

1976 August 23

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSOSTOMOS ANDREOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION AND ANOTHER,
Respondents.

(Case No. 103/72).

Public Officers—Schemes of service—Interpretation and application of—Within the discretion of the appointing organ—Principles on which Court will interfere with the exercise of such discretion.

5 *Public Officers—Appointments and promotions—“First entry and promotion” post—Rule that preference should be given for those already in the service cannot override the more fundamental principle that the most suitable candidate has to be selected for appointment or promotion—But if an outsider to the service is appointed then adequate reasons must be given for adopting such*
10 *a course—Reasons that led the respondent Commission to prefer the interested party adequately stated and of such a nature as to render it reasonably open to the Commission to act as it did.*

15 *Public Officers—Schemes of service—Qualifications—Open to an appointing authority to take into account any other qualification of a candidate which is of such a nature as to render him the most suitable candidate for appointment or promotion.*

20 *Public Officers—Appointments and promotions—Selection of the “most suitable” candidate—There cannot be excluded from the notion of “the most suitable” the essential consideration of how best will be served the interests of the specific branch of the public service in which a vacant post is to be filled.*

Public Officers—Appointments and promotions—Head of Department—

Recommendations—Have to be given due weight, especially if the post concerned involves duties requiring specialized knowledge—“First entry and promotion” post—Interested party, though an outsider to the service in the strict technical sense, not unknown to the Head of Department whose recommendations could be safely relied on by the Commission. 5

The applicant in this recourse complains against the appointment of the interested party to the “first entry and promotion” post of Statistics Officer, in the Department of Statistics and Research. At the material time the applicant was holding the post of Senior Statistics Assistant, having been appointed to it on July 15, 1969, and the interested party, who was holding the post of Master of Mathematics in Secondary Education, had been seconded to the Department concerned as from September 1, 1971, after he had attended a post-graduate course in relation to, mainly, Vital Health Statistics, on a scholarship granted to him by the World Health Organization. He had attended this course, which included additional classes in Medical Statistics, at the London School of Hygiene & Tropical Medicine of the University of London, from September 1970 to May 1971, and he had been, also, attached to the Office of Population Censuses and Surveys, in London, for an extended training programme which lasted from January 1971 till June 1971. 10 15 25

In forwarding the applications of the interested party and the applicant to the respondent Commission, the Director of the Department of Statistics and Research stated in writing the following:— 25

“ Mr. Pericleous has been awarded a nine-month fellowship by the World Health Organization for a post-graduate specialization in Vital, Health and General Demographic Statistics. He has already, through visits, familiarized himself with the statistical information in all Government Hospitals and Rural Health Centres. He seems keen and meticulous in his work and is capable of constructive suggestions. In fact he is preparing a long report suggesting ways and means of improving our Demographic Statistics”. 30 35

“Mr. Andreou although of average intelligence and academic background, both at Secondary School level and University level makes strenuous efforts to succeed in his

5 professional sphere. He has proved himself of immense value to the Ministry of Education working on Educational Statistics, providing essential statistical information for major administrative decisions particularly in the recent decision by Government to extend free education till the age of 15. He is polite to his superiors and friendly with his colleagues and expects to be appreciated in his efforts and endeavours".

10 The applicant possessed a Degree of Bachelor of Arts in Social Studies (General, Pass in Economics, Government and Statistics) of the University, of Exeter, and had, also, as a UNESCO fellowship holder, in 1968, for a six months' period, studied Educational Statistics in the United Kingdom, Ireland, Holland, France and Italy.

15 The interested party had a degree in Mathematics of the University of Athens and had acquired, also, the aforesaid post-graduate qualifications.

Counsel for the applicant mainly contended:

20 (a) That the appointment of the interested party was in effect a "first entry appointment", and not a promotion, and that such party did not possess one of the qualifications required in this respect under the relevant scheme of service, namely a post-graduate qualification in Statistics, in addition to his Degree in Mathematics, or, alternatively, two years' experience in Statistics, in addition to his said Degree.

30 (b) That the applicant had priority over the interested party for promotion to the post concerned, because the latter was an outsider to the service, and was, therefore, given a first entry appointment to such post.

35 (c) That in preferring the interested party undue weight was given to his specialization in Vital, Health and Demographic Statistics and that this amounted, in effect, to the application of the relevant scheme of service in an amended form; because no such specialization was actually required under the said scheme; and that what was done was contrary to law, since only the Council of Ministers is empowered, under section

29 of the Public Service Law, 1967 to make, or amend, schemes of service.

- (d) That in the way in which the Head of the Department concerned presented his recommendations before the respondent Commission it was in effect he, and not the Commission, who selected the interested party for appointment instead of the applicant. 5

Held, dismissing the recourse, (1) that it is up to the appointing authority to interpret and apply the relevant scheme of service in the circumstances of each particular case, and this Court will not interfere with an appointment made by such authority if it is not satisfied that it was not reasonably open to the authority in question to interpret and apply the scheme of service in the way in which it has done; that though the applicant did not have two years' experience in statistics he possessed a post graduate qualification in statistics which could be reasonably treated by the respondent Commission as satisfying the relevant alternative requirement of the scheme of service; and that, accordingly, it was reasonably open to the respondent Commission to interpret and apply the relevant scheme of service as it has done. 10 15 20

(2) That though, as a rule, priority for promotion should, if possible, be given to those already in the service, the preference for those already in the service can never override the more fundamental principle that the most suitable candidate has to be selected for appointment or promotion to a vacant post in the public service; that a person in the service may, for the above reason, be by-passed in order to appoint an outsider to the service, but if this is done then adequate reasons must be given for adopting such a course; that the reasons which led the respondent Commission to prefer the interested party were stated adequately in the relevant minutes of the Commission; that they were reasons pertaining to his specialized academic qualifications and they were reasons of such a nature as to render it reasonably open to the Commission to select the interested party instead of the applicant. 25 30 35

(3) That a scheme of service prescribes only the basic requirements for appointment or promotion to a particular post; that, therefore, it is open to an appointing authority to take into account any other qualification of a candidate which is of such

a nature as to render him the most suitable candidate for appointment or promotion; and that there cannot be excluded from the notion of "the most suitable" the essential consideration of how best will be served the interests of the specific branch of the public service in which a vacant post is to be filled. (See, also, *Georgiades and Another v. The Republic* (1966) 3 C.L.R. 827 at p. 845).

(4) That the recommendations of a Head of Department have to be given due weight by an appointing authority, especially if the post concerned involves duties requiring specialized knowledge (see, *inter alia*, *Theodossiou, infra*, and *Gavriel v. The Republic*, (1971) 3 C.L.R. 185, 199); that in the present instance it could not be said that the interested party was an unknown to the Head of Department candidate, entirely from outside the public service or from another Department, because both the interested party and the applicant had already been working for some time in the Department concerned under him; that, therefore, his recommendations could be safely relied on by the respondent Commission in view of his personal knowledge of the merits of both of them (p. 389 post).

(5) That this Court has not been satisfied that the Commission in reaching the *sub judice* decision has exceeded the proper limits of its relevant discretionary powers; and that, accordingly, the recourse must be dismissed.

Application dismissed.

Cases referred to:

Andreou v. Republic (1973) 3 C.L.R. 101;

Papapetrou v. Republic, 2 R.S.C.C. 61 at p. 69;

Josephides v. Republic, 2 R.S.C.C. 72 at p. 77;

Petsas v. Republic, 3 R.S.C.C. 60 at p. 63;

Neophytou v. Republic, 1964 C.L.R. 280 at p. 299;

Georgiades and Others v. Republic (1967) 3 C.L.R. 653 at pp. 666 and 669;

Tryfon v. Republic (1968) 3 C.L.R. 28 at p. 40;

Kyriakou v. Republic (1975) 3 C.L.R. 37, at pp. 44, 45;

Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48;

Georgiades and Another v. Republic (1970) 3 C.L.R. 257 at pp. 262, 263;

Pattichis and Another v. Republic (1968) 3 C.L.R. 374 at p. 381;
Hjisavva and Another v. Republic (1967) 3 C.L.R. 155 at p. 179;
Petrou v. Republic (1967) 3 C.L.R. 40 at p. 48;
Hadjiconstantinou and Others v. Republic (1973) 3 C.L.R. 65
 at p. 71;
Georgiades and Another v. Republic (1966) 3 C.L.R. 827 at
 p. 845;
Gavriel v. Republic (1971) 3 C.L.R. 185 at p. 199;
 Decision of the Greek Council of State in case 634/1950.

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Recourse.

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Recourse against the decision of respondent No. 1 to appoint the interested party to the post of Statistics Officer in the Department of Statistics and Research in preference and instead of the applicant.

K. Talarides, for the applicant.

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N. Charalambous, Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANAFYLLIDES P. gave the following judgment. The applicant has challenged by this recourse the appointment of L. Pericleous (to be referred to hereinafter as the “interested party”) to the “first entry and promotion” post of Statistics Officer, in the Department of Statistics and Research, and, also, the failure of the respondent Public Service Commission to fill another, existing at the material time, vacancy in the post in question.

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In relation to the said failure an Interim Decision has already been given in this case (see *Andreou v. The Republic*, (1973) 3 C.L.R. 101), in which the text of the relevant minutes of the respondent Commission, dated January 12, 1972, was reproduced in full, and, therefore, it does not have to be quoted once again in this judgment.

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The applicant was holding, on the above date, the post of Senior Statistics Assistant, having been appointed to it on July 15, 1969, and the interested party, who was holding the post of Master of Mathematics in Secondary Education, had been seconded to the Department concerned as from September 1, 1971, after he had attended a post-graduate course in relation to,

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mainly, Vital and Health Statistics, on a scholarship granted to him by the World Health Organization.

As it appears from documents attached to the application of the interested party for appointment to the post of Statistics Officer, he had attended the said course, which included additional classes in Medical Statistics, at the London School of Hygiene & Tropical Medicine of the University of London, from September 1970 to May 1971, and he had been, also, attached to the Office of Population Censuses and Surveys, in London, for an extended training programme which lasted from January 1971 till June 1971.

In forwarding the application of the interested party to the respondent Commission, the Director of the Department of Statistics and Research, Mr. Ch. Menelaou, stated in writing the following:-

" Mr. Pericleous has been awarded a nine-month fellowship by the World Health Organization for a post-graduate specialization in Vital, Health and General Demographic Statistics. He has already, through visits, familiarized himself with the statistical information in all Government Hospitals and Rural Health Centres. He seems keen and meticulous in his work and is capable of constructive suggestions. In fact he is preparing a long report suggesting ways and means of improving our Demographic Statistics."

In forwarding the application of the applicant, Mr. Menelaou made the following written comments:-

" Mr. Andreou although of average intelligence and academic background, both at Secondary School level and University level makes strenuous efforts to succeed in his professional sphere. He has proved himself of immense value to the Ministry of Education working on Educational Statistics, providing essential statistical information for major administrative decisions particularly in the recent decision by Government to extend free education till the age of 15. He is polite to his superiors and friendly with his colleagues and expects to be appreciated in his efforts and endeavours".

The academic qualifications of the two candidates concerned were as follows:—

The applicant possessed a Degree of Bachelor of Arts in Social Studies (General, Pass in Economics, Government and Statistics) of the University of Exeter, and had, also, as a UNESCO fellowship holder, in 1968, for a six months' period, studied Educational Statistics in the United Kingdom, Ireland, Holland, France and Italy. 5

The interested party had a Degree in Mathematics of the University of Athens and had acquired, also, the post-graduate qualifications which have been already described in this judgment. 10

The first matter with which I have to deal is the submission of counsel for the applicant that the appointment of the interested party was in effect a "first entry appointment", and not a promotion, and that such party did not possess one of the qualifications required in this respect under the relevant scheme of service, namely a post-graduate qualification in Statistics, in addition to his Degree in Mathematics, or, alternatively, two years' experience in Statistics, in addition to his said Degree. It is quite clear from the material before me that the interested party did not have two years' experience in Statistics, but he possessed the aforementioned post-graduate qualification in Statistics, which, in my view, could be reasonably treated by the respondent Commission as satisfying the relevant alternative requirement of the scheme of service; and in this connection I cannot agree with counsel for the applicant that such post-graduate qualification ought necessarily to have been of a university level or a qualification which was obtained after participation in an examination for a relevant Diploma or Degree. 15
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It is well established that it is up to the appointing authority—in this case the respondent Commission—to interpret and apply the relevant scheme of service in the circumstances of each particular case, and this Court will not interfere with an appointment made by such authority if it is not satisfied that it was not reasonably open to the authority in question to interpret and apply the scheme of service in the way in which it has done (see *Papapetrou v. The Republic*, 2 R.S.C.C. 61, 69, *Josephides v. The Republic*, 2 R.S.C.C. 72, 77, *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, and more recently *Neophytou v. The Republic*, 40

1964 C.L.R. 280, 299, *Georghiades and others v. The Republic*, (1967) 3 C.L.R. 653, 668, *Tryfon v. The Republic*, (1968) 3 C.L.R. 28, 40 and *Kyriakou and others v. The Republic*, (1975) 3 C.L.R. 37, 44, 45); and in the present case, as has been already indicated, I am of the view that it was reasonably open to the respondent Commission to interpret and apply the relevant scheme of service as it has done.

Another complaint of counsel for applicant has been that his client had priority over the interested party for promotion to the post concerned, because the latter was an outsider to the service, and was, therefore, given a first entry appointment to such post.

That, as a rule, priority for promotion should, if possible, be given to those already in the service is a proposition which was to be found in the General Orders (11/1.2), and useful reference, in this respect, may, also, be made to the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p. 345, as well as to the decisions of the Council of State in Greece in cases 383(36) and 164(56); but, the preference for those already in the service can never override the more fundamental principle that the most suitable candidate has to be selected for appointment or promotion to a vacant post in the public service (see, *inter alia*, *Theodossiou v. The Republic*, 2 R.S.C.C. 44, 48, *Georghiades and another v. The Republic*, (1970) 3 C.L.R. 257, 262, 263, *Pattichis and another v. The Republic*, (1968) 3 C.L.R. 374, 381, *Hjisavva and another v. The Republic*, (1967) 3 C.L.R. 155, 179 and *Petrou v. The Republic*, (1967) 3 C.L.R. 40, 48); and that a person in the service may, for the above reason, be by-passed in order to appoint an outsider to the service is shown by the cases of *Georghiades and others v. The Republic*, (1967) 3 C.L.R. 653, 666 and *Hadjiconstantinou and others v. The Republic*, (1973) 3 C.L.R. 65, 71; but if this is done then adequate reasons must be given for adopting such a course.

The reasons which led the respondent Commission to prefer the interested party were stated adequately in the relevant minutes of the Commission; they were reasons pertaining to his specialized academic qualifications and I do think that they were reasons of such a nature as to render it reasonably open to the Commission to select the interested party instead of the applicant; and in this respect it must be borne in mind that the interested party was an outsider to the service only in a strict

technical sense of the term, because, even though he was not substantively appointed to a post in the Department concerned, he had already been seconded, since September 1971, to such Department, after he had obtained a post-graduate qualification which was very relevant to his work there. 5

Counsel for the applicant has submitted that in preferring the interested party undue weight was given to his specialization in Vital, Health and Demographic Statistics and submitted that this amounted, in effect, to the application of the relevant scheme of service in an amended form, because no such specialization was actually required under the said scheme; he, further, contended that what was done was contrary to law, since only the Council of Ministers is empowered, under section 29 of Public Service Law, 1967 (Law 33/67), to make, or amend, schemes of service. 10

In my opinion a scheme of service prescribes only the basic requirements for appointment or promotion to a particular post. It is open, therefore, to an appointing authority to take into account any other qualification of a candidate which is of such a nature as to render him the most suitable candidate for appointment or promotion; and there cannot be excluded from the notion of "the most suitable" the essential consideration of how best will be served the interests of the specific branch of the public service in which a vacant post is to be filled. 15 20

As was pointed out in *Georgiades and another v. The Republic*, (1966) 3 C.L.R. 827, 845, personal prospects of promotion cannot be allowed to override the interests of the service when the most suitable candidate for the post concerned is being chosen. 25

It has been, further, contended by counsel for the applicant that in the way in which the Head of the Department concerned, Mr. Menelaou, presented his recommendations before the respondent Commission it was in effect he, and not the Commission, who selected the interested party for appointment instead of the applicant. It has, however, been often stated that the recommendations of a Head of Department have to be given due weight by an appointing authority, especially if the post concerned involves duties requiring specialized knowledge (see, *inter alia*, *Theodossiou, supra*, and *Gavriel v. The Republic*, (1971) 3 C.L.R. 185, 199); and in the present instance it could not be 30 35

said that the interested party was an unknown to Mr. Menelaou candidate, entirely from outside the public service or from another Department, because both the interested party and the applicant had already been working for some time in the Department concerned under Mr. Menelaou; so, his recommendations could be safely relied on by the respondent Commission in view of his personal knowledge of the merits of both of them.

In any event, a perusal of the relevant minutes of the Commission shows that all three candidates who were before it at the time, namely the applicant, the interested party and a certain Theophanous, were duly considered on the basis of all relevant material, and that the strong recommendation made in favour of the interested party by Mr. Menelaou—which he supported by giving full reasons for it—was only one of the factors, even though possibly an important factor, which led to the selection of the interested party; and it was, certainly, up to the Commission to give such weight as it deemed fit to any one of the various factors which were relevant to its choice of the most suitable candidate (see, *inter alia*, in this respect, the decision of the Council of State in Greece in case 634/1950).

I have dealt with the main issues which were raised by counsel for the applicant and which, in my view, merited particular consideration in this judgment. I have, of course, paid, also, due regard to all other additional arguments which were advanced by him, in relation to other secondary issues, in an effort to establish that the respondent Commission in selecting the interested party has acted in excess or abuse of powers; but, having carefully examined every relevant consideration, I feel that I have not been satisfied that the Commission in reaching the *sub judice* decision has exceeded the proper limits of its relevant discretionary powers (and see, *inter alia*, in this connection, the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p. 268).

For all the foregoing reasons this recourse, against the appointment of the interested party; fails and it is dismissed accordingly, but, in the light of all pertinent factors, without any order as to costs against the applicant.

Application dismissed. No order as to costs.