

1974
Nov. 29

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS
N. PISSAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IOANNIS N. PISSAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 223/72).

Public Officers—Promotions (or appointments or secondments)—Recommendations by Head of Department not to be lightly disregarded—Clear and cogent reasons should be given and recorded in the relevant minutes why said recommendations were not followed—Especially in cases where specialized knowledge and ability are required—In the instant case the respondent Public Service Commission did not follow the recent recommendation of the Head of Department in favour of the applicant—Reasons for so acting not clearly recorded—Not coming up to the minimum standard required in the particular circumstances of this case for acting contrary to such recommendation of the Head of Department—Reasons invoked cannot be held to be cogent reasons warranting such departure—The sub judice decision has therefore to be annulled for lack of due reasoning which renders it contrary to law, that is to say, the established principles of administrative law and, also, in abuse and excess of powers.

Administrative acts or decisions—Due reasoning required—What is due reasoning depends on the particular circumstances of each case.

Promotions (or appointments)—Recommendations of Head of Department—Weight—See supra.

Reasoning—Due reasoning—Lack of due reasoning—See supra.

Administrative decisions contrary to law i.e. contrary to established principles of administrative law, and also in abuse and excess of powers—See supra.

Abuse and excess of powers—Lack of due reasoning—See supra.

*Discretionary powers—Defective exercise—Lack of due reasoning—
Contrary to law and in abuse and excess of powers—See supra.*

1974
Nov. 29

—
IOANNIS
N. PISSAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

By this recourse under Article 146 of the Constitution the applicant public officer seeks to challenge the decision of the respondent Public Service Commission by which the interested party Mr. G.M., Technical Assistant in the Department of Town Planning and Housing, was seconded to the temporary post of Senior Technical Assistant, instead of himself.

The applicant possessed all the required qualifications for the said post and is senior to all other candidates, including the interested party; moreover he was recommended for secondment to the post in question by the Head of Department by letter dated June 8, 1972 and orally during the relevant meeting of the respondent Commission, dated July 10, 1972.

The reasons given by the Commission for disregarding the recommendations made for the purpose by the Head of Department (*vide post*, in the judgment) did not appear to the learned Judge to be clear and cogent which would leave no doubt however little, as to their exact meaning; and on the authority of *Theodossiou* and *The Republic*, 2 R.S.C.C. 44, at p. 48, the learned Judge annulled the decision complained of as taken contrary to law *i.e.* the well settled principles of administrative law and also in abuse and excess of powers.

After reviewing the facts and the documents in the record, the learned Judge, annulling the *sub judice* decision of the respondent Public Service Commission:—

Held, (1) (a) It is a well settled principle of administrative law and there is a line of decisions of this Court bearing on this issue, that the recommendation of a Head of Department, especially where specialized knowledge and ability are required, is a most vital consideration not to be lightly disregarded; and if the Public Service Commission felt that it could not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission for the protection of the legitimate interests of the candidates concerned.

(b) “Failure to do so”, as stated in the case of *Theodossiou* and *The Republic*, 2 R.S.C.C. 44, at p. 48,—“would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission

1974
Nov. 29
—
IOANNIS
N. PISSAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power”.

(2) (*After reviewing the reasons given by the respondent Commission for disregarding the said recommendations of the Head of Department*):

(a) Due reasoning is a question of degree depending on the circumstances of each case and all the aforesaid facts were so special in nature that called for clear and cogent reasons which would leave no doubt, however little, as to the meaning of the reasons given in the *sub judice* decision.

(b) In my opinion, in the light of the above, the reasons given by the Commission for disregarding the aforesaid recommendations of the Head of Department in favour of the applicant could not be called cogent and clear reasons and do not come up to the necessary minimum standard required in the particular circumstances of this case for acting contrary to the most recent recommendation of the Head of Department.

(3) For these reasons the *sub judice* decision is annulled for lack of due reasoning which renders it contrary to law, that is to say, the established principles of administrative law and also in abuse and excess of power. Costs of £15 in favour of the applicant.

*Sub judice decision annulled;
order for costs as above.*

Cases referred to:

Theodossiou and The Republic, 2 R.S.C.C. 44, at p. 48.

Recourse.

Recourse against the decision of the respondent Public Service Commission to second the interested party to the temporary development post of Senior Technical Assistant in preference and instead of the applicant.

K. Talarides, for the applicant.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

M. Kramvis, for the interested party.

Cur. adv. vult.

The following judgment was delivered by:-

1974
Nov. 29

—
IOANNIS
N. PISSAS

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

A. LOIZOU, J.: The applicant, by the present recourse, complains against the decision of the respondent Commission of the 10th July, 1972, by which George Moysis, Technical Assistant in the Department of Town Planning and Housing, was seconded to the temporary development post of Senior Technical Assistant, with effect from the 1st August, 1972, which is a promotion post from the immediately lower one of Technical Assistant.

There were in all four officers who possessed the required qualifications under the relevant scheme of service; the applicant, the interested party, and two others.

When the filling of the said post was duly approved, the Head of the Department, by letter dated the 8th June, 1972 (*exhibit 'A'*, blue 3), submitted his recommendations on the candidates to the Chairman of the respondent Commission. The career of each of the four candidates is outlined therein, together with relevant information regarding the experience and the qualifications possessed by them. Specific reference is made in paragraph (4) thereof, to reports made against the applicant and the interested party and the outcome of the investigations carried out and concludes by saying that after consideration of the case of each one of the four candidates and taking into consideration the merit, qualifications and seniority, as referred to in section 44 (2) of the Public Service Law, 1967, he recommended the applicant for secondment to the vacant post of Senior Technical Assistant.

The filling of this vacancy was considered by the respondent Commission at its meeting of the 10th July, 1972. The Director of the Department was also present, and his views were heard. The minute of the Commission so far as relevant for the determination of the issues raised in the present proceedings, is as follows:-

“The Director of the Department of Town Planning and Housing by his letter No. 200/16c of 8.6.72, made certain comments on each of the four candidates referred to above and concluded recommending Mr. I. Pissas for promotion to the above post.

The Commission observed that although Mr. Pissas is senior to the other three candidates, yet his Annual Confidential Reports described him as ‘unreliable’.

1974

Nov. 29

—

IOANNIS
N. PISSAS

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

In comparing Mr. Pissas' Annual Confidential Reports together with those of the other three candidates, the assessment of his work appears to be inferior to that of the remaining candidates. In view of the above, the Commission decided by majority of 3 votes to 2 not to follow the Director's recommendation.

The Director of the Department stated that the assessment made in the last two Annual Confidential Reports in respect of Mr. Pissas was due to friction between the Reporting Officer and the Officer concerned. The Director of the Department added that the overall duties performed by Messrs. I. Pissas and G. Moysi were different and of higher responsibilities than the remaining two candidates; furthermore, they have been in charge for some time of the Department's District Offices. The Director of the Department stated further that Mr. A. Symeonides is an excellent Draughtsman, but this duty is only part of the general duties which an officer has to perform, in accordance with the relevant scheme of service. Mr. Symeonides is better than Mr. A. Petrou, who is a bit slow in his work.

Bearing in mind all the above, the Commission decided by majority of 3 votes to 2 (Messrs. D. Theocharides and Mr. Y. Louca dissenting) that Mr. G. Moysi was on the whole the best and that he be seconded to the temporary (Dev.) post of Senior Technical Assistant, w.e.f. 1.8.72.

The two dissenting Members preferred Mr. I. Pissas to Mr. G. Moysi". (*Exhibit 'A'*, blue 6).

As it appears from the aforesaid minute, the respondent Commission by majority of three votes to two, decided to act contrary to the recommendations of the Head of the Department made for the purpose.

It is a well settled principle of Administrative Law, and there is a line of decisions of this Court bearing on this issue, that the recommendation of a Head of a Department, especially where specialized knowledge and ability were required, was a most vital consideration not lightly to be disregarded, and if the Public Service Commission felt that it could not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission for the protection of the legitimate interests, under Article 151 in con-

junction with Article 146 of the Constitution, of the candidates concerned. "Failure to do so", as stated in the case of *Theodossiou* and *The Republic* 2 R.S.C.C. p. 44 at p. 48—"would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power".

1974
Nov. 29
—
IOANNIS
N. PISSAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

The reasons given by the respondent Commission for disregarding the recommendations made for the purpose by the Head of the Department, were that the applicant though senior to the other three candidates, yet his Annual Confidential Reports described him as "unreliable" and that in comparing his Annual Confidential Reports together with those of the other three candidates, the assessment of his work appears to be inferior to that of the remaining candidates.

The first report where reference to reliability appears, is that for the year 1968. The reporting officer records the following observations:- "It appears to me that the tragedy of this officer's child affects his reliability and devotion to duty". These observations are not repeated in the Confidential Report for 1969, prepared again by the same reporting officer, Mr. Phaedonos and countersigned by the same Head of Department. Then the two last Confidential Reports prepared by Mr. Charalambous with whom the applicant was in friction, come into the picture. The following observation appears in the 1970 report:- "Due to his character he tends to have a very high opinion of himself and he treats his colleagues, including his superiors, accordingly. If he wants to, he can be an efficient officer, but his reliability is sometimes questionable". In the Confidential Report for the year 1971, the following observation appears:- "He carries out his duties hastily and in an irresponsible way. The product of his work has proved that he is unreliable, and this phenomenon has enthralled the confidence granted by his superiors". The views of the Head of the Department as countersigning officer, in the same report, are that "the Reporting Officer has been rather hard on this officer because of the differences of opinion between them. There is no doubt that Mr. Pissas' behaviour has been doubtful at times. However, it is true that Mr. Pissas is a very competent person when he wants to and he has carried out at times duties well above his post when there was no Divisional Officer at

1974
Nov. 29
—
IOANNIS
N. PISSAS
v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Limassol. In view of all these and having in mind the exigencies of the Service, I have recommended his transfer from Limassol to Nicosia (accepted by the P.S.C.) and I hope that in his new surroundings he will do well and contribute to the work of the Department in a positive way”.

Furthermore, in both Confidential Reports for the years 1970 and 1971 under the heading of General Assessment, his reliability is described as satisfactory. Then, there are the recommendations of the Head of the Department contained in his letter of the 8th June, 1972 (*exhibit 'A'* blue 7) made for the purpose of the *sub judice* secondment, as well as his oral statement made at the meeting of the respondent Commission.

From the aforesaid statement of facts it appears that there are certain outstanding features that called for some explanation. There existed the friction between the applicant and his last reporting officer and also the fact that his reliability was questioned in the Confidential Report for the year 1968 by his then reporting officer who himself advanced the explanation that this might be attributed to the tragedy of the officer's child. Similar observation does not appear in the report for the subsequent year, though prepared by the same reporting officer.

Due reasoning is a question of degree depending on the circumstances of each case and all the aforesaid were facts so special in nature that called for clear and cogent reasons which would leave no doubt, however little, as to the meaning of the reasons given in the *sub judice* decision.

In my opinion, in the light of all these facts, the general reference to the contents of the confidential reports, a reference which might in other cases be sufficient to supplement the reasoning of an administrative decision, and the mention of the word “unreliable” in quotes, are not what could be called cogent reasons and do not come up to the necessary minimum standard required in the particular circumstances of this case for acting contrary to the most recent recommendation of the Head of the Department.

For these reasons the *sub judice* decision is annulled for lack of due reasoning which renders it contrary to law, that is to say, the established principle of Administrative Law and also in abuse and excess of power.

In view of this result, the other grounds of law relied upon by the applicant, need not be examined.

Furthermore, on account of the fact that the matter will come up for re-examination before the respondent Commission, I refrain from commenting on the merits of the candidates or making any comparison regarding the contents of the confidential reports produced, so that nothing said in this judgment will in any way affect the exercise of the discretion of the respondent Commission.

In the result, the *sub judice* decision is annulled. Respondent to pay £15.- as against costs.

*Sub judice decision annulled;
order for costs as above.*

1974
Nov. 29

—
· IOANNIS
· N. PISSAS
· v.
· REPUBLIC
(PUBLIC SERVICE
COMMISSION) ·