

1980 April 19

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIA HADJIPASCHALI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 87/79).

5 *Administrative Law—Inquiry—Due or proper inquiry—Absence of, sufficient by itself as an independent ground of annulment—Public officers—Promotions to post of Press Assistant 1st Grade—No inquiry by respondent Commission into the question of possession by applicant of the qualifications required by the relevant scheme of service—Sub judice promotions annulled as being contrary to the principles of administrative law and in abuse of powers.*

10 *Public officers—Promotions—Press Assistant 1st Grade—No inquiry by respondent Commission into the question of possession by applicant of the qualifications required by the relevant scheme of service—Sub judice promotions annulled as being contrary to the principles of administrative law and in abuse of powers.*

15 The applicant in this recourse, a Publications Assistant 2nd Grade, challenged the decision of the respondent Commission to promote the interested parties to the post of Press Assistant 1st Grade, in the Public Information Office, in preference and instead of her.

20 The respondent Commission excluded the applicant as a candidate for promotion to the above post on the ground that she did not possess the qualifications required by the relevant scheme of service, namely "a minimum of three years' experience as Press Assistant, 2nd Grade", without first taking the views of the Head of her Department.

In a letter* addressed by the Director of the Public Information Office (the Head of Department) to counsel for the respondents it was stated that the applicant possessed the said three years' experience in the post of Press Assistant when the *sub judice* promotions were made because from Autumn, 1974 until the end of 1978 she has been carrying out purely press work. 5

Held, that the respondent Commission failed to conduct any inquiry in order to ascertain whether the applicant possessed the three years' experience, required by the scheme of service, in the post of Press Assistant 2nd Grade before excluding her for consideration as a candidate for the post concerned; that failure of an administrative organ to make a due and/or proper inquiry is a ground for annulment and this ground has been repeatedly treated by this Court in many cases as an independent ground of annulment sufficient by itself (see, *inter alia*, *Antoniou v. Republic* (1978) 3 C.L.R. 308 at pp. 312–313); and that, accordingly, the *sub judice* promotions must be annulled as being contrary to the accepted principles of administrative law and in abuse of powers. 10 15

Sub judice promotions annulled. 20

Cases referred to:

Antoniou v. Republic (1978) 3 C.L.R. 308 at pp. 312–313;

Tourpeki v. Republic (1973) 3 C.L.R. 592;

Ioannides v. Republic (1972) 3 C.L.R. 318 at p. 326.

Recourse. 25

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Press Assistant 1st Grade in preference and instead of the applicant.

K. Michaelides, for the applicant. 30

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

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant, who is a civil servant posted at the Public Information Office and holds the post of Publications Assistant 2nd Grade, by her recourse prays for a declaration that the decision of the respond- 35

* Quoted at p. 106 *post*.

ent Commission, which was published in the Official Gazette of the Republic on the 15th December, 1978, to promote Andreas Chr. Agathocleous and Ioannis Solomou (hereinafter to be referred to as "the interested parties") to the post of Press Assistant 1st Grade in preference and instead of her, is null and void and of no effect whatsoever.

The interested parties, though duly served with copy of the present application, never appeared before the Court, nor did they, in any way, signify their wish to be represented and contest the proceedings. I, therefore, take it that they have left the matter in the hands of counsel for the respondents.

The facts on which the present recourse is relied upon and which are set out in the application, are undisputed by the respondents and they are briefly as follows:-

The applicant is a graduate of Pallouriotissa Greek Gymnasium and has, also, a Diploma of Translator "Diplome de Traducteur" of the Geneva University. She has a very good knowledge of Greek, English and French. On the 1st August, 1970, she was appointed as a Publications Assistant 2nd Grade at the Public Information Office, after she had served as a Translator/Clerical Assistant, on a daily wages basis in the Department of Water Development.

Although the applicant was posted as a Publications Assistant 2nd Grade, she, also, carried out the duties of Press Assistant 2nd Grade for the period between 1974 to the 15th January, 1979, and she was in charge of the publication of the French Bulletin of the P.I.O. At the same time she was in charge of the publication of other bulletins. After the 15th January, 1979, she continued to do press work and has been assigned with the duties of keeping various Embassies abroad informed with developments that are taking place in Cyprus.

The recourse is based on the following grounds of law:

1. Under the Public Service Law 33/67 S.44(1) it is provided that no employee is promoted to another post unless, *inter alia*, he possesses those qualifications which are required by the relevant scheme of service.
2. For the post of Press Assistant 1st Grade, the relevant scheme of service provides that a candidate for promotion

must have a leaving certificate of a six-year Secondary School with a very good knowledge of Greek and English or Turkish and English and the ability to interpret fluently and correctly, and a minimum of 3 years' experience as Press Assistant 2nd Grade. 5

3. The post of Press Assistant 1st Grade is not a promotion post exclusively for the holders of the post of Press Assistant 2nd Grade, as the Respondent wrongly treated it, but it is equally open to the holders of the post of Publications Assistant 2nd Grade. 10
4. Respondent by treating Applicant as not eligible for promotion, in spite of her possessing all necessary qualifications under the relevant scheme of service, acted on a misconception of the law and the material facts.
5. The Respondent also acted in excess or abuse of its powers in making the aforesaid promotions in complete disregard of and without considering the applicant who was fully qualified, superior in merit and senior to at least one of the interested parties, namely Andreas Chr. Agathocleous. 15
6. The Respondent in making the said promotions did not carry out a sufficient inquiry to see that all eligible persons then serving as Press Assistants 2nd Grade and Publications Assistants 2nd Grade, were considered for promotion. 20
7. In view of Applicant's qualifications, merit and seniority, Respondent failed in its duty to select the best candidate." 25

The scheme of service of the post of Press Assistant, 1st Grade, which is a promotion post, is appended to the Opposition as *enclosure No. 3*. The qualifications which a candidate for this post must possess appear in this enclosure under the heading "Qualifications Required" and are— 30

"A leaving certificate of a six-year secondary school with a very good knowledge of Greek and English or Turkish and English. Ability to interpret fluently and correctly. A minimum of 3 years' experience as Press Assistant, 2nd Grade. 35

Note: (a) Candidates for appointment, who hold a Leaving Certificate of a five-year secondary school obtained prior to the 15th August, 1960; and

(b) Public servants who joined the public service either in a permanent or in a temporary capacity before the 1st December, 1961, who hold a Leaving Certificate of a five-year secondary school or other equivalent qualification, or who, though not holding such a Certificate, have a general education of a standard regarded as equivalent to that of a five-year secondary school,

will be considered eligible for appointment or promotion to this post if they are otherwise suitable."

Interested party Andreas Chr. Agathocleous graduated from the Paphos Greek Gymnasium and after a two years' course at the Paedagogical Academy of Cyprus, obtained in 1961 a Diploma which qualified him as an elementary school teacher. He served as an elementary school teacher from 1/9/61 to 9/9/62, as a teacher at the Deaf School from 10/9/62 to 31/10/72, and as a Press Assistant 2nd Grade (permanent) in the P.I.O. from 1/11/72 to 30/11/78.

Interested party Ioannis Solomou is a graduate of the Pan-cyprian Gymnasium and possesses a lower certificate in English of the Cambridge University, a certificate of Proficiency in English of the Cambridge University and a Diploma of Pantios Highest School of Political Sciences of Athens. From 1/9/68 to 31/3/69 he served on a temporary basis as a Press Assistant in the P.I.O. and from 1/4/69 to 30/11/78 as a Press Assistant 2nd Grade (permanent).

The service and the qualifications of the interested parties appear in *enclosure No. 6*, which is appended to the Opposition.

As it appears from *exhibits Nos. 4, 5, 6 and 7*, which were filed during the hearing of this recourse, the respondent Commission excluded the applicant as a candidate for promotion to the post of Press Assistant 1st Grade, on the ground that she did not possess the qualifications required by the scheme of service, without first taking the views of the Head of her Department, i.e. the Director of the P.I.O.

In a letter, *exhibit No. 5*, which the Director of the P.I.O.

addressed to counsel for the respondents, the following are stated with regard to the applicant's qualifications:

“Όσον άφορᾷ τήν τριετῆ ἔμπειρία στή θέση Βοηθοῦ Τύπου Β', ἡ ὁποία ἀπαιτεῖται γιά προαγωγή στή θέση Βοηθοῦ Τύπου Α', ἡ κα Χ' Πασχάλη διέθετε τήν ἔμπειρία αὐτή ὅταν ἔξετάζετο τὸ θέμα τῆς προαγωγῆς. Συγκεκριμένα ἡ κα Χ' Πασχάλη, ποῦ εἶναι μόνιμη ὑπάλληλος τοῦ Γραφείου αὐτοῦ ἀπὸ τὴν 1 Αὐγούστου 1970, ἀσχολεῖτο ἀπὸ τὸ Φθινόπωρο τοῦ 1974 μέχρι τέλους τοῦ 1978, μὲ καθαρά δημοσιογραφικὴ ἔργασία, δηλ. τὴν ἔκδοση τοῦ ἑβδομαδιαίου Γαλλικοῦ διαφωτιστικοῦ δελτίου τοῦ Γραφείου μας. Συνεπῶς, κατὰ τὴν ἀποψή μου, ἡ κα Χ' Πασχάλη διέθετε τουλάχιστο τριετῆ ἔμπειρία στή θέση Βοηθοῦ Τύπου Β'.”

(“As regards the 3 years' experience in the post of Press Assistant 2nd Grade, which is required for promotion to the post of Press Assistant 1st Grade, Mrs. HadjiPaschali possessed this experience when the matter of the promotion was under examination. In particular, Mrs. HadjiPaschali, who is a permanent employee of this Office as from the 1st August 1970, was, as from Autumn of 1974, until the end of 1978, carrying out purely press work, i.e. the publication of the weekly French Information Bulletin of our Office. Therefore, in my view, Mrs. HadjiPaschali possessed at least three years' experience in the post of Press Assistant 2nd Grade.”)

It is clear from *exhibits Nos. 5 and 7* that the Commission failed to conduct any inquiry in order to ascertain whether the applicant possessed the 3 years' experience, required by the scheme of service, in the post of Press Assistant 2nd Grade before excluding her for consideration as a candidate for the post concerned.

Failure of an administrative organ to make a due and/or proper inquiry is a ground for annulment and this ground has been repeatedly treated by this Court in many cases as an independent ground of annulment sufficient by itself. If authority is required for this, see *Antonίου v. The Republic*, (1978) 3 C.L.R. 308 at pp. 312-313; *Tourpeki v. The Republic*, (1973) 3 C.L.R. p. 592; and *Ioannides v. The Republic*, (1972) 3 C.L.R. 318 at p. 326.

In the result, the sub judice decision is annulled as being contrary to the accepted principles of administrative law and in abuse of powers.

In the circumstances of this case, I make no order as to costs

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Sub judice decision annulled. No order as to costs.