

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI N. ARISTOCLEOUS AND ANOTHER,

*Applicants.*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

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—  
ELENI N.  
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AND ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Cases Nos. 224/73 and 225/73).

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*Public Service and Public Officers—Promotions—Post of Clerk 2nd Grade, General Clerical Staff—Seniority—Applicants by a month or so senior to three of the interested parties—Merit—Confidential reports—Emanating from different reporting officers—Rating applicants and interested parties in strong terms—Weight to be attached to such reports—Even if they emanated from the same officer the confidential reports on the applicants are not of such a nature as to invoke the principle that all other things being more or less equal seniority would prevail—Circumstances, in the light of the nature of the said confidential reports, justify approach that said seniority should only be a factor in the overall picture—No striking superiority established as regards either applicants over any of the interested parties, justifying interference by this Court—Mere superiority not enough.*

*Promotions—Seniority—Confidential reports—Weight to be attached thereto—No striking superiority established—Mere superiority not enough—Seniority only one of the factors to be considered—In the circumstances of this case this Court would not be justified to interfere with the promotions complained of.*

*Discretionary powers—Court will not substitute its own discretion for that of the administration—Respondent Commission did not act in abuse or excess of powers or in any way outside the extreme limits of its discretion.*

*Seniority—See supra.*

*Confidential reports—See supra.*

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These are recourses made under Article 146 of the Constitution by the two applicants public officers directed against the promotions to the post of Clerk 2nd Grade, General Clerical Staff, of the interested parties. The applicants were senior by a month or so to three of the interested parties. The relevant confidential reports, emanating from different reporting officers, are rating the applicants as well as the interested parties in strong favourable terms. The learned Judge of the Supreme Court dismissed these recourses, holding that on the whole the respondent Public Service Commission cannot be said to have acted in abuse or excess of its powers and that in the circumstances it was open to it to act as it did in this case.

*Held*, (1) As observed in the case of *Evangelou v. The Republic* (1965) 3 C.L.R. 292, at p. 297, the confidential reports on the candidates for promotion should “be regarded only as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole”. In fact I cannot help observing that different reporting officers inevitably use different standards in their evaluation of the performance of the various officers serving under them.

(2) (a) The confidential reports regarding the applicants as well as the interested parties are couched in strong terms; which shows how difficult the task of the respondent Public Service Commission was in performing its duty to select the most suitable of them for promotion and how correct is what has been stated in respect of confidential reports emanating from different reporting officers (*supra*).

(b) Even if we were to assume for a moment that these reports and particularly those of the applicants and the three interested parties who appear to be a month or so junior to the applicants, were prepared on the basis of the same subjective criteria and measures, yet, it cannot be said that they are of such a nature, compared with each other, as to invoke the principle that all other things, being more or less equal, seniority should prevail.

(c) The circumstances, however, in the present cases justify the approach that the said *seniority* should only be a factor in the overall picture (see *Partellides v. The Republic* (1969) 3 C.L.R. 480, at p. 484, *Theodossiou* and *The Republic*, 2 R.S.C.C. 44, *Evangelou v. The Republic* (1965) 3 C.L.R. 292, at p. 297).

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(3) On the other hand, no striking superiority has been established as regards either applicant over any of the interested parties, in which case this Court would have to interfere, mere superiority not being enough for such purpose.

(4) For the above reasons I have come to the conclusion that on the totality of the material before the respondent Commission it was reasonably open to it to reach the *sub judice* decisions and it cannot be said that it acted in abuse or excess of powers or in any way outside the extreme limits of its discretion, this Court being precluded from substituting its discretion for that of the respondent Commission.

*Both recourses dismissed.*  
*No order as to costs.*

Cases referred to:

*Evangelou v. The Republic* (1965) 3 C.L.R. 292, at p. 297;

*Partellides v. The Republic* (1969) 3 C.L.R. 480, at p. 484;

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

#### Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Clerk 2nd Grade, General Clerical Staff, in preference and instead of the applicants.

*E. Vrahimi (Mrs.)*, for the applicants.

*C. Kypridemos*, 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 two recourses directed, with the consent of the parties, to be heard together to the extent that they present common questions of law and fact, and by which the validity of a number of promotions to the permanent post of Clerk 2nd Grade, has been challenged.

After the withdrawal of the recourse as against a number of interested parties, the promotions now challenged are those of—  
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Afxentiou Stavroulla, Leonidou Athina, Hepi Maroulla, Alo-neftou Maro, Louca Anastasia, Kalotari Yiannoulla; HJ. Petrou Glafkos, Christoudias Christos, Koualis Michalakis and Deme-triadou Anthoulla.

Under the relevant scheme of service (*exhibit 'A'*, enclosure 2), the post of Clerk 2nd Grade is a promotion post from the immediately lower post of Clerical Assistant.

An officer, in order to be eligible to such promotion, should have, among other qualifications, a minimum of six years' service in the post of Clerical Assistant of which at least two in an established capacity and should also have passed the examinations in General Orders, or in the case of officers employed mainly on accounting duties, the examination in Financial Instructions and Store Regulations.

The respondent Commission, upon request from the Director of the Department of Personnel, considered the filling, on a permanent basis, of 25 vacancies in the said post and proceeded to do so at its meeting of the 3rd of April, 1973, at which he was present, being considered as the Head of Department for three classes of public officers, namely, the General Clerical Staff, the Administrative Officers of all Grades and the Messengers. He was not, however, in a position to make any specific recommendation, as all candidates were, by necessity, scattered all over Cyprus (see *Exhibit 'A'*, enclosure 7).

The respondent Commission decided to promote, out of 51 eligible candidates, 25 to the post in question, with effect from the 1st May, 1973. As it appears from the relevant minute (*Exhibit 'A'*, enclosure 4), it did so, "After taking into consideration all the facts appertaining to each one of the officers serving in the post of Clerical Assistant and after giving proper weight to their merits, qualifications, seniority, service and experience, as well as to their suitability for promotion to the above post, as shown in their Personal Files and in their Annual Confidential Reports and after discussion with the Head of Department the Commission came to the conclusion, and the Director of the Department of Personnel agreed, that the said candidates were on the whole the best".

The ground of law relied upon by learned counsel for the applicants, is that in effecting the said promotions the respon-dent Commission failed in its paramount duty to select the

most suitable candidate for the post, having regard to the totality of the circumstances pertaining to each one of the two applicants vis-a-vis the interested parties.

The respondent Commission had before it the personal files of the two applicants and those of the interested parties and the material particulars therefrom are shown on a Table (*Exhibit 'A'*, enclosure 5) attached to the Opposition.

They were all appointed to the permanent post of Clerical Assistant on the 1st April, 1965, though it has to be clarified that the last five interested parties were serving in the Greek Communal Chamber and upon its dissolution they were employed by decision of the Public Service Commission, retrospectively as from that date, under the provisions of the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law, 1965 (Law No. 12 of 1965). So, there is no direct comparability, except that they have longer service, since under section 16 (3) of the aforesaid Law, their service with the Republic is deemed to be an uninterrupted continuation of their service with the Communal Chamber. As far as, however, all of them are concerned, and in view of the simultaneous appointment or promotion to the particular office in question, seniority has, under the provisions of section 46 (2) of the Public Service Law, to be determined according to the officers' previous seniority. Proceeding on this basis, it appears that the applicants are only senior, to the extent hereinafter shown, as against interested parties Christos Christoudias, Glafkos Hj. Petrou and Michalakis P. Koualis who were appointed to the post of Clerical Assistant, unestablished, on the 3rd August, 1964, 10th August, 1964 and 8th September, 1964, respectively, as against the 1st July, 1964 when the two applicants were appointed as temporary Clerical Assistants.

The two applicants have passed the examinations in General Orders, as well as Financial Instructions and Store Regulations. All the interested parties have passed the General Orders Examinations, with the exception of interested party Glafkos Hj. Petrou who passed both examinations. The passing of both these examinations, however, is not treated as an additional advantage under the relevant scheme of service.

In making its selection the respondent Commission took also into consideration the annual confidential reports on the candidates. I do not propose to deal extensively with the rating of

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each candidate, inasmuch as these confidential reports were not prepared by one and the same Head of Department with a view to comparing the respective merits of the candidates for the particular vacancies in question. As observed in the case of *Evangelou v. The Republic* (1965) 3 C.L.R. 292, at p. 297, such confidential reports should “be regarded only as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole”. In fact, I cannot help observing that different reporting officers inevitably use different standards in their evaluation of the performance of the various officers serving under them.

No doubt, however, applicant Eleni Aristocleous in Recourse No. 224/73, is rated in the last two confidential reports as excellent in eight out of ten rating items, very good in the other two and described as a *hard working, conscientious and exceptionally good typist*.

Applicant Anastassia Efthymiou in Recourse No. 225/73 has a special confidential report for 1972, commonly known as blue report; she is described therein as excellent and above average and *recommended to be promoted with the first available opportunity*. The view of the Director-General of the Ministry of Labour, the countersigning officer in this case, is that “she is an excellent officer who merits accelerated promotion”. In the previous report she is again described as excellent and strongly recommended for accelerated promotion.

The confidential reports of the interested parties, however, are, generally speaking, in no less strong terms. They are, on the whole, described either as excellent or very good, which shows how difficult the task of the respondent Commission was in performing its duty to select the most suitable of them for promotion and how correct is what has been stated in respect of confidential reports emanating from different reporting officers. Even if we were to assume for a moment that these reports and particularly those of the applicants and the three interested parties who appear to be by a month or so junior to the applicants, were prepared on the basis of the same subjective criteria and measures, yet, it cannot be said that they are of such a nature, compared with each other, as to invoke the principle that all other things being more or less equal, seniority should prevail. The circumstances, however, in the present cases, in the light of what has been said regarding the nature of all confidential reports, as hereinabove explained, justify the

approach that the said seniority should only be a factor in the overall picture (see *Partellides v. The Republic* (1969) 3 C.L.R. 480 at p. 484; *Theodossiou and The Republic*, 2 R.S.C.C. p. 44 and *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292 at p. 297).

Bearing in mind all the above, I have come to the conclusion that on the totality of the material before the respondent Commission it was reasonably open to it to arrive at the *sub judice* decision and it cannot be said that it acted in abuse or excess of power or in any way outside the extreme limits of its discretion, this Court being precluded from substituting its discretion for that of the respondent Commission. No striking superiority has been established as regards either applicant over any of the interested parties, in which case this Court would have interfered, mere superiority not being enough for such purpose.

In the circumstances, the two recourses are dismissed, but I do not propose to make any order as to costs, as the grievance of the two applicants for which they sought redress in this Court was not one that could lightly be dismissed.

Both recourses dismissed, with no order as to costs.

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

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