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[A. LOIZOU, J.]

DEMETRIOS
HADJI VASSILIOU
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS HADJI VASSILIOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 212/72, 213/72, 241/72 & 356/72).

Public Officers—Promotions—Post of Forest Ranger—Written examinations—Holding of written examinations, though no such provision exists in the relevant scheme of service—And assignment of their holding to the Head of Department concerned—A course lawfully open to the respondent Public Service Commission and does not amount to abstaining from exercising its discretionary powers or abdicating its jurisdiction regarding selection of candidates—Holding of such examination not offending sections 29 and 42 (2) of the Public Service Law, 1967 (Law 33/1967).

Written examinations—Promotions—See supra.

Promotions—See supra; see also infra.

Promotions—Head of Department—His recommendations to the Public Service Commission based on information received from senior officers of his Department who relied on the work, experience and annual confidential reports of the candidates—Course adopted does not amount to the Director—General (Head of Department) abstaining from exercising his powers—Nor does it amount to the respondent Public Service Commission abdicating its jurisdiction—Cf. sections 34 and 36 of the Public Service Law, 1967 (Law 33/1967).

Promotions—Head of Department—Recommendations of Head of Department concerning one of the candidates disregarded by the respondent Public Service Commission—Reasons given for disregarding such recommendations held to be cogent and adequate in the circumstances and supplemented by material in the file

(see *Theodossiou and The Republic*, 2 R.S.C.C. 44)—Reasonably open to the Commission on the totality of the material to arrive at the conclusion that it did.

Head of Department—Recommendations—See supra, passim.

Administrative acts or decisions—Reasoning—Nature of reasoning required always a question of degree depending upon the nature of the decision concerned—Decision concerning promotions of public officers—A duly reasoned decision in the instant cases—And moreover reasoning thereof supplemented by material in the relevant files—Principles governing question of due reasoning well settled and briefly restated.

By these four recourses—heard together—the applicants public officers sought unsuccessfully to challenge three promotions to the post of Forest Ranger made by the respondent Public Service Commission in preference to the applicants.

On behalf of the applicants several points have been raised in support of their respective claims, which are dealt with each one separately hereinbelow. The first of such points was to the effect that it was not lawfully open to the respondent Commission, in the absence of an express provision in the relevant scheme of service, to hold a written examination of the candidates. Such procedure, it was alleged, would offend sections 29 and 42 (2) of the Public Service Law, 1967 (Law 33/1967); the first one, for the reason that it provides that the passing by candidates of an examination may be provided in a scheme of service, which is not so provided in the cases in hand; and the second one, because the results of such examinations are not within the criteria of 'merit', 'qualifications' and 'seniority' laid down by the said sections.

Dismissing the recourses, the learned Judge:—

Held, I: As regards the point that the holding of a written examination in cases like the instant ones where no relevant provision existed in the scheme of service, is not lawfully open to the respondent Public Service Commission:

(1) (A) In the case *Bargilly v. The Republic* (1970) 3 C.L.R. 33, at p. 35, Triantafyllides J. (as he then was) had this to say: "The holding of the examination was a course properly open to the respondent in the discharge of its duty to select the best candidates"; and in the case *Georghiades v. The Republic* (1970)

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3 C.L.R. 257, at p. 262, repeating his comments in the *Bargilly's* case (*supra*) went on to say: "Having considered this matter once again on the present occasion, I see no reason not to continue adhering to this view".

(B) I fully subscribe to this approach and I wish only to add that written examinations constitute, generally speaking, a fair procedure for ascertaining the particular knowledge and abilities of the candidates in relation to the subject on which they are examined; and the holding of such examination in no way offends against section 29 or 42(2) of the Public Service Law, 1967.

(2) And the assignment of their holding to the Director of the Department concerned as a person having expert knowledge in the particular subject which these examinations were to cover, does not amount to the respondent Commission abstaining from exercising its discretionary powers or abdicating its jurisdiction. In my view they constitute a choice of means of forming their judgment on the matter under consideration (*see* Stasinopoulos on Law of Administrative Acts, 1951, at p. 333).

Held, II: As regards the point that the respondent Commission abandoned a fraction of its competence in having before it the views of the Departmental Board not provided by law:

(1) It has not been claimed that a Board has been established under the provisions of either section 34 or 36 of the Public Service Law, 1967, for the purposes of assisting the respondent Commission in respect of appointments or promotions. What merely happened was that the Acting Director having obtained the views of the senior officers of the Department and having in mind, *inter alia*, the annual confidential reports preferred the three persons whom he recommended for promotion.

(2) In my view, this was a matter of the Acting Director obtaining useful information about the candidates upon which he would rely in order to make the necessary recommendations, which he had to make to the respondent Commission under section 44 (3) of the said Law; and by conveying to the Commission the views of the majority of the senior officers whom he had consulted, he was doing nothing else than adopting them and passing them on as his own recommendations. Otherwise, he would have dissociated himself from such views.

(3) And I see no objection to the Acting Director making use of the annual confidential reports on the candidates which

normally are prepared or countersigned by the aforesaid senior officers. It neither amounts to the Director abstaining from exercising his powers or to the Commission abdicating its jurisdiction; and in no way does it offend against sections 34 or 36 of the Public Service Law, 1967 (see *Thalassinos v. The Republic* (1973) 3 C.L.R. 386, at p. 391).

Held, III: As regards the point that the sub judice decisions (promotions) are not duly reasoned:

(1) I have found no reason in the relevant minutes of the respondent Commission and the material in the file to persuade me to agree with this proposition.

(2) I need not repeat here the principles regarding due reasoning which are well settled and are to be found in a number of decisions (see, *inter alia*, *The Republic v. Lefcos Georghiades* (1972) 3 C.L.R. 594, at p. 690; *Costas HjiConstantinou v. The Republic* (1973) 3 C.L.R. 65, at p. 70; *Stavrinou v. The Republic* (1973) 3 C.L.R. 584, at p. 691).

(3) (A) Suffice it to say that it has to be clear and that the concrete factor upon which the administration based its decisions for the occasion under consideration be specifically mentioned, the nature of the reasoning required being always a question of degree depending upon the nature of the decision concerned.

(B) And I am satisfied that the *sub judice* decisions are duly reasoned and their reasoning is fully supplemented from the material in the relevant file.

Held, IV: As regards the point to the effect that in the case of one out of the three interested parties the respondent Commission disregarded the recommendation of the Head of Department and promoted Mr. St. instead of the applicant Mr. Chimonas who was recommended:

(1) The respondent Commission having so acted had in accordance with the established principle (*vide Theodossiou v. The Republic*, 2 R.S.C.C. 44), to give cogent reasons for disregarding the recommendation of the Head of Department.

(2) The reasons given by them for disregarding the aforesaid recommendation are set out in the concluding paragraph of the relevant minutes.

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Note: After referring thereto the learned Judge went on:

I have come to the conclusion that the reasons given by the Commission for disregarding the recommendation of the Head of Department as aforesaid are adequate in the circumstances and supported by the material in the file.

Recourses dismissed. No order as to costs.

Cases referred to:

- Bargilly v. The Republic* (1970) 3 C.L.R. 33, at p. 35;
Georghiades v. The Republic (1970) 3 C.L.R. 257, at p. 262;
Thalassinos v. The Republic (1973) 3 C.L.R. 386, at pp. 391-392;
Republic v. Lefcos Georghiades (1972) 3 C.L.R. 594, at p. 690;
Costas HjiConstantinou v. The Republic (1973) 3 C.L.R. 65, at p. 70;
Evdokia Stavrinou v. The Republic (1973) 3 C.L.R. 584, at p. 591;
Theodossiou and The Republic, 2 R.S.C.C. 44, at p. 48.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Forest Ranger in the Department of Forests in preference and instead of the applicants.

- K. Talarides*, for the applicants in Case Nos. 212/72 & 213/72.
L. N. Clerides, for the applicant in Case No. 241/72.
I. Typographos, for the applicant in Case No. 356/72.
N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment* was delivered by:—

A. LOIZOU, J.: This is my judgment in respect of four recourses under Nos. 212/72, 213/72, 241/72 and 356/72 directed, with the consent of the parties, to be heard together, and by which the validity of a number of promotions to the post of Forest Ranger has been challenged. The promotions are those

* An appeal has been lodged against this judgment. The appeal has been heard and judgment thereon has been reserved.

of Christodoulos Stylianides, Christos Economides and Costas Stavrou; the promotion, however, of the latter, is not challenged in Recourse No. 356/72.

The post of Forest Ranger is a promotion post from the lower post of Forester which, until the 31st December, 1970, was divided into two grades, Forester, 1st Grade and Forester, 2nd Grade on a combined establishment. By the estimates of 1971 they were combined into one grade which was styled as "Forester". In view of this, the question of the seniority of the officers holding the previous posts of Forester 1st and 2nd Grade was raised at the meeting of the 11th October, 1971, and the respondent Commission sought the advice of the Attorney-General, which was given, and was to the effect that all officers who were previously holding the post of Forester 1st Grade, should be considered as senior to those who were previously holding the post of Forester 2nd Grade.

The respondent Commission bearing in mind the said advice and having regard to the provisions of section 46 (5) of the Public Service Law, 1967 which provides that "the seniority of officers holding the same office, the salary and title of which have been changed as a result of a salary revision or reorganization, shall be determined according to the officer's seniority immediately prior to such revision or reorganization", it decided, and rightly so, that all officers who until the 31st December, 1970 were holding the post of Forester 1st Grade, should be considered as senior to those who were at the same time holding the post of Forester 2nd Grade and that the officers in question should continue to have among themselves the same seniority which they had before the 1st January, 1971. Furthermore, the officers who until the 31st December, 1970, were holding a post of Forester 2nd Grade, should continue to have the same seniority as Foresters, but the most senior of those officers should follow in seniority the last officer who was previously holding the post of Forester 1st Grade.

The respondent Commission at its meeting of the 12th December, 1971 (*exhibit 'A'*, blue 4), started considering the merits, qualifications, experience and seniority of all officers holding on secondment, either permanent or temporary development posts of Forest Ranger and also of those holding the post of Forester, and adjourned to the 5th January, 1972, when it continued its deliberations for the remaining ones. After deciding on the promotions of the Foresters who were holding

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on secondment posts of Forest Rangers, it considered the filling of the consequential vacancy in the temporary development post of Forest Ranger. The Director of the Department of Forests stated that he was in difficulty to make a definite recommendation for this consequential vacancy and added that he had convened a meeting of all senior officers of his Department for this purpose, but each officer had recommended one of the Foresters working under him. The respondent Commission, as stated in its minutes of that meeting, had difficulty in selecting one officer for this post and authorized the Director of the Department of Forests to hold a written and/or oral examination, with a view to testing the candidates' knowledge, having regard to the duties and responsibilities of the post of Forest Ranger, in accordance with the scheme of service. The Commission decided further that 13 officers, among whom were the applicants and the interested parties who were found on the whole to be suitable for the post of Forest Ranger, should be asked to take the examinations. In fact, written examinations were held on the 26th January, 1972, at the Productivity Centre and their marks were as follows:

Demetrios Hj. Vassiliou (applicant in Recourse No. 212/72),
63 marks.

Constantinos Chimonas (applicant in Recourse No. 213/72),
85 marks.

Ploutarchos Georghiou (applicant in Recourse No. 241/72),
79 marks.

Evagoras Chr. Solomonides (applicant in Recourse No.
356/72), 58 marks.

Interested party Christodoulos Stylianides, 91 marks.

Interested party Christos Economides, 95 marks.

Interested party Costas Stavrou, 60 marks.

The matter came up for consideration again at the meeting of the respondent Commission of the 30th May, 1972. There were by then, three vacancies, in the post of Forest Ranger, to be filled in consequence of promotions to higher posts.

The minutes (*exhibit 'A'*, blue 11) quoted hereinbelow to the extent that they are relevant to the subject promotions, read:—

“The Commission considered the merits, qualifications, seniority and experience of all the officers holding on secondment the permanent post, as well as the temporary (Dev.) post of Forest Ranger, as reflected, in their Personal Files and in their Annual Confidential Reports.

The Commission considered at the same time the merits, qualifications, seniority and experience of all the officers serving in the post of Forester, who had been found on the whole to be the most suitable for the post of Forest Ranger and who had taken a written examination in accordance with item 1 of the minutes of 5.1.72, as reflected in their Personal Files and in their Annual Confidential Reports. The results of the written examinations taken by these officers were also taken into consideration.

.....

With regard to the candidates holding on secondment the temporary (Dev.) post of Forest Ranger, the Ag. Director of the Department of Forests stated that on merits, and on the basis of their Annual Confidential Reports, Messrs. A. Ignatiou and Ch. Constantinou are the best.

As regards the candidates serving in the post of Forester, and who had taken a written examination in accordance with item 1 of the minutes of 5.1.72, the Ag. Director of the Department stated that he had obtained the views of the senior officers of the Department and the majority of them, having in mind their work, experience and the Annual Confidential Reports, preferred Messrs. Chr. Economides, Chr. Stylianides and C. Chimonas for secondment to the temporary (Dev.) post.

Bearing in mind all the above, the Commission decided that -

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(iii) the following Foresters be seconded to the temporary (Dev.) post of Forest Ranger w.e.f. 1.7.72:

Chr. Economides

Chr. Stylianides

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The decision regarding all the officers referred to above was taken unanimously (with the exception of Costas Stavrou).

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.....
In the case of Mr. Costas Stavrou the decision was taken by majority of 3 votes to 2, on the basis of his seniority and the Annual Confidential Reports. (The Chairman and Mr. Y. Louca dissented). The Chairman preferred Mr. M. G. Michaelides and Mr. Y. Louca preferred Mr. C. Chimonas to Mr. Stavrou”.

The first ground of law relied upon in these recourses, is that it was contrary to Law to require the candidates to take an examination; in particular, it offended the provisions of sections 29 and 42(2) of the Public Service Law, 1967. The first one, for the reason that it provides that the passing by candidates of an examination may be provided in a scheme of service, which is not so provided in the case in hand, and the second one, because the results of such examinations are not within the criteria of merit, qualifications and seniority laid down by the said section. It was further contended that by detailing the Director of the Department of Forests to hold these examinations, the respondent Commission abdicated a fraction of its power or jurisdiction which in effect amounted to the adoption of a wrong procedure.

It may be mentioned here, that the examination papers, the contents of which were extensively commented upon by counsel for the applicants, were produced as *exhibit 'B'*.

The propriety of holding in general of examinations for ascertaining the knowledge of candidates in a particular subject, other than the passing of examinations provided for by schemes of service under section 29, was dealt with in the case of *Bargilly v. The Republic* (1970) 3 C.L.R. 33, where candidates for appointment in a first entry and promotion post who were not in the Public Service were called for an interview only after being successful in passing an ad hoc examination. Though the complaint of the applicant in that case about the fact that he was required to sit for examinations was abandoned, yet, Triantafyllides, J. remarked at page 35 thereof, that in his opinion “the holding of the examination was a course pro-

perly open to the respondent in the discharge of its duty to select the best candidates”.

The question of examinations came up again in *Georghiades v. The Republic* (1970) 3 C.L.R. 257. It was urged, that the holding of a written examination in cases where no relevant provision existed in the scheme of service, was not lawfully open to the Commission. Triantafyllides, J. at page 262 repeating his comments in the *Bargilly's* case (*supra*) went on to say, “having considered this matter once again on the present occasion, I see no reason not to continue adhering to this view”.

I fully subscribe to this approach and I wish only to add that written examinations constitute, generally speaking, a fair procedure for ascertaining the particular knowledge and abilities of candidates in relation to the subject on which they are examined. No doubt, they are neither imposed, nor prohibited by the Law; the assignment of their holding to the Director of the Department concerned as a person having expert knowledge in the particular subject which the examinations were to cover, does not amount to the respondent Commission abstaining from exercising its discretionary power or abdicating its jurisdiction. In my view, they constitute a choice of means of forming their judgment on the matter under consideration. (See Stasinopoulos Law of Administrative Acts, 1951, p. 333).

The second ground of law relied upon by the applicants is that the respondent Commission abandoned a fraction of its competence by having before it the views of a Departmental Board not provided by Law and based on exactly the same material as the Commission had to act upon it. This is based on the statement of the Ag. Director of the Department appearing in the minutes of the respondent Commission hereinabove set out, that he had obtained the views of the senior officers of the Department and the majority of them, having in mind their work, experience and the annual confidential reports, preferred the three persons whom he recommended.

It has not been claimed that a board has been established under the provisions of either sections 34 or 36 of the Public Service Law, which cover the cases of boards established for the purpose of assisting or advising the respondent Commission in respect of appointments or promotions to specialized offices under the first section and to non-specialized offices in the second section. In my view, it was a matter of the Ag.

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Director obtaining useful information upon which he would rely to make the necessary recommendations, which he had to make under section 44 (3) of the Law. It was a procedure followed in order to inform and acquaint himself from the best available sources, their section heads, who come into contact with them in the every-day performance of their duties, and by conveying to the respondent Commission the views of the majority, was doing nothing else than adopting them and passing them on as his own recommendations. Otherwise, he would have dissociated himself from such views.

I see no objection to making use of the confidential reports themselves which normally are prepared or counter-signed by these senior officers. It neither amounts to the Director abstaining from exercising his power or that the respondent Commission abdicated its jurisdiction. As I said in the case of *Gregoris Thalassinos v. The Republic* (1973) 3 C.L.R. 386, at pp. 391-392, "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 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".

I see no reason to depart from this approach.

The next ground of law relied upon in the present recourses is that the *sub judice* decisions are not duly reasoned.

I have found no reason in the relevant minute of the respondent Commission and the material in the file to persuade me to agree with this proposition. I need not repeat here the principles regarding due reasoning which are well settled and are to be found in a number of decisions. (See, *inter alia*, *The Republic v. Lefcos Georghiades* (1972) 3 C.L.R. 594, at p. 690, *Costas Hadji Constantinou v. The Republic* (1973) 3 C.L.R. 65, at p. 70, *Evdokia Stavrinou v. The Republic* (1973) 3 C.L.R. 584, at p. 591). Suffice it to say that it has to be clear and that the concrete factor upon which the administration based

its decisions for the occasion under consideration, be specifically mentioned, the nature of the reasoning required, being always a question of degree depending upon the nature of the decision concerned, and I am satisfied that the *sub judice* decisions are duly reasoned and their reasoning is fully supplemented from the material in the relevant file.

In the present case the respondent Commission followed the recommendations of the Head of the Department as far as two of the interested parties were concerned.

As regards Costas Stavrou, the Commission did not follow the recommendations and preferred him instead of the applicant Chimonas who was recommended. This being so, they had, in accordance with the established principle (vide *Theodossiou* and *The Republic*, 2 R.S.C.C. 44 at p. 48), to give cogent reasons for disregarding same. The reasons given by them in the concluding paragraph of the minutes hereinabove set out, were that they relied on his seniority and the annual confidential reports. In this respect, we have that Costas Stavrou was first appointed as Forest Foreman on the 1st October, 1949 and became a Forester 1st Grade on the 1st August, 1955 until the 31st December, 1970 when the post was restyled as "Forester" as from the 1st January, 1971.

Applicant Demetrios HJ. Vassiliou first entered the service on the 1st January, 1942 and was promoted to Forester 1st Grade on the 1st March, 1959.

Applicant Ploutarchos Georghiou was first appointed on the 1st February, 1950 and became Forester 1st Grade on the 1st September, 1960.

Applicant Constantinos Chimonas was first appointed on the 1st August, 1954 and became Forester 1st Grade on the 1st September, 1960.

Applicant Evagoras Solomonides was first appointed on the 17th January, 1949 and became Forester 1st Grade on the 1st September, 1960.

A table showing particulars of the Government Service prepared for the purpose of these recourses, from the material that can be found in their personal files, gives the qualifications of the applicants and the interested parties and it may be mentioned that interested party Stylianides was first appointed

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in 1954, he became Forester 1st Grade on the 1st August, 1961, Christos Economides was first appointed on the 1st January, 1954 and became Forester 1st Grade on the 1st August, 1961.

I do not think that it will serve any useful purpose if I reproduce here the contents of the confidential reports of applicants and interested parties and proceed with a detailed comparison of same, but as far as Costas Stavrou is concerned, who was promoted in spite of the fact that he was not recommended by the Head of the Department, we have it that his confidential reports for 1971 rated him between good and excellent on the various items of appreciation. Applicant Chimonas has equally favourable reports, and in addition he was recommended for accelerated promotion by his reporting officers. With this recommendation the counter-signing officer is in agreement and remarks with an element of cynicism that he hoped with the new vacancies he would be amongst the lucky ones to be promoted to the post of Forest Ranger which he very much deserves.

I have come to the conclusion that the reasons given by the respondent Commission in disregarding the recommendation of the Head of the Department in respect of the promotion of interested party Costas Stavrou are adequate, in the circumstances, and supported by the material in the file.

Bearing in mind the totality of the material that was before the respondent Commission, it was reasonably open to it to arrive at the conclusion that it did. The applicants have failed to satisfy me that the relevant discretion in promoting the interested parties has been improperly or wrongly exercised and that the *sub judice* decisions should be set aside as having been taken in abuse or excess of power.

For all the above reasons, the present recourses are dismissed, but in the circumstances I make no order as to costs.

*Applications dismissed.
No order as to costs.*