

1978 December 9

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEANTHIS CLEANTHOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 293/78).

*Public Officers—Qualifications required for appointment or promotion—
Weight and effect of higher qualifications than those so required.*

*Public Officers — Promotions — Seniority — “Unestablished officer”
—“Temporary officer”—Distinction.*

Words and phrases—“Unestablished officer”—“Temporary officer”. 5

*Public Officers—Promotions—Confidential reports—Emanating from
different reporting and countersigning officers—Approach of the
Court—Possible that different weight may be given by a reporting
officer, in deciding the merit of a candidate, in the valuation of the
different rateable items in the confidential reports. 10*

*Public Officers—Promotions—Posts of Land Clerical Assistant and
Land Clerk 2nd Grade in the Lands and Surveys Department—
Qualifications—Applicant possessing higher qualifications than
those required by the scheme of service—Seniority—Applicant an
“unestablished officer” and some of the interested parties “tem- 15
porary officers”—Merit—Confidential reports—Applicant some-
how better reported on certain rateable items—Interested parties
recommended for promotion by Head of Department but applicant
not so recommended—Sub judice decisions reasonably open to 20
the respondent Commission on the totality of all relevant factors
—Applicant has failed to establish striking superiority as against
any of those selected—Mere superiority not enough.*

*Public Officers—Promotions—Principles on which Court intervenes—
An applicant has to establish striking superiority as against any
one of those selected—Mere superiority is not enough.*

5 The applicant in this recourse challenged the validity of the
decision of the respondent Commission to emplace the 22
interested parties on the permanent establishment as Land
Clerical Assistants and the validity of a subsequent decision to
second the first 21 interested parties to the temporary develop-
10 ment post of Land Clerk 2nd Grade, in the Department of
Lands and Surveys, in preference and instead of himself.

In addition to the qualifications* required under the schemes
of service the applicant possessed a Diploma in Law from
Salonica University. His other qualifications were more or
less the same as those of the interested parties with the exception
15 of interested party No. 10 who passed the intermediate examina-
tions in Law of the University of London.

The 21 interested parties who were seconded to the above
2nd Grade post were recommended for promotion by the Head
of Department but applicant was not recommended.

20 Applicant contended that:

- (a) Though a Law Degree was not a required qualification
under the scheme of service, yet it should be considered
as an additional advantage because academic qualifi-
cations were indispensable in the highest posts and an
25 additional advantage in other senior posts in the same
department.
- (b) Though applicant had equal seniority with the first 13
interested parties he was senior to the remaining ones.
- (c) Applicant had better confidential reports than the
30 interested parties because he has been rated with more
rateable items as "excellent" than the other candidates.

Regarding the question of seniority the applicant was ap-
pointed as a Land Clerical Assistant on an unestablished basis
on the 1.12.1971 together with the said first 13 interested parties,

* The qualifications required under the schemes of service are:

- (i) Leaving certificate of a six-year secondary school with a good knowledge of Greek (for Greek candidates) or Turkish (for Turkish candidates) and/or English or mathematics.
- (ii) Adaptability to village life and liking for outdoor work.

whereas on the same date interested parties Nos. 14-20 and 22, were appointed as temporary Land Clerical Assistants and appointed as unestablished on the 1.3.1972. Interested party No. 21, though on daily wages as from 1.10.1970, was appointed as unestablished on 1.8.1974. He was a much older man than any other candidate, and he was a late entrant in the Government Service. 5

The confidential reports were not prepared by the same reporting and countersigning officers; and applicant appeared in some respects to have been somehow better reported on certain rateable items with higher rates than some of the interested parties. 10

Held, (1) that a qualification cannot be considered as an advantage over other candidates if it is not expressly stated to be so by the relevant schemes of service; and that the possession of higher qualifications should not weigh so greatly in the mind of the Public Service Commission but they should decide in selecting the best candidate on the totality of all circumstances before them (*Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at pp. 427 and 428 and *Ioannou v. Republic* (1976) 12 J.S.C. 1804 at p. 1809 et seq. *applied*). 15 20

(2) That an unestablished officer is one holding a permanent post in a temporary capacity, whereas a temporary officer is one holding as such a temporary post; that they are all temporary officers; and that though there appears to exist an element of seniority, through the first being preferred to hold temporary posts as against the second who were appointed to temporary posts, in the overall picture, however, their length of service and experience derived therefrom is not obviously any different as they all perform the duties pertaining to identical posts. 25 30

(3) That although the applicant in arguing his case has presented a table showing that he has been rated with more rateable items as excellent than the other candidates, in such instances one should not lose sight of the fact (a) that it is possible that different weight may be given in deciding the merit of a candidate in the valuation of the different rateable items. For example one may be rated as excellent in the ability to cooperate with colleagues, whereas somebody else as good or very good on that item, and another may be rated as excellent on the item of competence in present work, whereas the other may be rated as good on that item; (b) not all reports were made 35 40

by the same reporting and countersigning officers (see *Georghiou v. Republic* (1977) 9–10 J.S.C. 1476 at p. 1483 regarding the approach under (b) above).

5 (4) That in so far as the decision relating to the secondment to the post of Land Clerk 2nd Grade is concerned there exists the recommendation of the Head of Department in favour of the interested parties.

10 (5) That considering all the circumstances of the case and on the totality of all relevant factors both *sub judice* decisions were reasonably open to the respondent Commission; that the respondent Commission did not fail in their paramount duty to select the candidates most suitable for the post in question and this Court cannot intervene in order to set aside such decisions, unless the applicant of a recourse before it, satisfies it
15 that he was an eligible candidate strikingly superior to those or anyone of those selected; that though the applicant may appear in some respects to have been somehow better reported on certain rateable items with higher rates than some of the interested parties, this Court has in no way been satisfied that the applicant
20 has established striking superiority as against anyone of them, mere superiority not being enough; and that, accordingly, the present recourse will be dismissed.

Application dismissed.

Cases referred to:

- 25 *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at pp. 427 and 428;
Ioannou v. The Republic (1976) 12 J.S.C. 1804 at p. 1809 et seq. (to be reported in (1976) 3 C.L.R.);
30 *Georghiou v. The Republic* (1977) 9–10 J.S.C. 1476 at p. 1483 (to be reported in (1976) 3 C.L.R.)

Recourse.

35 Recourse against the decision of the respondent Commission to emplace on the permanent establishment, as Land Clerical Assistants. in the Department of Lands and Surveys, the 22 interested parties and against the decision to second to the post of Land Clerk 2nd Grade the first 21 interested parties, in preference and instead of the applicant.

Applicant appeared in person.

G. Constantinou (Miss), for the respondent.

A. LOIZOU J. read the following judgment. By the present recourse the applicant prays for a declaration of the Court:-

- (a) That the act and/or decision of the respondent Commission to emplace as from 1.4.1978 the 22 interested parties, whose names are set out in Appendix 'A' to the application, on the permanent establishment as Land Clerical Assistants who were serving until then on an unestablished basis, instead of the applicant, is void *ab initio* and of no legal effect whatsoever. 5
- (b) That the act and/or decision of the respondent Commission to second to the temporary development post of Land Clerk, 2nd Grade, w.e.f. 1.7.1978 of the first 21 interested parties instead of the applicant, is void *ab initio* and of no legal effect whatsoever. 10
- (c) That the omission of the respondent Commission to emplace the applicant in the permanent post of Land Clerical Assistant and subsequently to promote him to the post of Land Clerk, 2nd Grade, is unlawful and void and what has been omitted should be performed." 15

The respondent Commission at its meeting of the 15th December, 1977, (*exhibit* 1 – enclosure 1) considered the question of the emplacement of 28 Land Clerical Assistants serving on an unestablished basis on the permanent establishment. The Commission considered, as it states in its relevant minute, the merits, qualifications, seniority, service and experience of all the officers serving on an unestablished basis in the permanent post of Land Clerical Assistants as reflected in their personal files and in their confidential reports and after hearing the Director of the Department of Lands and Surveys who stated that the service of all the said officers had been satisfactory, came to the conclusion that the aforementioned 22 interested parties were on the whole the best and decided accordingly. It further felt that the remaining officers should remain on an unestablished basis in order to be tried more and prove their abilities for emplacement on the permanent establishment. 20
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The respondent Commission then on the 9th June, 1978, proceeded with the filling of 23 vacancies in the temporary development post of Land Clerk, 2nd Grade, which is a promotion post from the post of Land Clerical Assistant. The relevant minute (*exhibit* 1, enclosure 6) reads as follows:- 40

“ The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Land Clerical Assistant, as reflected in their Personal Files and in their Annual Confidential Reports.

5 There were 55 officers serving in the post of Land Clerical Assistant; 26 of these officers were serving on a permanent basis, another 26 officers were serving on an unestablished basis and the remaining 3 were serving in the temporary (Dev.) post of Land Clerical Assistant.

10 The Director of the Department of Lands and Surveys stated that, having regard to the merits and abilities of all the candidates, he considered Messrs. Themistoklis Themistokleous, Andreas Trittis, George Sterghides, Michael Antoniou, Omeros Hji Savvas, Athinodoros Christoforou,
15 Stelios Stylianou, Andreas Symeou, Stelios Hji Elisseou, Nicolaos Stephanou, Nicos Michael, Kyriacos Christoforou, Spyros Antoniadis, Nicolaos Shiakallis, Andreas Pavlides, Stylianos Charalambous, Tassos Philippou, Theodoulos Pavlou, Evangelos Papastavrou, Andreas Georghiou and
20 Kokos Georghiadis as the best, their services had been very satisfactory and recommended them for promotion to the post of Land Clerk, 2nd Grade.

 After considering all the above and after taking into consideration all the facts appertaining to each one of the
25 candidates and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, as shown in their Personal Files and in their Annual Confidential Reports, and having regard to the views expressed as well as to the recommendations made by the
30 Director of the Department of Lands and Surveys, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be seconded to the temporary (Dev.) post of Land Clerk, 2nd
35 Grade, w.e.f. 1.7.78.”

 After setting out the names of the candidates selected, the respondent Commission concluded by saying that the remaining vacancies in the temporary development post of Land Clerk, 2nd Grade, should be left unfilled for the time being.

The grounds of law relied upon by the applicant, who is a pupil advocate and has argued his case himself, are the following:-

- (1) The decision and/or decisions of the respondent Commission was taken in excess and/or abuse of power and contrary to the public interest, the excess and/or abuse being that the applicant is superior to all the interested parties in academic qualifications, seniority in the service of interested parties 14-22 in Schedule 'A' to the Application, and 14-21 in Schedule 'B', and has equal seniority with all the remaining interested parties. 5 10
- (2) The decision of the respondent Commission is wrong as the academic qualifications of the applicant which are considered by the schemes of service as indispensable for higher posts and for other posts as additional and basic qualifications, were ignored. 15
- (3) The decision and/or decisions of the respondent Commission constitute discrimination against the applicant as they were taken in breach of the duty to select the best candidate. 20

The qualifications required under the schemes of service (*exhibit 1, enclosure 5*) are:-

- (i) Leaving certificate of a six-year secondary school with a good knowledge of Greek (for Greek candidates) or Turkish (for Turkish candidates) and/or English or mathematics. 25
- (ii) Adaptability to village life and liking for outdoor work.

An exception, however, is made for public servants who were appointed in the public service before the 1st December, 1961, either under a permanent or temporary capacity and/or for those in the public service on a monthly basis on the 1st February, 1968. In such cases officers possessing a leaving certificate from a five-year secondary school or other equivalent qualification or, though not possessing such school leaving certificate or qualification, have general education of a level considered as equivalent to the level of a five-year secondary education school, could be treated as suitable for appointment or promotion if they possessed the remaining qualifications required by the scheme. 30 35

The applicant in addition to the required qualifications, obtained in 1977 a Diploma in Law from Salonica University. His other qualifications being more or less the same as those of the interested parties with the exception of interested party
5 No. 10, Andreas Symeou who passed the intermediate examinations in Law of the University of London.

The applicant in arguing his case urged that though a Law Degree was not a required qualification under the scheme for the post in question, yet it should be considered as an additional
10 advantage, as academic qualifications were indispensable in the highest posts and an additional advantage in other senior posts in the said Department (see *exhibit 2*). The question of qualifications was, in his submission, connected with the question of merit. He argued that a Lands Officer who has an academic
15 knowledge of the law could perform his duties better than one who did not possess such qualification. Characteristic of such usefulness being the fact that officers promoted to the post of Land Clerk, 2nd Grade, are required to attend a three months' course on the Immovable Property (Tenure, Valuation and
20 Registration) Law, Cap. 224, and on that part of Wills and Succession Law, Cap. 195 which deals with the question of succession and also on other laws.

Admittedly this is an attractive argument, but the question of a candidate possessing academic qualifications, that is to say,
25 higher qualifications than those required by the schemes of service, has already been dealt with in the case of *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R., p. 417, at pp. 427 and 428, by Hadjianastassiou, J., who said that "that reason alone (higher qualifications) should not weigh so greatly in the
30 mind of the Committee, but they should decide in selecting the best candidate on the totality of all circumstances before them. Had it been otherwise, I would be inclined to the view that there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the
35 candidates there was a person with higher qualifications". This approach was followed by me in the case of *Ioannou v. The Republic* (1976) 12 J.S.C., p. 1804*, at p. 1809 et seq.

In my view a qualification cannot be considered as an advant-

* To be reported in (1976) 3 C.L.R.

age over other candidates if it is not expressly stated to be so by the relevant schemes of service.

The applicant will, undoubtedly, reap the benefits of his academic achievement when he will be a candidate for a post that demands such a qualification.

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The next factor commented upon by the applicant is that of seniority. He asserted that he has equal seniority with the first 13 interested parties on Appendix 'A' and senior to the remaining ones. The applicant was appointed as a Land Clerical Assistant on an unestablished basis on the 1.12.1971 together with the said first 13 interested parties, whereas on the same date interested parties Nos. 14, 15, 16, 17, 18, 19, 20 and 22, were appointed as temporary Land Clerical Assistants and appointed as unestablished on the 1.3.1972. Interested party 21, though on daily wages as from 1.10.1970, was appointed as unestablished on 1.8.1974. He is a much older man than any other candidate, and he was a late entrant in the Government Service.

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An unestablished officer is one holding a permanent post in a temporary capacity, whereas a temporary officer is one holding as such a temporary post. They are all temporary officers, yet, there appears to exist an element of seniority, through the first being preferred to hold temporary posts as against the second who were appointed to temporary posts. In the overall picture however, their length of service and experience derived therefrom is not obviously any different as they all perform the duties pertaining to identical posts.

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The confidential reports on the applicant and the interested parties are more or less the same. Although the applicant in arguing his case has presented a table showing that he has been rated with more rateable items as excellent than the other candidates, in such instances one should not lose sight of the fact (a) that it is possible that different weight may be given in deciding the merit of a candidate in the valuation of the different rateable items. For example one may be rated as excellent in the ability to cooperate with colleagues, whereas somebody else as good or very good on that item, and another may be rated as excellent on the item of competence in present work, whereas the other may be rated as good on that item; (b) not

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all reports were made by the same reporting and countersigning officers.

5 The approach under (b) above has been adopted by the Full Bench in *Georghiou v. The Republic* (1977) 9-10 J.S.C. p. 1476* at p. 1483 by reference to the previous Case Law of the Court where it was stated:- "We do agree that it is open to the Commission as well as to an administrative Court trying a recourse to give due weight to the fact that different reporting officers cannot be treated as having made their assessments by using
10 identical standards and that therefore some allowance may have to be made for possible differences in the valuation of various candidates when they have not been reported on by the same reporting or countersigning officer."

15 Moreover in the present case there exists as far as the *sub-judice* decision of the 9th June, 1978 is concerned, whereby the interested parties were seconded to the temporary development post, of Land Clerk, 2nd Grade, the recommendation of the head of the department recommending for promotion those selected eventually by the respondent Commission who were
20 stated to be as the best, having regard to the merits and abilities of all the candidates and that their services had been very satisfactory.

25 I do not intend to embark on an analysis of the confidential reports of the parties, by doing that I will be unnecessarily making this judgment longer. It is sufficient for me to say that considering all the circumstances of the case and on the totality of all relevant factors both *sub-judice* decisions were reasonably open to the respondent Commission. The respondent Commission did not fail in their paramount duty to select
30 the candidates most suitable for the post in question and this Court cannot intervene in order to set aside such decisions, unless the applicant of a recourse before it, satisfies it that he was an eligible candidate strikingly superior to those or anyone of those selected. It is only in such a case that the administrative organ concerned is deemed to have exceeded the limits of
35 its discretion and therefore to have acted in excess or abuse of its powers. The applicant may appear in some respects to have been somehow better reported on certain rateable items with

* To be reported in (1976) 3 C.L.R.

higher rates than some of the interested parties, but in no way I have been satisfied that the applicant has established striking superiority as against anyone of them, mere superiority not being enough. By way of example it may be pointed out here that in the case of interested party No. 21 Kokos Georghiades, who in a sense is the most junior of them all the countersigning officer raises the assessment of four rateable items in the reports for the years 1976 and 1977 from very good to excellent and strongly recommends him therein to be promoted in the first instance, both as he deserves it and because he is nearing to be pensioned off and it was only fair that he became permanent.

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

Application dismissed.

No order as to costs.