

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHIVOS EVAG. SAVVIDES,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

PHIVOS EVAG.
SAVVIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 8/73).

Public Officers—Promotions—Principles applicable—Paramount duty of the authority concerned to select the most suitable candidate—Post of Senior Technical Assistant in the Department of Public Works—Merit—Interested party superior in merit to applicant—Qualifications—Both parties having the same substantive qualifications—Seniority—Applicant senior to interested party by 6½ years—Principles upon which seniority should prevail—In the instant case the factor of seniority must not prevail in view of the clear superiority of the interested party over the applicant on the question of merit—Seniority prevails in cases where all other factors are more or less equal—Recommendations by Head of Department—Interested party recommended for promotion by the Head of Department—Adoption of such recommendations by the respondent Public Service Commission does not necessarily mean that it accepted them without carrying out a proper inquiry and without exercising its discretion in the manner—On the facts it was entirely open to the respondent Commission to reach the decision complained of in this recourse—Recourse against promotion of the interested party instead of, and in preference to, the applicant dismissed.

Promotions in the public service—Principles applicable—Merit—Qualifications—Seniority—Recommendations by the Head of Department—See supra.

Seniority—One of the factors to be taken into account—Not the decisive one—Principles applicable—See supra.

1974
Dec. 17

PHIVOS EVAG.
SAVVIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

*Recommendations by the Head of Department in cases of promotions—
See supra.*

*Reasoning of administrative decisions—Due reasoning—Promotions of
public officers—Recommendations by Head of Department—The
fact that he was not asked by the respondent Commission to give
reasons why he was recommending the interested party does not
mean that the sub judice promotion is not duly reasoned.*

By this recourse the applicant seeks to challenge the promotion to the post of Senior Technical Assistant in the Department of Public Works of the interested party instead of himself. The parties were equal in qualifications. But the interested party was superior in merit whereas the applicant was senior to the former by 6½ years. Lastly, the interested party was recommended for promotion by the Head of Department. The learned Judge, after reviewing the facts and applying the well settled principles of administrative law regarding the question of promotions, held that on the facts it was entirely open to the respondent Public Service Commission to take the decision complained of in these proceedings; and he dismissed the recourse, without, however, making any order as to costs.

Recourse dismissed.

Cases referred to:

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

Partellides v. The Republic (1969) 3 C.L.R. 480.

Recourse.

Recourse against the decision of the respondent Public Service Commission to second the interested party to the temporary (Dev.) Post of Senior Technical Assistant in the Department of Public Works in preference and instead of the applicant.

K. Talarides, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

MALACHTOS, J.: On the 17th May, 1972, the Director-General of the Ministry of Communications and Works wrote

to the Chairman of the Public Service Commission informing him that the Minister of Finance had approved, *inter alia*, the filling of one vacancy in the post of Senior Technical Assistant, Civil Engineering and Architectural section, in the Department of Public Works as well as any consequential ones, requesting him to take the necessary steps for their filling.

1974
Dec. 17
—
PHIVOS EVAG.
SAVVIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

According to the relevant schemes of service the post of Senior Technical Assistant is a promotion post and candidates must have at least five years satisfactory service in the post of Technical Assistant, 1st Grade.

The Public Service Commission at its meeting of 8.7.72, decided that the filling of the above mentioned vacancies be considered on 21.9.72 in the presence of the Director of the Department of Public Works.

At its meeting of 21.9.72 the Commission, after considering all the candidates, decided that Mr. Takis Vassiliades, who was holding on secondment the temporary (Dev.) Post of Senior Technical Assistant, was, on the whole, the best and promoted him to the permanent post of Senior Technical Assistant with effect from 15.10.72. The Commission then proceeded to fill the consequential vacancy in the temporary (Dev.) Post of Senior Technical Assistant which was created as a result of the promotion of Mr. T. Vassiliades to the corresponding permanent post and decided that Mr. Andreas Kallis was, on the whole, the best candidate and that he be seconded for the said post.

The relevant minutes of the Commission, *exhibit* 10, read as follows:

“The Commission then proceeded to fill the consequential vacancy in the temporary (Dev.) Post of Senior Technical Assistant, which was created as a result of the promotion of Mr. T. Vassiliades to the corresponding permanent post.

The Commission considered the merits, qualifications, seniority, service and experience of all officers holding the post of Technical Assistant, 1st Grade, who had been attached to the Civil Engineering and Architectural Section, as reflected in their Personal Files and in their Annual Confidential Reports.

The Director of the Department stated that Mr. Andreas Kallis was the best Technical Assistant, 1st Grade, and recommended him for promotion.

1974
Dec. 17

PHIVOS EVAG.
SAVVIDES

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Bearing in mind the above, the Commission decided that Mr. Andreas Kallis was on the whole the best and that he be seconded to the temporary (Dev.) Post of Senior Technical Assistant, w.e.f. 15.10.72”.

The applicant, a Technical Assistant 1st Grade, attached to the Architectural Section, feeling aggrieved by the said decision filed the present recourse claiming a declaration of the Court that the decision of the respondent Commission of 21.9.72 to second to the temporary (Dev.) Post of Senior Technical Assistant in the Public Works Department Andreas Kallis, the interested party, and which decision was published in the Official Gazette of the Republic on 10.11.72 under Not. 2083, is *null* and *void* and of no legal effect whatsoever.

The grounds of law on which the application is based, as stated therein, are the following:

1. The respondent Commission did not carry out a proper enquiry and did not in substance consider the respective qualifications and service experience of the applicant and the interested party.
2. The decision of the respondent Commission is not duly reasoned in view of the striking superiority of the applicant over the interested party as regards qualifications and seniority.
3. The respondent Commission did not carry out a proper enquiry as to whether the interested party possessed the qualifications required by the schemes of service.
4. The decision complained of was taken contrary to the principles of selection of the best candidate, and
5. The applicant in view of his service experience, seniority and qualifications was strikingly superior to the interested party.

Counsel for applicant argued that as regards promotions of public officers on the criteria laid down by section 44 (2) of the Public Service Law 1967, *i.e.* merit, qualifications and seniority, the applicant ought to be considered superior to the interested party. On the question of merit, he submitted that according

to the confidential reports of both the applicant and the interested party, *exhibits* 4 and 6 respectively, they are both reported as very good officers.

As to qualifications and seniority he submitted that as it appears from the personal files of both the applicant and the interested party, *exhibits* 5 and 7 respectively, applicant is better qualified and is senior by 6½ years. The respondent, therefore, ought to select the applicant as being the best candidate since he was superior to the interested party having regard to his experience, seniority and qualifications.

Counsel for applicant further argued that the respondent Commission did not exercise properly and substantially its discretion because they merely endorsed the choice already made by the Head of Department. They did not properly enquire as to why the Director recommended the interested party. In view of this, he submitted that there is no due reasoning of the decision complained of. Furthermore, no due consideration and weight was given by the respondent Commission as regards the considerable seniority of the applicant.

The above arguments of counsel for applicant cover all the grounds of law on which the present application was based with the exception of ground 3 which, obviously has been abandoned, since no argument has been advanced on it. In any case, it is clear from the confidential reports and the personal file of the interested party that at the material time he possessed all the qualifications required by the schemes of service.

It is true that both the applicant and the interested party are very good public officers, but it is equally true that in making a comparison between the two, the interested party is obviously superior as far as merit is concerned. This is clear from their respective confidential reports, *exhibits* 5 and 7, where the applicant, as far as general assessment is concerned, is mostly reported as very good whereas the interested party is mostly reported as excellent. Furthermore, the interested party for the last four years preceding the decision complained of had special confidential reports submitted by his superiors reporting him as a prompt, competent and satisfactory in every way and strongly recommending him for promotion. As to qualifications, it is clear from their personal files that they have the same material qualifications since they are both licensed building technicians,

1974
Dec. 17

PHIVOS EVAG.
SAVVIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1974

Dec. 17

—

PHIVOS EVAG.

SAVVIDES

v.

REPUBLIC

(PUBLIC SERVICE

COMMISSION)

class A, under the Architects and Civil Engineers Law, 1962. However, on the question of seniority, it was not disputed that the applicant is senior to the interested party by 6½ years.

The decision of the respondent Commission complained of in this recourse is a matter within the competence and discretion of the said Commission, and in a recourse under Article 146 of the Constitution, the Court is not empowered to substitute its own discretion for that of the administration.

When the authority or organ concerned has exercised their discretion in reaching a decision, after paying due regard to all relevant considerations and without taking into account irrelevant factors, this Court will not interfere as to the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law or has been made in excess or abuse of powers vested in the authority or organ concerned.

In the case of *Michael Theodossiou and The Republic of Cyprus, through the Public Service Commission*, 2 R.S.C.C. 44, the principle has been laid down that the paramount duty of the Public Service Commission in effecting appointments or promotions is to select the candidate most suitable in all the circumstances of each particular case, for the post in question. It is also stated at page 48 of this report that “ In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where specialized knowledge and ability are required for the performance of certain duties, is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded. If the Public Service Commission is of the opinion that for certain reasons such recommendation cannot be adopted then as a rule such Head of Department or other officer concerned should be invited by the Public Service Commission to explain his views in order that the Public Service Commission may have full benefit thereof, a course which has not been followed in this case”.

In the case in hand the Commission had before them the personal files and the confidential reports of both the applicant and the interested party, as well as the Director of the

1974
Dec. 17

—
PHIVOS EVAG.
SAVVIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Department who expressed his views. In exercising their discretion they took into account, as it appears from their minutes, exhibit 10, the merits, qualifications, seniority, service and experience of all officers holding the post of Technical Assistant, 1st Grade, who had been attached to the Civil Engineering and the Architectural Section, as reflected in their personal files and in their annual confidential reports and decided that the interested party was, on the whole, the best candidate and second-him to the Temporary (Dev.) Post of Senior Technical Assistant with effect from 15.10.72. No doubt the seniority of the applicant was one of the factors to be taken into account but it was not a decisive one and should only prevail where all other factors were more or less equal. (*Partellides v. The Republic* (1969) 3 C.L.R. 480). In the present case, however, the above principle has no application in view of the superiority of the interested party over the applicant on the question of merit. The fact that the Public Service Commission in taking the decision complained of adopted the recommendations of the Director of the Department does not necessarily mean that it accepted them without carrying out a proper enquiry and without exercising its discretion in the matter. Obviously, the respondent Commission was not of the opinion that the recommendations of the Director of the Department, for any reasons, could not be adopted so that to ask him to explain his views, since such recommendations were supported by the confidential reports of the candidates which were before the said Commission.

This disposes also the peculiar submission of counsel for applicant that the decision of the respondent Commission is not duly reasoned simply because the Director of the Department was not asked by the respondent Commission to give reasons as to why he was recommending the interested party. In any case, the decision complained of, as it appears from the material contained in the file, is duly and adequately reasoned.

On the material before me I am satisfied that the respondent Commission in exercising its discretion in the present case, has paid due regard to all relevant considerations and has taken into account all relevant factors, including the recommendation of the Director of the Department concerned and in reaching the decision complained of has not acted in abuse or excess of powers conferred upon it by law. So, there is nothing to warrant interference of this Court with its decision. It was entirely open to it to take the decision complained of.