

1973
July 5

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

GEORGHIOS
ECONOMIDES

GEORGHIOS ECONOMIDES,

v.

Appellant,

REPUBLIC
(COUNCIL
OF MINISTERS
AND/OR
DIRECTOR
OF THE
DEPARTMENT OF
PERSONNEL
AND ANOTHER)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND/OR THE
DIRECTOR OF THE DEPARTMENT OF PERSONNEL
AND ANOTHER,

Respondents.

(Revisional Jurisdiction Appeal No. 108).

Administrative decision—Principle excluding as a rule retroactivity of administrative decisions—Public officer on study leave abroad—Decision of Council of Ministers altering nature of his service for purposes of a scheme of service—Subsequent application by the Public Service Commission of said scheme in accordance with said decision with retrospective effect—It offends against the principle excluding as a rule retroactivity of administrative decisions.

Scheme of service—Interpretation—Application—Application with retrospective effect—See further supra.

Scheme of service—Council of Ministers expressly deciding not to publish scheme of service—No contravention of Article 57.4 of the Constitution.

Public Officers—Promotions—Schemes of service—See supra.

Words and Phrases—“Service” («ὑπηρεσία») and “experience” («πειρα») used for purposes of a scheme of service—Interpretation;

This is an appeal against a first instance judgment of a Judge of this Court (*see* (1972) 3 C.L.R. 506) dismissing the appellant's recourse against the promotion to the post of Administrative Officer, 1st Grade, of N.Z. (the interested party), made on July 12, 1971. The respondent Public Service Commission, applying retrospectively a decision of the Council of Ministers dated August 7, 1969, came to the

conclusion that the appellant public officer was not eligible for promotion to the said post. This view was upheld by the judgment appealed from. The Supreme Court, however, allowing the appeal and annulling the *sub judice* promotion, held that the respondent Commission's view offended against the principle excluding retroactivity of administrative decisions; and that, therefore, the appellant was eligible for promotion as claimed.

The full facts of this case appear in the judgment of the Court.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 25th September, 1972 (Revisional Jurisdiction Case No. 393/71) dismissing appellant's recourse against the decision of the respondents to promote the interested party to the post of Administrative Officer, 1st Grade, in preference and instead of the appellant.

Fr. Kyriakides with *E. Lemonaris*, for the appellant.

S. Georghiades, Senior Counsel of the Republic,
for the respondents.

The judgment of the Court was delivered by :-

TRIANTAFYLIDES, P. : This is an appeal against a first instance judgment* of a judge of this Court by means of which there was dismissed the appellant's recourse against the promotion to the post of Administrative Officer, 1st grade, of N. Zavros (to be referred to hereinafter as "the interested party"); such promotion was made on the 12th July, 1971.

By his recourse the appellant had, originally, challenged, also, the validity of the promotions to the said post and to the post of Senior Administrative Officer of other public officers, but, eventually, his counsel limited the scope of the recourse so as to relate only to the promotion of the interested party.

It is convenient to deal, first, at this stage, with the submission of counsel for the appellant that the scheme

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of service for the post of Administrative Officer, 1st grade, should be declared to be null and void because it was not published as a decision of the Council of Ministers in the official Gazette of the Republic, as required under Article 57.4 of the Constitution.

It has become abundantly clear during the hearing of this appeal that the Council of Ministers did decide expressly—as it could do under Article 57.4—that its decision embodying the scheme of service in question should not be published; and, thus, there has not occurred any contravention of the said Article; therefore, we need not deal with this point any further.

The next contention of appellant, with which we have to deal, is that the respondent Public Service Commission erred in regarding the appellant as being ineligible for promotion to the post of Administrative Officer, 1st grade. The circumstances in which the Commission formed such a view are as follows:

Under the current scheme of service for the said post, which was made by the Council of Ministers on the 28th June, 1971, it was provided that for promotion to this post there is required at least five years' administrative experience, which must include two years' such experience in the post of Administrative Officer, 2nd grade.

It may be noted that there is nothing in the said scheme indicating that the required thereby periods of administrative experience are to be regarded as necessarily corresponding to equal periods of *actual* service, and as not including, also, intervening periods during which a public officer happens to be on leave; and, as a matter of fact, it appears, from what is stated hereinafter, that the terms "service" («ὕληση») and "experience" («πειρα») when used for the purposes of relevant requirements in schemes of service, are not to be understood in a *literal* sense, but they should be understood in the manner laid down from time to time by decisions of the Council of Ministers: Thus, on the 9th February, 1967, it was decided by the Council of Ministers—(Decision 6342)—that a period of further education («μετεκπαίδευσης») of a public officer, up to two years, should be treated as service or experience

for purposes of schemes of service by which there are required specific periods of service or experience, and that, also, a postgraduate degree («μεταπτυχιακόν διπλωμα») obtained after at least two years of studies, *before entering the public service*, should be treated as service or experience for the above purposes.

The appellant was appointed as an Administrative Officer, 3rd grade, on the 16th July, 1962, and he was promoted to the post of Administrative Officer, 2nd grade, on the 1st August, 1966. He was absent on study leave from the 28th September, 1966, to the 26th June, 1970, on a four years' scholarship granted to him for the purpose of studies at the American University in Beirut, as a result of which he obtained a degree of Bachelor of Arts (in Public Administration); during the period of his studies he returned twice to Cyprus and worked in the Department of Personnel, from the 1st July, 1967, to the 7th September, 1967, and from the 24th June, 1968, to the 7th September, 1968.

By a decision of the Council of Ministers—(Decision 8969)—of the 7th August, 1969, it was laid down that time spent abroad, by a public officer who does not possess a university qualification, for the purpose of obtaining such a qualification, should not be treated as “experience” or “service” for the purposes of schemes of service for “promotion posts” or “first entry and promotion posts”; but, that education abroad, up to one year, not resulting in obtaining a university qualification (and not being regarded by the relevant scheme of service as an advantage) shall be treated as experience or service, on condition that the education in question is related to the duties of the public officer concerned.

The above decision of the 7th August, 1969, refers to the earlier decision of the Council of Ministers, of the 9th February, 1967; it qualified it, but did not revoke it; it seems that it was intended thereby to introduce a distinction, for the purposes of the requirements of schemes of service, between further education by a public officer who did not possess already a university degree, and further education («μετεκπαίδευσις») in other respects, as in the earlier decision—of the 9th February, 1967—no such distinction was made.

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It appears from the relevant minutes of the Commission that the appellant was regarded by it as not eligible for promotion because the Commission took the view that in accordance with the Council's decision of the 7th August, 1969, "the education obtained" by the appellant in Beirut—as aforementioned—could not be considered as administrative experience for the purpose of the relevant scheme of service; and, having taken into account only the actual service of the appellant (before, during and after his studies) in the post of Administrative Officer, 2nd grade, the Commission found that he had experience in such post for 1 year, 7 months and 5 days, and not for two years as required under the scheme of service.

We agree fully with the learned trial judge that the Council of Ministers was entitled to make, as it has done, on the 28th June, 1971—after the appellant had become an Administrative Officer, 2nd grade—a new scheme of service so as to alter the qualifications required for promotion to the post of Administrative Officer, 1st grade. We, however, disagree, with respect, with the trial judge's view that the appellant was lawfully treated by the Commission as not being eligible for promotion to the post of Administrative Officer, 1st grade, under such scheme of service :

In our opinion when the respondent Commission applied the said scheme of service, in conjunction with the decision of the Council of Ministers of the 7th August, 1969, and, decided, thus, that the appellant was not eligible for promotion, it contravened the principle of Administrative Law excluding retroactivity of administrative decisions; our reasons for taking this view are the following :

The appellant went to Beirut, on study leave, before the 7th August, 1969, when the decision in question of the Council of Ministers was taken; and, it is not in dispute (and it was so found in the judgment appealed from) that until the 7th August, 1969, periods of absence of public officers abroad on study leave were being treated to all intents and purposes as service; the exclusion by the Commission from consideration, because of the decision of the Council of the 7th August, 1969, of

the period of time, before such date, during which the appellant, though still in the service, was away on study leave, amounted, in effect, to an alteration retrospectively of the nature of the service of the appellant during the said period, in the sense that whereas such period was counted up to the 7th August, 1969, for purposes of promotion, after, and because of, the Council's decision of the 7th August, 1969, it was treated retrospectively as not to be counted for purposes of promotion.

Moreover, though by virtue of the decision of the Council of Ministers of the 9th February, 1967, the two years of his studies (out of a total, approximately, of four years) ensuing after such date were rendered years to be counted as a period of experience for the purposes of the requirements of schemes of service, the said two years were, by virtue of the retrospective application thereto of the later decision of the Council, of the 9th August, 1969, rendered years not to be counted as aforesaid.

In our view, in order to avoid offending against the principle excluding retroactivity of administrative decisions, the decision of the 9th August, 1969, should only have been applied to the period of the appellant's studies *after* the date when such decision was taken, and not *before* then; and, had this course been followed, it is clear from the relevant dates that this would not have prevented him from being treated as eligible to be considered for promotion to the post of Administrative Officer, 1st grade.

In our opinion, therefore, the Commission by contravening the principle excluding retroactivity of administrative decisions, approached erroneously the matter of the eligibility of the appellant for promotion, and, as a result, the appellant was wrongly excluded from consideration as a candidate for promotion.

The wrongful exclusion, as above, from consideration of a candidate inevitably vitiated the validity of the exercise of the discretionary powers of the Commission in relation to the filling of the post of Administrative Officer, 1st grade; and as in these proceedings the Commission's relevant decision is challenged only in so far as the promotion of Zavros, the interested party, is

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concerned, it follows that this appeal has to be allowed and the promotion of Zavros to be declared to be null and void and of no effect whatsoever.

The Commission, in reconsidering the matter of the filling of the post in question, is, of course, still entitled to use its discretion in choosing the best candidate for promotion.

In all the circumstances of this case we do not think that we should make any order as to the costs of these proceedings either at the first instance or on appeal.

Appeal allowed.

No order as to costs.