

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL MORPHIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

MICHAEL  
MORPHIS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Case No. 373/74).

*Public Officers—Promotions—Secondment to post of Junior Assistant Assessor 1st Grade—Merit, qualifications, service, experience of candidates and recommendations by Head of Department duly taken into consideration—Applicant's seniority—One of the factors taken into account but not the decisive one—Because all other factors were not more or less equal due to the existence of the recommendation of the Head of Department in favour of the interested parties—Nothing to warrant interference with the exercise of the discretion of the Public Service Commission.*

*Head of Department—Recommendations—Importance of—Adoption of the recommendations by the Public Service Commission does not mean that they accepted them without carrying out a proper inquiry and without exercising their discretion in the matter.*

This recourse is directed against the decision of the respondent Commission to second the interested parties to the post of Junior Assistant Assessor, 1st Grade.

The applicant was senior to the interested parties, but they were all, more or less, of equal merit and qualifications. On the other hand the interested parties were recommended for promotion by the Head of Department but applicant was not.

Applicant contended: (a) That the respondent Commission failed in their paramount duty to select the best candidate as his seniority should prevail, in view of the fact that all other factors—merit and qualifications—were more or less equal.

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(b) That the Commission should have inquired into the recommendations of the Head of the Department which do not show why the interested parties were recommended in preference and instead of the applicant.

(c) That the Commission should have given cogent reasons for disregarding the applicant's seniority.

*Held*, (1) The recommendations of a Head of Department, especially 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 and it should not be lightly disregarded. (See *Theodossiou* and *The Republic*, 2 R.S.C.C. 44 at p. 48).

(2) The respondent Commission in this case was not of the opinion that the recommendations of the Head of the Department shall be disregarded and consequently invite him to explain fully his view so as to have the full benefit thereof, since the recommendations were supported by the confidential reports of the candidates which were before the respondent Commission.

(3) The adoption of the recommendations of the Head of the Department does not necessarily mean that the respondent Commission accepted them without carrying a proper inquiry and without exercising their discretion in the matter.

(4) The seniority of the applicant, was one of the factors taken into account, but it was not considered as a decisive one; as it appears all other factors were not more or less equal; as there existed, to say the least, the recommendations of the Head of the Department in favour of the two interested parties. In the circumstances there were cogent reasons for disregarding the seniority of the applicant.

*Application dismissed.*

Cases referred to:

*Theodossiou* and *The Republic*, 2 R.S.C.C. 44 at pp. 47, '48;

*Partellides v. The Republic* (1969) 3 C.L.R. 480 at p. 483.

**Recourse.**

Recourse against the decision of the respondent whereby the interested parties were seconded to the permanent post of

Junior Assistant Assessor, 1st Grade, in preference and instead of the applicant.

A. Eftychiou, for the applicant.

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

5 *Cur. adv. vult.*

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The facts sufficiently appear in the judgment of the Court delivered by:-

10 A. LOIZOU, J. The applicant, by the present recourse, challenges the validity of the secondment to the permanent post of Junior Assistant Assessor, 1st Grade of the interested parties Andreas Karavalis and Chrystalla S. Constantinou.

15 The post of Junior Assistant Assessor, 1st Grade, is a promotion post from the immediately lower post of Junior Assistant Assessor, 2nd Grade, which, latter post, the applicant and the two interested parties hold permanently since the 1st February, 1972. In view of this simultaneous promotion of all three parties, their seniority has to be determined according to their previous seniority.

20 The applicant was first appointed in the Government Service as a Temporary Clerical Assistant in 1961 and was seconded to the post of Junior Assistant Assessor, 2nd Grade, on the 15th December, 1970.

25 Interested party Karavalis entered the Government Service as a Temporary Clerical Assistant in 1966 and became a Junior Assistant Assessor, 2nd Grade, on an unestablished basis, on the 1st November, 1968.

30 Interested party Constantinou, entered the Government Service as a Temporary Clerical Assistant in 1970 and became a Junior Assistant Assessor, 2nd Grade on an unestablished basis on the 15th December, 1970. Their qualifications are practically the same.

The filling of vacancies in the Department of Inland Revenue was considered by the respondent Commission on the 10th April, 1974 and the relevant minute reads as follows:-

35 “ Under the relevant scheme of service, candidates must have passed before promotion the examination in General Orders and Intermediate Examination in book-keeping of

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the L.C.C. and the Departmental Examination in Income Tax Law and Practice or in Estate Duty and Practice.

The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the lower post of Junior Assistant Assessor, 2nd Grade, as reflected in their Personal Files and in their Annual Confidential Reports. 5

The Director of the Department of Inland Revenue stated that he considered Mr. A. Karavalis and Miss Chrystalla Constantinou as the best, their services have been very satisfactory and recommended them for the 1st Grade post. 10

After considering all the above and after giving due consideration to the merits, qualifications, seniority, service and experience of all the candidates, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the recommendations made by the Director of the Department, the Commission decided that the following officers were on the whole the best and that they be seconded to the permanent post of Junior Assistant Assessor, 1st Grade w.e.f. 1.5.74". 15 20

In the confidential report for the year 1970 the applicant is described as a promising officer and rated as very good on all ratable items. In the report for the year 1971 he is described as an employee with special personality and that after some experience he will prove to be very reliable, and again he is rated as very good. For the year 1972 his good personality is pointed out and he is rated as very good in seven out of the ten ratable items and excellent in the remaining three. For the year 1973 he is rated as very good for nine, out of the ten ratable items and excellent regarding the item of courtesy and dealing with the public. The reporting officer on the last three confidential reports is Mr. Zembylas, Principal Assessor in the Department of Inland Revenue. 25 30

The interested party Karavalis is described in the confidential report for the year 1970 as a hard-working officer and was strongly recommended for promotion. Out of ten ratable items he is rated as very good on six, excellent on three and average on one. The countersigning officer, the Assistant Director of the Department, Mr. Strovolidis who is the counter- 35 40

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signing officer on all confidential reports for all concerned in this case, expresses the view that the aforesaid assessment is a conservative one for this officer. For the year 1971 he is again rated as very good on five out of the ten ratable items, good in one, excellent in three and average in one. The same picture appears in the 1972 and 1973 reports. The first three reports are prepared by Mr. Karakannas, a Principal Assessor and the last one by Mr. Smyrnios, a Senior Assessor.

Interested party Chrystalla Constantinou is described in the confidential report for the year 1970 as a very diligent officer and rated as very good in six out of the ten ratable items, excellent in two and average in one. There is no report for the year 1972, but in the 1973 report she is described as a very good officer and recommended for promotion and rated as very good in five out of the ten ratable items, excellent in four and average in one. The reporting officer for the first year is Mr. Karakannas and for the second year Mr. Zevlaris, a Principal Assessor.

It has been the case for the applicant that the respondent Commission failed in their paramount duty to select the best candidate for the post, as the applicant's seniority should prevail, in view of the fact that all other factors—merit and qualifications—were more or less equal. Furthermore, they should have inquired into the recommendations of the Head of the Department which do not show why the interested parties were recommended in preference and instead of the applicant. In any event, the respondent Commission should have given cogent reasons for disregarding the applicant's seniority. In support of the aforesaid proposition reference has been made to the case of *Theodossiou* and *The Republic*, 2 R.S.C.C., 44 at pp. 47 and 48 and *Partellides* and *The Republic* (1969) 3 C.L.R., 480 at p. 483.

As it appears from the relevant minute hereinabove set out, in exercising their discretion the respondent Commission took into consideration the merits, qualifications, service and experience of all the candidates, as reflected in their personal files and their annual confidential reports and had regard to the recommendations made by the Head of the Department. No doubt, the seniority of the applicant, was one of the factors taken into account, but it was not considered as a decisive one; as it appears all other factors were not more or less equal, as there existed to say the least, the recommendations of the

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Head of the Department in favour of the two interested parties whom he considered as the best, their services, in his view, being very satisfactory.

In relation to promotions, importance has always been attached by the Case Law of this Court to the recommendations made by Heads of Departments, and rightly so, as, by virtue of their position and the responsibility it entails, they are best suited for this task which is of such importance to the smooth functioning of the Public Service. As stated in the *Theodossiou's* case (*supra*) at p. 48, the recommendations of a Head of a Department, especially 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 and it should not be lightly disregarded. Obviously, the respondent Commission in this case was not of the opinion that the recommendations of the Head of the Department shall be disregarded and consequently invite him to explain fully his views so as to have the full benefit thereof, since the recommendations were supported by the confidential reports of the candidates which were before the respondent Commission. The adoption of the recommendation of the Head of the Department does not necessarily mean that the respondent Commission accepted them without carrying out a proper inquiry and without exercising their discretion in the matter. In the circumstances, there are cogent reasons for disregarding the seniority of the applicant.

On the material before me I am satisfied that the respondent Commission has not exceeded the limits of their discretion; they have paid due regard to all relevant considerations and have taken into account all relevant factors, including the recommendations of the Head of the Department concerned, and in reaching the decision complained of they have not acted in abuse or in excess of powers. So, there is nothing to warrant interference of this Court with the exercise of the discretion of the respondent Commission.

For the reasons stated above, this recourse fails, but there will be no order as to costs.

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