

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

1975
Dec. 1

ANDREAS HJIGREGORIOU,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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ANDREAS
HJIGREGORIOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Revisional Jurisdiction Appeal No. 158).

*Public Officers—Promotions—Waiting list—Reconsideration by re-
spondent Commission of earlier decision whereby it had selected
appellant as the one to be promoted next in case of a vacancy—
A course which was quite properly adopted in the circumstances—
5 Latter decision a duly reasoned one—Head of Department re-
commending interested party on second occasion as being the best
candidate—Such recommendation emanating from same Director
who had on the earlier occasion recommended appellant as the
best—Most recent confidential reports, which were not before
10 the Commission on earlier occasion, showed that interested
party was better than the appellant—Even though some of earlier
reports could, perhaps, be taken as favouring appellant, Court of
Appeal cannot say that on the whole, it is satisfied that the Com-
mission has acted, in the circumstances, in excess of its powers.*

15 *Public Officers—Promotions—Head of Department—Recommendations before Public Service Commission—Fact alone that he was not the countersigning officer in respect of the annual confidential reports does not establish that he did not have adequate knowledge about merits of candidates—In accordance with presumption of
20 regularity Court has to assume that he consulted the countersigning officer as regards merits of the candidates before he went to the Commission's meeting.*

25 *Public Officers—Promotions—Annual confidential reports—Need to look at past annual confidential reports and especially at most recent ones, in order to evaluate performance of candidates during their careers as a whole.*

Waiting List—Departure from.

Administrative Law—Presumption of regularity.

The appellant complains against the dismissal of his recourse which was directed against the secondment of the interested party to the post of Assessor in the Inland Revenue Department.

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Counsel for the appellant contended:

- (a) That the decision of the Commission is not duly reasoned in that though the Commission had on an earlier occasion, (on May 10, 1973) when selecting candidates for promotion to the post of assessor, compared both the appellant and the interested party and had decided, on a recommendation of the Director of the Department concerned, that the appellant was the person to be promoted if there would come to exist a further vacancy, nevertheless it did not give sufficient reasons in its *sub judice* decision, of April 10, 1974 as to why it decided then to depart from its earlier decision and second the interested party instead of the appellant.
- (b) That the Director of the Department, who made the recommendations before the Public Service Commission, could not have had himself the necessary knowledge about the merits of the candidates because of the fact that he had delegated to the Deputy Director of his Department his powers of acting as countersigning officer in connection with the annual confidential reports concerning such candidates.
- (c) That the Commission erroneously based itself, in selecting the interested party, on only the most recent of the annual confidential reports, namely those for the year 1973.

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Held, (I) with regard to contention (a) above:

(1) The reconsideration by the Commission of its earlier decision was a course which was quite properly adopted in the circumstances, in view especially of the fact that the composition of the Commission had changed in the meantime, through the appointment of a new member who was not holding office on the earlier occasion.

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5 (2) The reasons given by the Commission for reaching a different decision after the reconsideration of the matter (vide pp. 480–481 of the judgment *post*) cannot be regarded as being insufficient or defective so as to warrant the conclusion that the Commission's decision is not duly reasoned.

10 (3) On the whole, we are not satisfied—(and the burden was on the appellant to satisfy us)—that the Commission has acted, in the circumstances of this particular case, in excess or abuse of its powers in deciding to choose, as most suitable, the interested party (see p. 482 of the judgment *post*).

Held, (II) with regard to contention (b) above:

15 The fact alone that the Director of the Department was not the countersigning officer in respect of the 1973 annual confidential reports does not establish that the Director did not have adequate knowledge about the merits of the candidates when he expressed his views before the Commission; because, in accordance with the presumption of regularity, we have to assume that he consulted the Deputy Director as regards the merits of the candidates before he went to the Commission's meeting where he was to make his recommendations. (See pp. 20 482–483 of the judgment *post*).

Held, (III) with regard to contention (c) above:

25 Though it is necessary, in deciding on the merits of candidates, to look at past annual confidential reports, and especially at the most recent ones, in order to evaluate the performance of the candidates during their careers as a whole, in this case we cannot accept that it was only the last reports, for 1973, which were relied on, to the exclusion of all the others (See p. 483 of the judgment *post*).

30 *Appeal dismissed.*

Appeal.

35 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 28th April, 1975 (Revisional Jurisdiction Case No. 364/74) whereby a recourse against the secondment of the interested party to the temporary post of Assessor in the Inland Revenue Department was dismissed.

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K. Talarides, for the appellant.

A. M. Angelides, for the respondent.

Cur. adv. vult.

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

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TRIANTAFYLLIDES, P.: This is an appeal against the dismissal* of a recourse made by the appellant against the secondment of a certain A. Zarkas (referred to herein as the “interested party”) to the temporary post of Assessor in the Inland Revenue Department; the said secondment was published in the official Gazette of July 12, 1974.

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The relevant decision of the respondent Public Service Commission was taken on April 10, 1974.

The first submission of counsel for the appellant has been that the decision of the Commission is not duly reasoned in that though the Commission had, on an earlier occasion (on May 10, 1973), when selecting candidates for promotion to the post of Assessor, compared both the appellant and the interested party and had decided, on a recommendation of the Director of the Department concerned, Mr. A. Apostolides, that the appellant was the person to be promoted if there would come to exist a further vacancy, nevertheless it did not give sufficient reasons in its *sub judice* decision, of April 10, 1974, as to why it decided then to depart from its earlier decision and second the interested party instead of the appellant.

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The relevant parts of the Commission’s minutes, for its meeting of April 10, 1974, read as follows:—

“The Commission at its meeting of 10.5.73 (item 1(d) of the relevant minutes refers) decided, *inter alia*, that Mr. Andreas Hji Gregoriou be placed on the waiting list for appointment to the post of Assessor in due course.

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In view of the long time that has elapsed since the placing on the waiting list of the officer referred to above and as one of the Members of the Commission was not holding office when Mr. Hji Gregoriou was placed on the waiting list in May, 1973, and as in the meantime another Annual

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* See *Georgiades and Another v. Republic* at p. 143 in this Part *ante*.

Confidential Report has been submitted in respect of all the candidates, the Commission decided to consider the matter afresh.

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The Director of the Department added that, on merits,
5 he considered Mr. A.D. Zarkas as the best; his general performance in his work is higher than that of the other candidates; he is in a position to carry out higher duties with ease. In view of the above, the Director of the Department recommended Mr. Zarkas for promotion.

10 The Commission observed that in the last Annual Confidential Report for the year 1973, Mr. Zarkas was assessed mostly as 'very good' and in some cases 'excellent': his 'accuracy' and 'devotion to duty' were assessed as 'excellent'
15 In the case of Mr. A. Hji Gregoriou, who was placed on the waiting list in May, 1973, the said officer was assessed mostly as 'very good'; his 'adaptability' and 'initiative' was assessed as 'good'.

20 After considering all the above and after giving due consideration to the merits, qualifications, seniority, service and experience of all the officers serving in the post of Assistant Assessor, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the recommendation made by the Director of the Department, the Commission decided that Mr. A. D. Zarkas was
25 on the whole the best and he be seconded to the temporary (Ord.) post of Assessor (Income Tax) w.e.f. 1.5.74".

30 In relation to the above extracts from the minutes of the Commission we have been invited by counsel for the appellant to bear in mind that Mr. Apostolides could not have had himself the necessary knowledge about the merits of the candidates because of the fact that he had delegated to the Deputy Director of his Department his powers of acting as countersigning officer in connection with the annual confidential reports concerning such candidates.

35 Counsel for the appellant has not disputed the right of the Commission to reconsider its earlier decision by which it had selected the appellant as the one to be promoted next in case of a vacancy; and, indeed, we think that, as was pointed out too by the learned trial Judge, this was a course which was quite

properly adopted in the circumstances, in view especially of the fact that the composition of the Commission had changed in the meantime, through the appointment of a new member who was not holding office on the earlier occasion.

As it appears from its relevant minutes the Commission gave its reasons for reaching a different decision after the reconsideration of the matter of who was the most suitable candidate on April 10, 1974; and such reasons cannot be regarded as being insufficient or defective so as to warrant the conclusion that the Commission's decision is not duly reasoned.

The Commission had before it, on the second occasion, a recommendation of the Director of the Department concerned that the interested party was the best candidate; and it was a recommendation emanating from the same Director who had, on the earlier occasion, a year before, recommended the appellant as being the best; this shows that there must have occurred, in the estimation of the Director, a change regarding the merits of the appellant and the interested party. The Commission had, also, before it, on April 10, 1974, the annual confidential reports for 1973, which were not before it on May 10, 1973, and which indicated that the most recent evaluation of the candidates showed that the interested party was better than the appellant; and even though some earlier reports could, perhaps, be taken as favouring the appellant, we cannot say that, on the whole, we are satisfied—(and the burden was on the appellant to satisfy us)—that the Commission has acted, in the circumstances of this particular case, in excess or abuse of its powers in deciding to choose, as most suitable, the interested party.

We have given due weight to the factor that it was not the Director, but his Deputy, who was the countersigning officer in respect of the 1973 annual confidential reports and in respect of reports for earlier years; but this fact alone does not establish that the Director did not have adequate knowledge about the merits of the candidates when he expressed his views before the Commission; because, in accordance with the presumption of regularity, we have to assume that he consulted the Deputy Director as regards the merits of the candidates before he went to the Commission's meeting where he was to make his recommendations; this applies equally well in relation to both the first occasion, in 1973, when the appellant was recommended by him as being the best, and to the second occasion, when the interested party was recommended as being the best; and the

fact that, as is recorded in the minutes of the Commission, on the latter occasion the Director stated specifically that the interested party was, as regards general performance at his work, better than the other candidates, shows that the Director
5 had sufficient knowledge of the merits of each particular candidate.

Another point raised by counsel for the appellant is that the Commission erroneously based itself, in selecting the interested party, on only the most recent of the annual confidential reports
10 in respect of the candidates concerned, namely those for the year 1973.

We do not think that this argument of counsel for the appellant is well-founded: It is true that the Commission has referred expressly, and in some detail, to the contents of the 1973
15 reports, but not only were all the reports for past years, in respect of the candidates, before the Commission, but it was clearly stated in the minutes of the Commission that account was taken of the merits of the candidates as they appeared from, *inter alia*, "their Annual Confidential Reports"; and this
20 expression, which was used after reference had been made in particular to the 1973 reports must be taken to include the reports before 1973 as well.

We do agree with both the learned trial Judge and counsel for the appellant that it is necessary, in deciding on the merits
25 of candidates, to look at past annual confidential reports, and especially at the most recent ones, in order to evaluate the performance of the candidates during their careers as a whole. But, in this case, as we have already said, we cannot accept that it was only the last reports, for 1973, which were relied on,
30 to the exclusion of all the others.

For all the foregoing reasons this appeal is dismissed; but, we are not prepared to make an order as to costs against the appellant.

*Appeal dismissed. No order
as to costs.*