school, since such education was required for promotion to the post of Assistant Inspector.

It was further stressed by counsel for this applicant that some of the interested parties, also, did not possess a "leaving certificate of a recognized secondary school with a course of at least six years", as required under the relevant scheme of service (*exhibit 6*), but yet they were appointed, under an exception clause in the scheme of service, because the Commission, without conducting any examination to test their general education, decided that it was of a standard equivalent to that of five year secondary school.

It is well settled that this Court, as an administrative Court controlling the exercise of the discretion of the Public Service Commission when it decides whether or not a candidate possesses the qualifications required under a scheme of service, examines only whether the Commission on the material before it could reasonably have come to a particular conclusion (see, *inter alia*, *Petsas and The Republic*, 3 R.S.C.C. 60, 63). In the present case I am of the opinion, in the light of the relevant material

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placed before the Commission, that it could reasonably have reached the conclusion, even without conducting an examination for the purpose, that the interested parties possessed the required for appointment education.

I am, also, of the view that it was reasonably open to the Commission to decide that applicant Ktorides, who had studied at a secondary education school for only three years, did not satisfy the minimum requirements, in this respect, of the scheme of service; and the fact that he had been previously promoted, in 1964, to the post of Assistant Inspector, under a scheme of service requiring the same educational qualification as the scheme of service for the post involved in the present proceedings, did not preclude the respondent Commission—which was set up under the Public Service Law, 1967 (Law 33/67) and is a different body from that functioning in 1964—from ensuring on the present occasion due compliance with the relevant scheme of service, in a manner in which it was reasonably open to it, even if the conclusion it reached as to the level of the education of the applicant was not the same as before (and see, also, in this respect *Sofocleous (No. 2) v. The Republic* (1972) 3 C.L.R. 537).

After the Commission had considered, as aforesaid, those candidates who were Assistant Inspectors, it proceeded to consider as candidates for the remaining vacant posts of Customs and Excise Officer, 2nd Grade, all the Customs and Excise Officers 3rd Grade, whose posts were, also, abolished by Law 45/67. It proceeded to appoint a number of them, who are interested parties, but it did not appoint applicant Georghiades.

This applicant has attacked the appointments of the interested parties on a number of grounds, which were relied on by the other applicant (Ktorides), too :

It has first been submitted on behalf of the applicants that as they and many others like them had, in effect, become redundant due to the abolition of their posts by Law 45/67 the Commission, in filling the vacant posts of Customs and Excise Officer, 2nd Grade, ought to have followed the principle of “last in, first out”, and reference was made, in this respect, to *HadjiGeorghiou v. The Republic* (1965) 3 C.L.R. 121, 129.

It has been contended, further, that in making the appointments in question priority should have been accorded to established permanent officers over those who were unestablished or temporary officers; and in this respect reference has been made to *'Grimaldi v. The Republic* (1965) 3 C.L.R. 443.

Both the *HadjiGeorghiou* and *The Grimaldi* cases are distinguishable from the present recourses in view of essential differences in material respects. In the present instance both applicants were offered the opportunity to be otherwise employed in the public service, but they complain that they were not appointed to the higher "first entry and promotion" post of Customs and Excise Officer, 2nd Grade. It was the duty of the respondent Commission to appoint to such post the most suitable candidates without allowing the principle of "first in, last out", or considerations relevant to the nature of the status of the candidates in the public service (*i.e.* permanent or temporary), to prevent the selection of the most suitable candidates.

As regards one of the interested parties, P. Charalambous, counsel for the applicants argued that his appointment ought to be annulled because one of the members of the Commission, Mr. Proestos, who took part in the relevant decision, is a close relative of his. Counsel for the respondent declared that he had no knowledge about such a relationship and as counsel for the applicants have failed to adduce any evidence to establish it, though they initially undertook to do so, I have to disregard the relevant submission of counsel for the applicants, as not being based on substantiated facts.

Having dealt, in this judgment, with all the submissions of the applicants which merited examination and having not found any ground for annulling all or any of the appointments of the interested parties, I have to dismiss these recourses. But I do not propose to make any order for costs against the applicants.

*Applications dismissed.
No order as to costs.*

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