

1980 March 14

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNIS C. ZAFIRIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 73/78).

Public Officers—Promotions—Seniority—Applicant’s substantial seniority (13 years) over interested party disregarded without cogent reasons—Sub justice promotions annulled for lack of due reasoning.

Administrative Law—Administrative decisions—Need for due reasoning—Public officers—Promotions—Applicant’s substantial seniority over interested party disregarded without cogent reasons—Sub justice promotions annulled for lack of due reasoning. 5

Public officers—Promotions—Head of Department—Describing a candidate as suitable for a particular post—Whether such description can be equated to a recommendation of that candidate for appointment or promotion to a post in preference to others. 10

Public officers—Appointments and promotions—First entry and promotion post—No express reference to “seniority” of candidates in minutes of respondent Commission—But reference to their “experience”—Word “experience” includes element of seniority of candidates that are in the service. 15

The applicant, an Assistant Occupational Therapist, was a candidate for the post of Occupational Therapist (Psychiatric), a first entry and promotion post. When the respondent Commission met to consider the filling of the vacancies of the above post it considered the merits, qualifications and experience of 20

the candidates interviewed as well as their performance during the interview; and observed that A. Petridou and C. Koukkouris ("the interested parties") gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment or promotion to the above post.

The representatives of the Department concerned, who were present at the meeting, stated that the interested parties "were serving in the post of Assistant Occupational Therapist, their services have been very satisfactory and that they considered them very suitable for the post of Occupational Therapist". The Commission finally decided that the interested parties be promoted to the above post.

Both the applicant and interested party Koukkouris possessed the qualifications required under the relevant schemes of service and though this interested party had more qualifications than the applicant none of his qualifications constituted an additional advantage under the scheme of service. A comparison of their confidential reports showed that the assessment on the performance of their duties was more or less the same, if not better regarding the applicant, but the latter had, as compared with the said interested party, about 13 years seniority and 15 years longer service.

Upon a recourse by the applicant against the promotion of interested party Koukkouris Counsel for the applicant mainly contended that the respondent Commission disregarded the applicant's substantially greater seniority without giving cogent reasons, thus acting contrary to law and in abuse of powers.

Held, (1) that though the respondent Commission does not speak expressly about "seniority" as one of the factors taken into consideration in reaching the sub judice decision, but of "experience", the word "experience" used by the respondent Commission in its minutes includes the element of seniority as far as those candidates that are in the service are concerned, as seniority inevitably conveys the notion of "experience".

(2) That though the representatives of the Department are recorded to have stated that the services of the said two officers had been very satisfactory and that they considered them very suitable for the post, there is nothing in that opinion to suggest clearly a comparison with, or if that amounted to a preference

as against, the other candidates; that, in other words, it is not clear if that is a recommendation of the said two officers implying that the other candidates, and at that the applicant in particular was not suitable or was not recommended for the post; and that the description of a candidate as suitable for a particular post cannot by itself be equated to a recommendation of that officer for appointment or promotion to a post in preference to others or that the suitability of one implies the unsuitability of other candidates. -5

(3) That though the respondent Commission stated in its minutes that during the interview the interested party proved to be together with A. Petridou the best candidates, the seniority of the applicant was so substantial that in the circumstances of this case more cogent reasons were called for in disregarding same, as in that way an administrative Court would have been enabled to ascertain whether the administrative discretion of the appropriate organ was properly exercised and so become capable of judicial control in the sense of Article 146 of the Constitution; and that, therefore, the *sub judice* decision must be annulled on the ground of lack of due reasoning as on account of its circumstances same could not be ascertained from the material in the file (see *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at pp. 428-9). 10 15 20

Sub judice decision annulled.

Cases referred to: 25
Partellides v. Republic (1969) 3 C.L.R. 480;
Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417 at pp. 428-9.

Recourse.

Recourse against the decision of the respondent to promote the interested party Costas Koukkouris to the post of Occupational Therapist (Psychiatric) in preference and instead of the applicant. 30

E. Lemonaris, for the applicant.

G. Constantinou (Miss), for the respondent. 35

C. Loizou, for the interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration that the act and or

decision of the respondent published in the Official Gazette of the 20th January, 1978, to promote and or appoint Costas Koukkouris, (hereinafter to be referred to as the "interested party") to the post of Occupational Therapist, (Psychiatric),
 5 in preference and instead of the applicant, is null and void and of no effect whatsoever.

The grounds of Law relied upon by the applicant are the following:

- 10 " 1. The Respondents disregarded applicant's substantially greater seniority without cogent reasons thus acting contrary to Law and in abuse of powers. (*Partellides v. Republic* (1969) 3 C.L.R. 480).
- 15 2. Respondents disregarded Applicant's superior qualifications and merit thus acting contrary to Law and in abuse of powers (s. 44(2) of Law 33/67).
3. Alternatively Respondents exercised their discretion in a defective and/or wrong manner thus acting contrary to Law and in abuse of powers (s. 44(2) of Law 33/67).
- 20 4. Respondents decision is not duly reasoned and/or the reasoning behind same is wrong in Law and/or defective."

According to the relevant scheme of service (enclosure No. 3), the post in question is a first entry and promotion post. In response to the relevant advertisement in the Official Gazette, eight applications including those of the applicant and the
 25 interested party, were submitted for two vacancies in the said post. All these candidates were invited for interview on the 22nd September, 1977 when the filling of the two vacancies in question was considered by the respondent Commission. Present at the said meeting were the Director of the Department of
 30 Medical Services and the Medical Superintendent, Psychiatric Institutions. The candidates were interviewed and questions were put to them on matters of general knowledge and on matters connected with the duties of the post, as shown in the relevant Scheme of Service.

35 In the minutes of the respondent Commission, (enclosure 6) the following is stated:

"The Commission as well as the Representatives of the

Department of Medical Services put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). 5

The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration. 10

The Commission observed that, during the interview Antigoni P. Petridou and Constantinos Koukkouris gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment or promotion to the above post. 15

The Director of the Department of Medical Services as well as the Medical Superintendent, Psychiatric Institutions, stated that both Antigoni P. Petridou and Constantinos Koukkouris were serving in the post of Assistant Occupational Therapist, their services have been very satisfactory and that they considered them very suitable for the post of Occupational Therapist. 20

After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, 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 promoted to the permanent post of Occupational Therapist (Psych.) w.e.f. 1.12.77: 25

Antigoni P. Petridou, 30
Constantinos Koukkouris." 35

The examination of the qualifications, career and service of the applicant and the interested party is necessary for the proper

examination of the issues raised in this recourse. The applicant graduated the elementary school of his village in 1937 and was first engaged as a Welfare Assistant, on daily wages in 1953. He became a Temporary Welfare Assistant in 1955 and on a permanent basis as a Welfare Assistant on probation in 1956. This post, has since the 1st January, 1959 been restyled to Assistant Occupational Therapist, and the applicant has been occupying same since then.

The interested party after graduating the elementary school of his village attended for a year (July, 1958-1959) The Sevastou-poleos Technical School of Athens and then for a year attended the fourth class of the Technical School, Nicosia. From 1960-1967, he was employed in the War Department as a fitter, but his said services were terminated on the ground of redundancy. He was first employed as an Assistant Occupational Therapist on a temporary basis on 15th November, 1968 and on a permanent basis on probation as from 1st January 1969.

He is the holder of a graduation certificate from the English College Nicosia, Department of Commerce "in the Academic year 1971". As stated, however, by Mr. Phanopoulos, Inspector of Secondary Education in the Ministry of Education, this appears to be a certificate for attending evening coaching. There does not seem to be any disagreement that this was not meant to be a graduation certificate of a secondary school; under the relevant Scheme of Service its possession does not constitute an additional advantage.

The interested party is the holder also of (a) Certificate of Attendance of a Special Course for vocational training instructors at the Department of Employment Government Training Centre and Instructor Training College Letchworth England (in the Engineering Sector). See certificate of completion of a course in Instructional Techniques held at the Instructor Training College, Letchworth. (c) Certificate of completion of a course of training in the techniques of instruction both practical and theoretical at the Government Training Centre and Instructor Training College, Letchworth, in the U.K.

The confidential reports of the applicant for the year 1975 contain an observation that though he tends to be somewhat argumentative and temperamental at times he performed his

duties competently and diligently and that he had been in charge of the Male Occupational Therapy Section of the Psychiatric Institutions for a period of six months in view of the absence on leave of the Occupational Therapist. He is rated as very good on seven rateable items, as good on two and with average general intelligence. 5

For 1976 he is rated likewise and it is observed by the reporting officer that he performed his duties in a satisfactory way. The countersigning officer, the Acting Director of the Department of Medical Services expresses the view therein that he is a hard-working and efficient officer. For the year 1977 his confidential report contains once more the observation that he performed his duties in a satisfactory manner and he is rated in the same way. 10

In the confidential reports on the interested party for 1975 the reporting officer observed that he was an eager and polite officer who discharged his duties competently and diligently during the period under review and that he was particularly occupied in providing recreational activities for the patients. He is rated as very good on one rateable item and as good on the rest, except for general intelligence for which he is rated as average. In the confidential report for the year 1976 the same observation as to the performance of duties is to be found and the same rating. The countersigning officer, however, the Acting Director of the Department of Medical Services, expressed therein the view that "this officer deserves a better assessment being an efficient and willing worker whose qualities had been underestimated." For the year 1977 the reporting officer once more observed that this officer had performed his duties most competently and diligently and that he had been eager, energetic, tactful and spared no time or effort in promoting the welfare of the patients. Unlike the previous reports he is reported as very good on all rateable items except for general intelligence for which he is reported as average. 15
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A comparison of the confidential reports of the applicant and interested party shows that the assessment on the performance of their duties is more or less the same, if not better regarding the applicant. It has been argued on behalf of the applicant that the respondent Commission has disregarded the applicant's substantially greater seniority without giving cogent reasons, 35

thus acting contrary to Law and in abuse of powers. In support of this principle I have been referred to the case of *Partellides v. The Republic* (1969) 3 C.L.R. p. 480.

5 It is true that the respondent Commission does not speak expressly about "seniority" as one of the factors taken into consideration in reaching the sub judice decision, but of "experience". This is obviously done because of the fact that this is a first entry and promotion post and seniority in the service cannot come into play when appointment or promotion
10 to a post is open also to, and there are candidates who are in the service, though as between those in the service, it is a factor to be duly taken into consideration.

I have always, however, felt that the word "experience" used by the respondent Commission in its minutes includes the
15 element of seniority as far as those candidates that are in the service are concerned, as seniority inevitably conveys the notion of "experience".

In the present case the applicant has, as compared with the interested party about 13 years of seniority and 15 years of longer
20 service. In spite of this substantial seniority and greater experience the respondent Commission preferred the interested party. It is true that in its minutes it is stated that during the interview the interested party proved to be, together with Antigoni Petridou the best candidates for appointment or promo-
25 tion to the post in question. Also the representatives of the Department are recorded to have stated that the services of the said two officers had been very satisfactory and that they considered them very suitable for the post, but there is nothing in that opinion to suggest clearly a comparison with, or if that
30 amounted to a preference as against, the other candidates. In other words it is not clear if that is a recommendation of the said two officers implying that the other candidates, and at that the applicant in particular was not suitable or was not recom-
35 mended for the post. The description of a candidate as suitable for a particular post cannot by itself be equated to a recom-
mendation of that officer for appointment or promotion to a post in preference to others or that the suitability of one implies the unsuitability of other candidates.

In my view the seniority of the applicant is so substantial
40 that in the circumstances of this case more cogent reasons were

called for in disregarding same, as in that way an administrative Court would have been enabled to ascertain whether the administrative discretion of the appropriate organ was properly exercised and so become capable of judicial control in the sense of Article 146 of the Constitution. 5

I find it appropriate in this respect to quote from the judgment of Hadjianastassiou J., in the case of *Kyriacos G. Pagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at pp. 428-9:

“Having considered the arguments of both counsel and in view of the fact that one of the concepts of administrative law is that administrative decisions must be duly reasoned, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out in the decision of the Committee whether they are right or wrong, ought to have been reasons which not only would be intelligible, but also can reasonably be said to deal with the substantive points raised, i.e. why the interested party was preferred and what were the other relevant factors which weighed so much in the mind of the Committee in preferring the interested party instead of the applicant who, as I said earlier, had a longer service with the bank. In the absence of those reasons, in reviewing the said decision, I am unable to ascertain whether the decision is well-founded in fact and in accordance with the law, and in the light of this finding that the said decision is not duly reasoned, exercising my powers under Article 146, I would declare that such decision or act is null and void and of no effect whatsoever.” 10
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For all the above reasons the *sub judice* decision is annulled on the ground of lack of due reasoning as on account of its circumstances same could not be ascertained from the material in the file. In the circumstances, however, I make no order as to costs. 30

Sub judice decision annulled. No order as to costs.