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[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

GREGORIS  
THALASSINOS

GREGORIS THALASSINOS,

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 383/70).

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*Public Officers—Promotions—Interview of candidates by Public Service Commission—Head of Department—He can assess candidates' ability from their performance at the interview and can make his recommendations after it—Setting up of departmental Board by the Director-General of the Ministry—In order to assist him in the evaluation of the candidates—And for the purpose of being well informed and accurate in making his recommendations to the respondent Public Service Commission—Not contrary to any provision of the statute—The Public Service Law, 1967 (Law No. 33 of 1967), section 44(3)—See further immediately herebelow.*

*Promotions of public officers—Post of Labour Officer 2nd Grade—Duty of the Public Service Commission to select the most suitable candidate—Qualifications—Applicant passed an impressive number of examinations as compared with other candidates—But the scheme of service does not require any particular qualification—Annual confidential reports—Those on applicant not superior to those of any of the interested parties (officers promoted)—Seniority—Not the decisive factor governing promotions—But one that should be duly taken into consideration and should only prevail if only other things are equal—Knowledge of English—Required by Scheme of Service in cases of first entrants only and not in cases of promotion—It is not for the Court to decide whether a person appointed was qualified in a case where it was reasonably open to the respondent Com-*

*mission to find that he was so qualified—On the material before the Court the respondent Commission has not acted in abuse or excess of its powers or in any improper or unlawful manner—Recourse against promotions of interested parties dismissed.*

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*Head of Department—Promotions—Interview of candidates—Head of Department entitled to assess candidates' ability from their performance at such interview—Setting up by the Head of Department of a Departmental Board to assist him in the evaluation of candidates—Nothing illegal or improper in this course.*

*Seniority—Not the decisive factor governing promotions—One of the several factors—It should prevail only in cases where all other things are equal.*

*Qualifications—The Court will not decide whether a person appointed was qualified where it was reasonably open to the respondent Commission to find that he was so qualified.*

*Discretionary powers—Allegation of defective exercise—Abuse and excess of powers—Proper exercise of such powers etc.*

This is a recourse filed by the applicant public officer complaining against the promotion of the interested parties to the post of Labour Officer 2nd Grade in preference and instead of himself. The full facts of the case are set out in the Judgment whereby the learned Judge of the Supreme Court dismissed the recourse holding that there has been no defective exercise by the respondent Public Service Commission of their discretionary powers, it being reasonably open on the material before them to arrive at their *sub judice* decision.

Cases referred to :

*Theodossiou and The Republic*, 2 R.S.C.C. 44;

*Partellides v. The Republic* (1969) 3 C.L.R. 480;

*Josephides and The Republic*, 2 R.S.C.C. 72;

*Koukoullis and The Republic*, 3 R.S.C.C. 134;

*Neophytou v. The Republic*, 1964 C.L.R. 280;

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*Decisions of the Greek Council of State Nos. 1062/1951,  
738/1931, 934/1933;*

*Decisions of the French Council of State: Syndicat des  
Sylviculteurs du Sud-Ouest, 5 Avril 1957, Rec.  
p. 239.*

**Recourse.**

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Labour Officer, 2nd Grade in preference and instead of applicant.

*L. Clerides*, for the applicant.

*S. Georghiades*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

The following judgment \* was delivered by :-

A. LOIZOU, J. : The applicant by the present recourse seeks a declaration that the decision of the respondent Commission to promote Pandelis Papapandelis, Savvas Piperis, Charalambos Georghiades, Phoebus Ioannides and Serghios Economou to the post of Labour Officer 2nd Grade, in preference and instead of himself, is null and void and of no effect whatsoever.

The said post of Labour Officer, 2nd Grade, Ministry of Labour and Social Insurance, is a first entry and promotion post, and so the vacancies in question were advertised in the official Gazette. There were in all four permanent and two temporary development posts to be filled. Out of thirty-seven applicants, the Commission invited for interview thirty-four. (*Exhibit 1*, blue 15). On the 7th September, 1970 and in the presence of Mr. Sparsis, Director-General, Ministry of Labour and Social Insurance, the Commission interviewed twenty candidates in the morning and the remaining in the afternoon, with the exception of a certain Simeon A. Pastos, who had been interviewed previously, as he was due to leave Cyprus on a scholarship.

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\* For final judgment on appeal see (1975) 6 J.S.C. 826 to be reported in due course in (1974) 3 C.L.R.

The Commission then, according to its minutes, (exhibit 1, blue 21 - 22)

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"...considered the merits, qualifications and experience of the candidates interviewed to-day for this post as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.).

The Commission considered also the merits, qualifications and experience of Mr. S. A. Pastos who was interviewed by the Commission on the 30.7.70. In addition, the Commission considered at the same time the merits, qualifications and experience of the officers holding the permanent post of Labour Officer, 2nd Grade, on an unestablished basis, the corresponding temporary (Ord.) post, as well as the corresponding temporary (Dev.) post of Labour Officer, 2nd Grade.

Mr. Sparsis stated that, in order to assist the Commission in selecting the most suitable officers to fill the existing vacancies, a Departmental Board consisting of the senior Industrial Relations Officer, the District Labour Officer, Nicosia, and himself was set up. The Board realising the importance of their work and basing their decision on the personal knowledge of the merits of each individual candidate, did their best to make a fair comparison between candidates regarding their suitability for promotion.

Bearing in mind the findings of the Board as well as the performance of the candidates at the interview, Mr. Sparsis recommended the following officers to fill the existing vacancies in the post of Labour Officer, 2nd Grade:-

The contents of the aforesaid minute, gave rise to two additional grounds of Law. The first one, is that the Director-General had no right to assess the ability of the candidates from their performance at the interview, as that assessment was a matter within the exclusive competence of the Commission, and by so doing he was usurping its powers.

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Counsel for the Commission has argued that Mr. Sparsis was not merely relying on the performance of the candidates at the interview, as it appears from the exposition given for each candidate recommended for the post by him, but he had an overall picture of each one of them, and in addition he had been assisted by the departmental board that he set up for the purpose.

In my view, in making his recommendations after the interview, there is nothing contrary to Law, nor can it be said that in so doing he was usurping the functions of the Commission. He was not in any way taking away its powers of discretion, but he was simply exercising his own. Under section 44(3) of the Public Service Law, 1967 (No. 33 of 1967), in making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of the Department in which the vacancy exists. There is nothing in the said statutory provision, nor have I been able to trace in the general principles of Administrative Law, anything to suggest that the recommendation of the Head of the Department has to be made before the interview, and if made thereafter, it amounts to a usurpation of the functions of the Commission; on the contrary, such interview, affords to the Head of the Department as well, an opportunity to round up his views on the candidates before he makes his recommendations to the Commission.

The second ground of law, is that Mr. Sparsis had no right to set up the departmental board referred to in the aforesaid minute.

It has been argued by counsel for the applicant that the setting up of this board was contrary to Law and that the Commission acted in abuse or excess of its powers in hearing its recommendations, since under section 44(3) of the said Law, they could only hear the recommendations of the Head of the Department and nobody else, and further, since the post of Labour Officer, 2nd Grade is a non-specialized office, such Board could only be set up under the provisions of section 36 of the Public Service Law, 1967, which provides :-

“36.(1) The Council of Ministers may establish Departmental Boards to advise the Commission in respect of appointments or promotions to any office which is not a specialized office”.

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The setting up of Boards under the said section, their composition, functions and procedure, are left to be decided by the Council of Ministers, and a comparison may usefully be made, with the provisions of sections 34 and 35 of the Law, regarding the establishment of advisory boards for specialized offices. In the latter case, their composition is restricted by the requirement that they should consist of the Director-General of the Ministry who shall act as Chairman and two other officers, one of whom shall be the Head of the Department concerned, if any, and in the case of Independent Offices, they should consist of the Head of the office who shall act as Chairman and two other officers nominated by the Head of that Office, for the particular case, whereas in the case of the Board to be set up under section 36, there are no restrictions as to its composition which is left to the absolute discretion of the Council of Ministers. Furthermore, a Board set up under the provisions of section 36, advises the Commission directly and independently of its obligation under section 44(3), that in making a promotion, due regard shall be had to the recommendations made by the Head of the Department in which the vacancy exists.

In the case in hand, what has been done, was that the Director-General of the Ministry asked the senior officers of various sections of the Ministry, in view of their personal knowledge of the merits of each individual candidate, to assist him in the evaluation of the various candidates for the purpose of being well informed and accurate in making his recommendation. In so recommending, as it appears from the minute itself, he exercised his competence on the matter and assumed himself the responsibility for same.

The presence of section 36 in the Law, neither excludes, nor prohibits the procedure followed by the Director-General in the present case for the purposes for which he asked the assistance of the senior officers of

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his Ministry, as the provisions of the said section cover a different purpose with different effects.

The setting up of a collective advisory body by an organ having decisive competence so as to inform and give to it opinion concerning matters of its competence or the acceptance by it of the opinion of such advisory body, is not contrary to any provision of the Law. (Vide Conclusions from the Case Law of the Greek Council of State (1929 - 1959) 193 and Decision No. 1062/51). Also, the self-imposed restrictions on the exercise of discretionary power, such as the voluntary submission to formalities and restrictions, neither imposed nor prohibited by Law, is not precluded, because it constitutes a choice of means for forming an opinion. The result, though of such restriction, is that it cannot henceforth be ignored arbitrarily by the organ which caused it, because this would have constituted proof of inconsistency and arbitrariness, namely, defective exercise of the discretionary power. (Vide Stasinopoulos Dikaion Diikitikon Praxeon, at p. 333, also, Decisions of the Greek Council of State, Nos. 738/33 and 934/33, and in particular the latter case where it was held that the general administrator who, having power under the Law to elect himself the members of the Council of a Fund for district road making, caused the recommendation of such members by the Village Authorities, could not ignore the said recommendation without sufficient reasons).

Furthermore, since the decision of this Board of which he was a member, was unanimous, the recommendation as to the suitability of the candidates can be considered as that of the person having competence in the matter, namely, the Director-General. Support for this proposition can be found in Odent Contentieux Administratif, 1965 - 1966 ed. vol. 4, p. 1.147 and Recueil des decisions Du Conseil d'Etat, 1957, 5 Avril 1957, Syndicat des sylviculteurs du Sud—Ouest. p. 239. This ground cannot, therefore, succeed.

It remains now to consider the grounds of Law originally relied upon by the applicant.

The first and second arguments which have been argued together, and rightly so, deal with the duty of the Commission to select the best candidate for the said

post in accordance with the principles laid down in the case of *Theodossiou* and *The Republic*, 2 R.S.C.C. 44, and the disregard of applicant's superior qualifications. In this respect, reliance was placed on the table showing particulars of the Government Service and qualifications of the applicant and the interested parties (*exhibit* 1, blue 25 - 28) from which it was urged that it was clear that the applicant possessed qualifications superior in effect to those possessed by the interested parties. With the exception of interested party Georghiadis who is a graduate of the Pandios School of Political Sciences, the rest of them are graduates of secondary schools, having passed a number of examinations of the General Certificate of Education Standard or London Chamber of Commerce in English, book-keeping and other relevant subjects, except Pandelis Papapandelis who does not appear to possess any certificates other than those of the Greek Gymnasium of Lefkonico.

The applicant entered the Government Service on the 1st December, 1956 as a Labour Assistant in the Department of Labour, was seconded to the Post of Assistant Labour Officer on 1.8.66 and as from the 1st May, 1968 he was appointed to the same post on a permanent basis. He has passed an impressive number of examinations as compared with the other candidates. The scheme of service, however, does not require any particular qualification, except good knowledge of English of the standard of English Higher (Credit Level) and a thorough knowledge of either Greek or Turkish, and this, for first entrants only to the Government Service.

The confidential reports on the applicant and the interested parties have also been produced as *exhibits* 2 - 7 inclusive. It has not been claimed that those on the applicant are superior to those on any one of the interested parties. In fact, on the whole, they are better than those on the applicant. Although on these confidential reports Mr. Sparsis is the countersigning officer, they come from different reporting officers and in this way the standards used for assessment of each officer's ability cannot for certain be said to be based on the same yardstick. Therefore, they should be regarded only as forming part of the overall picture of the merits of each candidate which the Commission had to consider, a picture

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rounded up and completed by the recommendations of the Director-General which can be found in *exhibit 1*, blue 22 - 23 which, in so far as material, reads as follows :-

“(a) *Charalambos Georghiades* :-

He was appointed to the post of Insurance Clerk, w.e.f. 13.5.63. As from 1.8.1966 he was seconded to the post of Assistant Labour Officer and as from 1.5.1968 he was appointed to the same post on a permanent basis. In July 1968 he obtained the Diploma of the ‘Pantios’ Highest School of Political Science. Mr. Sparsis stated that at present Mr. Georghiades works as an Inspector of Factories at Famagusta. Previously he was working at the H.Q., and was attached to the Employment Section of the Ministry. His work had not been satisfactory and his Annual Confidential Reports confirm this. Later the Director-General drew his attention to his shortcomings and Mr. Georghiades had improved considerably during the last 18 months and he is now considered to be one of the best Inspectors of Factories. Mr. Sparsis added that Mr. Georghiades attended for one week a Seminar on Inspection of Factories in Athens and recommended him for appointment to the post of Labour Officer, 2nd Grade.

(b) *Serghios M. Economou* :

He was appointed to the post of Labour Assistant w.e.f. 13.5.1963 and as from 1.8.1966 he was promoted to the post of Assistant Labour Officer. Mr. Sparsis stated that Mr. Economou’s service have been very good. He studies on his own and tries to improve his knowledge. Mr. Sparsis recommended him for appointment to the post of Labour Officer, 2nd Grade.

(c) *Pandelis Y. Papapandelis* :

He was appointed to the post of Labour Assistant w.e.f. 9.1.62. On 1.10.66 he was seconded to the temporary (Dev.) post of Asst. Labour Officer and as from 1.5.1968 he was appointed to the corresponding permanent post. Mr. Sparsis stated that at present Mr. Papapandelis is working with the

Annual Holidays with Pay Scheme and the Termination of Employment Scheme. He is one of the senior officers of his grade, he is competent and dependable. Mr. Sparsis added that the officer in question has wide inspection experience and recommended him for appointment to the post of Asst. Labour Officer.

(d) *Ourania G. Savva* :-

Her appointment has not been attacked by the present recourse.

(f) *Phoebus K. Ioannides* :-

He was appointed to the post of Insurance Clerk w.e.f. 13.5.63. On 1.8.66 he was seconded to the post of Asst. Labour Officer and as from 1.5.68 he was appointed to the same post on a permanent basis. Mr. Sparsis stated that the work of the above officer has been very satisfactory and recommended him for appointment to the post of Labour Officer, 2nd Grade."

As laid down in *Theodossiou's* case, the paramount duty in effecting appointments or promotions is to select the candidate most suitable in all the circumstances of each particular case, for the post in question. This has to be decided on the totality of the circumstances pertaining to each one of them and in the light of the necessities of each particular case, and not merely on the fact that one candidate has passed some or more examinations than another.

The Commission having heard the recommendations of the Director-General and bearing in mind all the material before it, arrived at the *sub judice* decision, and I am satisfied that it has not acted in abuse or in excess of its power or in any improper or unlawful manner. So, there is nothing to justify the interference of this Court with their decision.

The third ground of law deals with the question of applicant's seniority, in the sense that he was longer in the service. On this point, I need only repeat what has been, on a number of occasions, stressed, that seniority is not the decisive factor which governs promotions, but

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one that should be duly taken into consideration and as stated in *Partellides v. The Republic* (1969) 3 C.L.R. 480, it should only prevail if all other things were equal. This, however, is not the case in the light of the recommendations of the Director-General and the contents of the confidential reports.

Finally, I would like to deal with the ground that the persons appointed by the Commission, or at least interested parties Pandelis Papapandelis and Charalambos Georghiades do not appear to possess the required knowledge of English. It should be pointed out that this qualification is required by the scheme of service in the case of first entrants to the Government Service and not in the case of promotion, as is the case of all interested parties. In any event, their qualifications were before the Commission and it is not for the Court to decide whether a person appointed was qualified in a case where it was reasonably open to the Commission to find that he was so qualified, considering in particular, that interested party Papapandelis has been in the Service since 1957 and Georghiades since 1963. (Vide *Josephides* and *The Republic*, 2 R.S.C.C. 72, *Koukoullis* and *The Republic*, 3 R.S.C.C. 134 and *Neophytou v. The Republic*, 1964 C.L.R. 280).

In the circumstances and for all the above reasons, the present recourse is dismissed with no order as to costs.

*Application dismissed.*  
*No order as to costs.*