

1975
April 28

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

—
NIKI
MICHAEL
(No. 1)

NIKI MICHAEL (NO. 1),

Applicant,

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 289/74).

*Public Officers—Promotions—Topographer—Irrigation Engineer—
Merits, qualifications, abilities and experience of candidates—As
well as the recommendations of the Head of Department, the
confidential reports, the six-monthly reports and replies to questions
put to candidates during the interview—Duly taken into consider- 5
ation—Reasonably open to the respondent Commission to decide
as it did—Sub judice decision a duly reasoned one—No abuse or
excess of powers.*

*Public Officers—Promotions—Qualifications—Not for Court to decide
whether a person appointed was qualified in a case where it was 10
reasonably open to the Public Service Commission to find that he
was so qualified.*

*Public Officers—Promotions—Excess or abuse of powers—Burden of
proof that Public Service Commission has acted in excess or abuse
of powers lay with the applicant. 15*

*Public Officers—Promotions—Discretionary powers—Principles on
which Court interferes with the exercise of discretion by the
Public Service Commission.*

Excess or abuse of powers—Burden of establishing.

The applicant complained against the decision of the re- 20
spondent Commission to appoint the interested party to the
post of Topographer-Irrigation Engineer, a first entry post.

5 The qualifications required for the said post are: " University
Diploma or Degree as Topographer Engineer or Irrigation
Engineer or an equivalent qualification. Good knowledge of
English, integrity and good character. Administrative and
organizing ability. Post-graduate experience in Topography
and other water work project will be considered as an advantage".

1975
April 28
—
NIKI
MICHAEL
(No. 1)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

10 The Director of the Water Development Department was
present at the relevant meeting of the Commission; and the
Commission as well as the Director put several questions to all
candidates on matters of general knowledge and on matters
connected with the duties of the post.

15 The Commission, after stating in its relevant minute that
they took into consideration the personal files and the confi-
dential reports on the candidates already in the service, proceeded
to observe that the interested party "gave very satisfactory
replies to questions put to him and generally he proved to be
the best candidate". They then stated that he is "in possession
of a diploma in Agriculture, which he obtained from the Univer-
sity of Salonica in 1965, and an M.Sc. Degree in Irrigation
which he obtained from the University of California (Davis) in
1971. Finally the Commission stated that "after taking into
consideration all the facts appertaining to each one of the candi-
dates and after giving weight to the merits, qualifications, abili-
ties and experience of these candidates as well as to their suit-
ability for appointment to the above post as shown at the inter-
view", the interested party was on the whole the best.

Counsel for the applicant contended:

- 30 (a) That the interested Party did not possess the academic
qualifications laid down by the scheme of service and
that in any case the Commission did not carry out the
sufficiently necessary inquiry into this most material
aspect of the matter.
- 35 (b) That the respondent Commission failed in its par-
amount duty to select the best candidate for the post
and the *sub judice* decision is not duly reasoned.

40 *Held*, (1) The qualifications of the interested party were
before the respondent Commission, and as it is well established,
it is not for the Court to decide whether a person appointed was
qualified in a case where it was reasonably open to the Com-

1975
April 28

—
NIKI
MICHAEL
(NO. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

mission to find that he was so qualified, as in the present case.
(See, *inter alia*, *Papapetrou* and *The Republic*, 2 R.S.C.C. 61).

(2) On the totality of the circumstances, one is led to the conclusion that the Commission carried out a sufficient inquiry regarding the qualifications of the interested party in the presence of the Director of the Water Development Department, an expert on the subject.

(3) This Court will not interfere with the discretion of the Commission unless it is satisfied that it was improperly or wrongly exercised, which is not the case in the circumstances of this recourse, the decision reached being reasonably open to the respondent Commission (See *Koukoullis and Others* and *The Republic*, 3 R.S.C.C. 134 at p. 137).

(4) The applicant upon whom the burden of proof lay has not discharged same by establishing that she had striking superiority over the interested party.

(5) I am satisfied that the *sub judice* decision is duly reasoned and their reasoning, to be found in the minutes, is fully supplemented from the material in the relevant files.

Application dismissed.

Cases referred to:

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

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

Koukoullis and *The Republic*, 3 R.S.C.C. 134, at p. 137;

Neophytou v. The Republic, 1964 C.L.R. 280;

Athos Georghiades v. The Republic (1967) 3 C.L.R. 653 at p. 668.

Recourse.

Recourse against the decision of the respondent Public Service Commission whereby the interested party was seconded to the temporary (D) post of Topographer—Irrigation Engineer in preference and instead of the applicant.

A. Xenophontos, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment* was delivered by:-

1975
April 28

—
NIKI
MICHAEL
(No. 1)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

5 A. LOIZOU, J.: The applicant is a Topographer Engineer specialized in designing and executing distribution systems and water engineering works. She obtained her diploma at the National Technical University of Athens in 1970. Between August and December, 1970 she was employed on daily wages, as a Surveyor, Grade I in the Computer Section of the Department of Lands and Surveys. In March, 1971 she was employed as Topographer—Irrigation Engineer in the Water Development
10 Department where she worked on the raising of Galini—Kalo Chorio Klirou dam and on the design of the distribution system of the Morphou—Tilliria and the Kissonerga—Chloraka projects.

15 The interested party obtained a diploma in Agriculture at the University of Salonica in 1965. In January, 1966 he taught physics at the Paphos Gymnasium until May when he was employed by the Department of Agriculture as an Assistant Agricultural Officer, holding permanently that post since March, 1970.

20 Whilst in the Government Service he was awarded a two-year scholarship for post-graduate studies at the University of Davis of California, where he obtained the degree of Master of Science in Irrigation in 1971. He is also the holder of a certificate of a five-week course on irrigation by the Israel Extension
25 Service and of a certificate on computer programming.

30 His duties, as they appear from the material in the files and in particular the six-monthly reports on officers serving on probation in *exhibit* 3 and the Annual Confidential Reports (*exhibit* 3 (A)), were calculation of crop water requirements and of the irrigable area from dams under the Cyprus Water Planning Project; designing improved systems of irrigation, engaging with the work of Morphou—Tylliria project on water use manners, including special studies of surface water utilization.

35 In response to an advertisement in the official Gazette of the Republic regarding a vacancy in the post of Topographer—Irrigation Engineer, a first entry post, ten applications were submitted. The respondent Commission invited eight of them for interview, among whom were the applicant and the interested party.

* For final judgment on appeal see p. 432 in this Part, *post*.

1975
April 28
—
NIKI
MICHAEL
(No. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

The Director of the Department of Water Development was present at the relevant meeting of the respondent Commission of the 26th February, 1974 when the interviews took place and the *sub judice* decision was reached.

The Commission, as it appears from the relevant minute (enclosure 7), as well as the Director of the Water Development Department, put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post, as shown in the relevant scheme of service (enclosure 3). 5
10

These duties and responsibilities are—the carrying out of research and survey for large and small projects, for the supervision of water resources, irrigation, drainage systems and domestic water works, the preparation of plans for the construction of channels, piping and other irrigation and water work projects, supervision of the construction of the said projects and any other duties which might be assigned to the holder of the post. 15

The required qualifications are—University Diploma or Degree as Topographer Engineer or Irrigation Engineer or an equivalent qualification. Good knowledge of English, integrity and good character. Administrative and organizing ability. Post-graduate experience in Topography and other water work projects will be considered as an advantage. 20

The applicant claims that the interested party did not possess the academic qualifications laid down by the scheme of service and that in any case the Commission did not carry out the sufficiently necessary inquiry into this most material aspect of the matter. 25

The interested party gave evidence before me and stated that the respondent Commission inquired with him as to the courses he took at the Davis University for his Master's Degree and presented to them a list, copy of which has been produced to this Court as *exhibit 6* and which includes, *inter alia*, water distribution systems, water resources engineering, drainage engineering, hydrology, irrigation principles and practices, etc. 30
35

On the totality of the circumstances, one is led to the conclusion that the respondent Commission carried out a sufficient inquiry regarding the qualifications of the interested party in the presence of the Director of the Water Development Depart- 40

ment, an expert on the subject. Also, in forwarding the interested party's application for the post in question, his Head of Department strongly recommended same and described the applicant as hard working, honest, capable and efficient officer.

1975
April 28
—
NIKI
MICHAEL
(No. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

5 The qualifications of the interested party were before the respondent Commission, and as it is well established, it is not for the Court to decide whether a person appointed was qualified in a case where it was reasonably open to the Commission to find that he was so qualified, as the present case is. (Vide
10 *Papapetrou and The Republic*, 2 R.S.C.C., p. 61, *Josephides and The Republic*, 2 R.S.C.C., p. 72, *Koukoullis and The Republic*, 3 R.S.C.C., p. 134, *Neophytou v. The Republic*, 1964 C.L.R., p. 280 and *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653, at p. 668).

15 The last two grounds of law that may conveniently be taken together, are that the respondent Commission failed in its paramount duty to select the best candidate for the post and the *sub judice* decision is not duly reasoned, acting in this way, contrary to the established principles of Administrative Law.

20 The respondent Commission after stating in the relevant minute that it took into consideration the personal files and the confidential reports on the candidates already in the service, says:-

25 “ The Commission observed, during the interview, that Mr. Loucas P. Savvides gave very satisfactory replies to questions put to him and generally he proved to be the best candidate. Mr. Savvides is in possession of a Diploma in Agriculture, which he obtained from the University of
30 Salonica in 1965, and an M. Sc. Degree in Irrigation which he obtained from the University of California (Davis) in 1971.

35 After considering the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving weight to the merits, qualifications, abilities and experience of these candidates as well as to their suitability for appointment to the above post as shown at the interview, the Commission decided that Mr. Loucas P. Savvides was on the whole the best and that he
40 be seconded to the temporary (D) post of Topographer/Irrigation Engineer w.e.f. 15.4.74”.

1975
April 28
—
NIKI
MICHAEL
(No. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

I have already referred to the recommendation of the Head of the Department to be found on the application submitted for the post. In addition, the respondent Commission had before it the confidential reports on the interested party, as well as the six-monthly reports prepared on officers serving on probation, as the interested party was at the time, which reveal a conscientious person of considerable merit, capable, obedient, hard working with excellent efficiency and whose contribution to the work of the Morphou—Tylliria project which was the last one on which he was engaged before his appointment was judged as very useful. 5 10

As to the contention that the respondent Commission has acted in excess or abuse of powers in appointing the interested party, because, allegedly, he was not the most suitable for the post in question, I can only repeat what has been stated in many similar cases, that, “this Court will not interfere with the discretion of the Commission in such a matter, unless it is satisfied that it was improperly or wrongly exercised”, which is not the case in the circumstances of this recourse, the decision reached being reasonably open to the respondent Commission. (Vide *Koukoullis and Others* and *The Republic (supra)*, page 137). 15 20

The applicant upon whom the burden of proof lies, has not discharged same by establishing that she had striking superiority over the interested party.

In conclusion, I am satisfied that the *sub judice* decision is duly reasoned and their reasoning to be found in the minutes, is fully supplemented from the material in the relevant files. 25

For all the above reasons the present recourse fails, but in the circumstances I make no order as to costs.

Application dismissed. 30
No order as to costs.