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TOURPEKI

v.

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(PUBLIC  
SERVICE  
COMMISSION)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

VASSO TOURPEKI,

*Applicant.*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 234/72).

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*Public Officers—Promotion—Meaning—Secondment—Promotion—Definition—Section 28 of the Public Service Law, 1967 (Law No. 33 of 1967)—Cf. infra.*

*Promotion—Supra.*

*Secondment—As distinct from promotion—Secondment is not a promotion—Fact that a secondment is of an undetermined duration does not change its temporary character and does not make it a promotion—Successive secondments—Permitted under the said statute—Sections 32(2) and 47 of the Public Service Law, 1967—Cf. infra.*

*Secondment—Secondment to a post two grades higher than the post held by the person so seconded—Permissible—The principle that a person cannot be promoted for more than one grade at a time not applicable to secondments—Section 28 of the Public Service Law, 1967—Cf. Arkatitis's case, infra—Cf. infra.*

*Secondment—Secondment to the post of Animal Husbandry Superintendent 1st Grade—Schemes of Service—Qualifications—Applicant possessing academic qualifications constituting an advantage under the relevant schemes of service—No due inquiry carried out by the respondent Public Service Commission whether or not applicant possessed such qualifications—Sub judice secondment annulled on this ground and, in addition, on the ensuing ground of lack of due reasoning—Cf. infra.*

*Due inquiry—Due reasoning—What is sufficient inquiry and whether such inquiry has been duly conducted or not—Principles applicable—In the instant case, the applicant possessed academic qualification constituting an advantage under the scheme of service—No sufficient inquiry carried out by the respondent Commission regarding the issue whether or not the applicant possessed such qualification—Therefore the Commission has exercised its discretion in a defective manner—It follows that the sub judice decision is null and void as having been taken contrary to the accepted principles of Administrative Law and in abuse and excess of powers—Moreover, said decision has to be annulled for lack of due reasoning—Because the outcome of such inquiry as aforesaid should have appeared in the reasoning of such decision—Consequently, sub judice decision must be held as taken contrary to law and in abuse and excess of powers.*

*Abuse and excess of powers—Act contrary to law or to well settled principles of Administrative Law—Decision reached as a result of defective exercise of discretionary powers due to lack of sufficient inquiry into material facts—Or, decision lacking due reasoning—See further immediately hereabove.*

*Discretionary powers—Defective exercise of—Lack of due inquiry—Lack of due reasoning—Decision contrary to law as well as in abuse and excess of powers.*

*Secondment—Position in Greece.*

By this recourse the applicant public officer challenges the validity of the decision of the respondent Public Service Commission to second A.P. (hereinafter referred to as “the interested party”) to the post of Animal Husbandry Superintendent 1st Grade in the Department of Agriculture. At the material time the interested party was holding a post lower than the immediately lower grade as compared to the aforesaid post of Animal Husbandry etc. On the other hand the applicant possesses a diploma from the Agronomic Mediterranean Institute in Bari and Montpellier, a factor which in accordance with the relevant scheme of service is “an advantage” in considering the qualifications required by such scheme for the aforesaid post of Animal Husbandry Superintendent 1st Grade. It would seem that the respondent

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Commission did not inquire whether the applicant did in fact possess such qualification. It was argued by counsel for the applicant, that, *inter alia*, the *sub judice* decision (secondment) amounted to a 'promotion' and as such it offended the provisions of section 30(1)(c) of the Public Service Law, 1967 (Law No. 33 of 1967) whereby promotion offices are to be filled by the promotion of officers serving in the immediately lower grade. The learned Judge of the Supreme Court dismissed this ground of law, but, agreeing with the submission of counsel for the applicant regarding the lack of due inquiry (and the ensuing lack of due reasoning), annulled the *sub judice* secondment as having been taken contrary to law *viz.* the accepted principles of Administrative Law and in excess and abuse of powers. It is to be noted that the learned Judge, rejecting counsel's submission, had previously held that successive secondments are not excluded by the statute (*supra*).

Held, I: *As to the point raised by counsel for the applicant that the secondment in question of the interested party amounts to 'a promotion':*

- (1)(a) Section 28 of the Public Service Law 1967 (Law 33 of 1967) provides: "promotion means any change in an officer's substantive status, which carries with it the emplacement of the officer in a higher division of the public service or on a salary scale with a higher maximum, whether .....; and the expression 'to promote' shall be construed accordingly."
- (b) It follows that when an officer is seconded to another post cannot be held to be promoted to that higher post as his 'substantive status' is not changed.
- (c) Secondment is a matter separately dealt with by the said Law (see section 47 thereof).
- (2) The prohibition, therefore, of promotions for more than one grade at a time set out and elaborated upon in the case of *Arkatitis and Others (No. 2) v. The Republic* (1967) 3 C.L.R. 429 and subsequently embodied in the aforesaid section 30(1)(c) of the Public Service Law, 1967, cannot be invoked in favour of the applicant.

Held, II: *As regards the argument that 'successive secondments' are not permitted:*

As far as successive secondments are concerned, there is nothing in the Law (*i.e.* The Public Service Law, 1967, *supra*) to prevent them. The only condition that section 32(2) of the statute puts, is that the officer who is seconded to a post should not be on probation.

*And annulling the sub judice secondment the learned Judge:*

Held, III: *As to the lack of inquiry referred to above (and the ensuing defective or insufficient reasoning):*

- (1)(a) The applicant appears to possess a diploma of the Agronomic Mediterranean Institute in Bari and Montpellier, a fact which in accordance with the relevant scheme of service is an 'additional advantage' in her favour.
- (b) What is sufficient inquiry is, to my mind, a question of degree depending upon the nature of the matter to be inquired into. Whether such an inquiry has been duly carried out, is a matter to be deduced from the relevant minutes kept for the purpose.
- (2) Nowhere in the minutes of the respondent Commission or in the recommendation of the Head of the Department, relied upon by the Commission, appears any reference whatsoever to this diploma.
- (3) Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the *sub judice* decision, having been arrived at contrary to the accepted principles of Administrative Law and in excess and abuse of powers, is null and void and of no effect whatsoever.
- (4) Moreover, the outcome of such inquiry should have appeared in the *reasoning* of the *sub judice* decision and in case it was found by the Com-

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mission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it. I, therefore, annul the decision for *lack of due reasoning which makes the sub judice* decision contrary to law and in excess and abuse of powers.

*Sub judice decision annulled.*

*Per curiam* : It should be observed that our Law differs from the corresponding provision in Greece where secondment (*apospasis*) can only be made for a period of six months with a further extension of another six months (see section 96 of the (Greek) Civil Service Code), whereas no such limit of time appears in our Law (*viz.* The Public Service Law, 1967, *supra*).

Cases referred to :

*Arkatitis and Others (No. 2) v. The Republic* (1967)  
3 C.L.R. 429;

*Papapetrou and The Republic*, 2 R.S.C.C. 61;

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

*Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653.

**Recourse.**

Recourse against the decision of the respondent Public Service Commission to second the interested party to the post of Animal Husbandry Superintendent 1st Grade in the Department of Agriculture.

*K. Talarides*, for the applicant.

*N. Charalambous*, Counsel of the Republic,  
for the respondent.

*A. Pandelides*, for the interested party.

*Cur. adv. vult.*

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant by the present recourse seeks a declaration of the Court that the decision of the respondent Commission to second Andreas Panayiotou

(hereinafter to be called the "interested party") to the temporary post of Animal Husbandry Superintendent 1st Grade in the Department of Agriculture is null and void and of no effect whatsoever.

The facts of the case are as follows :-

The Director of the Department of Agriculture by his letter dated the 2nd May, 1972 (*exhibit A blue 1*) requested the respondent Commission to fill the vacancy in the post of Animal Husbandry Superintendent 1st Grade—a promotion post from the lower post of Animal Husbandry Superintendent 2nd Grade—created as a result of the secondment of its holder to the temporary (Development) post of Animal Husbandry Officer Class II.

The respondent Commission considered the matter in the presence of the Director of the Department of Agriculture at its meeting of the 29th June, 1972. Their relevant minute reads as follows :-

"There are four officers serving in the post of Animal Husbandry Superintendent 2nd Grade. Two of them (Mrs. Turbeky and Mrs. Neophytou) are serving in their post on a permanent basis and the other two (Messrs. A. Panayiotou and A. Christoforou) are serving on secondment.

The Director of the Department stated that Mr. A. Panayiotou who is serving on secondment in the post of Animal Husbandry Superintendent 2nd Grade since 1.6.1968 is the best candidate; he is in charge of the Government Farm of Morphou; he is performing more responsible duties and his performance is better than that of the other candidates. In view of the above, the Director strongly recommended Mr. Panayiotou for accelerated promotion.

Bearing in mind all the above, as well as the merits, qualifications, seniority and experience of all the candidates serving in the post of Animal Husbandry Superintendent 2nd Grade and having regard to the statement made by the Director that Mr. Panayiotou is the best candidate and that he was strongly recommended for accelerated promotion, the Commission decided that Mr. A. Panayiotou be seconded to the Temporary (Development) post of

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Animal Husbandry Superintendent 1st Grade with effect from 1.8.1972.”

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Before dealing with the legal issues raised in this recourse, it is useful to refer to the career of both the applicant and the interested party, as appearing from their personal files and confidential reports (*exhibits* B, B1, C and C1), as well as from the table showing particulars of their Government Service and qualifications. (*Exhibit* A 5).

The applicant was first appointed in the Government Service as Temporary Poultry Instructress on the 1st October, 1947 and held this post until the 1st January, 1958 when she was promoted to the post of Senior Poultry Instructress. On the 1st October, 1967 she was seconded to the post of Animal Husbandry Superintendent 2nd Grade until the 1st December, 1968 when she was permanently appointed to that post which she holds until the present time. Apart from her secondary education she has passed English Distinction Examinations and has attended a poultry course, chick sexing course (F.A.O.). During the academic year of 1962 - 1963 she attended on a scholarship offered by the Italian and French Governments a course at the Agronomic Mediterranean Institute in Bari, Italy and Montpellier, France and having succeeded in the final examinations she obtained a diploma. (Vide *exhibit* B, Reds 9 and 17).

The interested party joined the Government Service as a student apprentice on the 1st November, 1956 and served in that post until the 1st July, 1962 when he was promoted to the post of Agricultural Assistant (Animal Husbandry) until the 1st October, 1967 when he was seconded to the post of Senior Poultry Instructor. On the 1st July, 1968 he was again seconded to the permanent post of Animal Husbandry Superintendent 2nd Grade until the 31st July, 1972, when he was seconded to the Temporary (Development) post of Animal Husbandry Superintendent 1st Grade. His qualifications are, apart from secondary education, English Higher and Mathematics A.

The qualifications required under the scheme of service are the following :- “Long and very satisfactory service in the post of Animal Husbandry Superintendent

2nd Grade with considerable knowledge and experience in any of the fields and activities of the Department of Animal Husbandry, a good knowledge of English and College diploma or certificate in Agriculture or another subject related to Animal Husbandry, will be an advantage.”

The first ground of law argued by counsel for the applicant, is that the *sub judice* decision amounted to a promotion and as such it offended the provisions of section 30(1)(c) of the Public Service Law, 1967, (Law No. 33/67) (hereinafter referred to as “the Law”) whereby promotion offices are filled by the promotion of officers serving in the immediately lower Grade, and the interested party was not serving in the immediately lower post, inasmuch as the meaning of the word “service” in this context, means holding the lower post substantively and not on secondment.

This point may be disposed of briefly by examining whether the *sub judice* decision comes within the definition of the word “promotion” to be found in section 28 of the Law. By the said definition “promotion means any change in an officer’s substantive status which carries with it an increase in the officer’s remuneration or which carries with it the emplacement of the officer in a higher division of the public service or on a salary scale with a higher maximum, whether the officer’s remuneration at the time is increased by such a change or not; and the expression ‘to promote’ shall be construed accordingly”.

Looking at the aforesaid definition one sees that the first prerequisite to be satisfied is that there should be a change in an officer’s substantive status. In my view when an officer is seconded to another post, he cannot be held to be promoted to that post as his substantive status is not changed; secondment is a matter separately dealt with by the Law. Under section 47 thereof, when a permanent officer is required temporarily to perform the functions of a vacant office, otherwise than in an acting capacity or to perform special duties in a section other than the one to which his office belongs, he is seconded to such office or section. The gist of this section is the temporary performance of the functions of a vacant office and it may be said that since this office was

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temporarily vacated by the secondment of its holder to a senior post, the interested party was seconded temporarily to this post and not promoted, his substantive status remaining the same, as his secondment could be terminated at any time and so automatically revert to the substantive post he held. Furthermore, section 32 of the Law which deals with the methods of filling offices provides, *inter alia*, that a temporary office may be filled by the secondment of a permanent officer not serving on probation. The office in question, as already stated, is a temporary development one and as such it could be filled by the secondment of a permanent officer, such as the applicant. The prohibition, therefore, of promotions for more than one Grade at a time, set out and elaborated upon in *Arkatisis & Others (No. 2) v. The Republic* (1967) 3 C.L.R. p. 429, as a general principle of Public Service Law and subsequently embodied in section 30(1)(c) of the Law, cannot be invoked in favour of the applicant; there exists now the statutory definition of the word "promotion" in section 28 of the Law enacted after the *Arkatisis* case, with which the learned trial judge in that case was not confronted. The fact that this secondment is of an undeterminable duration, does not change its temporary character and does not make it a promotion.

Whilst on this point, it should be observed that our Law differs from the corresponding provision in Greece where secondment (*apospasis*) can only be made for a period not exceeding six months with a further extension of another six months. (See section 96 of the Civil Service Code). It is in the light of this difference that the Decisions of the Greek Council of State on the matter should be viewed and distinguished when dealing with matters of secondment under our Law.

The next argument is that an officer could not be seconded from a post he holds on secondment to another post, unless he is first substantially appointed to the post last held on secondment. This is based on the contention that by successive secondments, one may be assisted to rise in the Service at the expense of other officers. As far as successive secondments are concerned, there is nothing in the Law to prevent them. The only condition

that section 32(2) of the Law puts, is that the officer who is seconded to a post should not be on probation.

The principle to be found in Decision No. 1824/48 of the Greek Council of State and relied upon by counsel for the applicant, that a law requiring a certain length of service in a post held as a prerequisite to further promotion, means the performance of duties of an organic post, would, in my view, be applicable to a case of promotion and not to one of secondment.

The contention, however, that such a method may be used to defeat, under the guise of legality, the legitimate interests of other officers, is a matter which has to be examined in relation to the principles governing the judicial control of the exercise of discretionary powers with which the administration is vested and in particular to the duty of administrative organs to carry out a due inquiry into material factors and give sufficient reasons for their decision; it is in relation to these two grounds of annulment relied upon by counsel for the applicant that the matter has to be considered. No doubt, the further secondment of an officer already seconded to a lower post, is an exceptional course in the sense that a seconded officer is preferred to others holding the same post substantively.

In this respect, one has to bear in mind that the creation of temporary posts and the secondment of officers usually for undeterminable period, is a prevalent occurrence in our Civil Service structure. It is not for me to consider its desirability, but it appears that it has been found to be the appropriate method to meet the fluctuating needs of the Civil Service, in the light of, *inter alia*, economic development planning. Undoubtedly, secondments, like the one under consideration, and on account of the unspecified period of their duration, inevitably give substantial advantage to the persons so seconded as regards their career in the Public Service. In view of this, the Commission, as far as the particular circumstances of each case warrant, should act in an analogous manner and be guided likewise by similar criteria as in the case of promotions; this appears to be, generally speaking, their practice.

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It is a well settled principle that the interpretation of a scheme of service and its application will not be interfered with by the Court, so long as such interpretation and application was reasonably open to the Commission. (See *Papapetrou and The Republic*, 2 R.S.C.C. p. 61 and *Josephides and The Republic*, 2 R.S.C.C. p. 72). As stated in *Athos Georghiades v. The Republic* (1967) 3 C.L.R. p. 653 at p. 668, "the application, however, by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations". The facts relevant to this issue have, therefore, to be considered.

In the present case the applicant appears to possess, a diploma from the Agronomic Mediterranean Institute in Bari and Montpellier, France and in the letter dated the 13th July, 1964 (*exhibit B. Red 9*), it is mentioned that a programme of the course is kept by the Ministry of Agriculture. As already mentioned, under the scheme of service, "a college diploma or certificate in agriculture or another subject related to Animal Husbandry will be an advantage". What is sufficient inquiry is, to my mind, a question of degree depending upon the nature of the matter to be inquired into. Whether such an inquiry has been duly carried out or not, is a matter to be deduced from the relevant minutes kept for the purpose.

In relation to the position created by the aforesaid circumstances, one has to observe that nowhere in the minutes of the Commission or in the recommendation of the Head of the Department, relied upon by the Commission, appears any reference whatsoever to this diploma. An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the pos-

session of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the *sub judice* decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

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Moreover, the outcome of such inquiry should have appeared in the reasoning of the *sub judice* decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the *sub judice* decision contrary to law and in excess and abuse of power.

In the circumstances and as the matter will come for re-examination before the respondent Commission, I think that it is proper not to deal with the remaining grounds of law so that the risk of saying anything that might be taken as transgressing their competence or interfering with the exercise of their discretion will be avoided. Needless to emphasize also that anything already said should not be taken as a pronouncement on the merits of the candidates, a matter falling in the first place, within the competence of the respondent Commission.

In the light of the foregoing, the *sub judice* decision of the Commission has to be declared null and void and of no effect whatsoever.

Regarding costs, the respondents to pay £20.- against applicant's costs.

*Sub judice decision annulled.  
Order for costs as above.*