

1980 May 22

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS KOUFETTAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 353/78).

Public Officers—Promotions—Promotion post—Senior Surveyor in the Lands and Surveys Department—Conversion of temporary posts, which have been held on secondment, into permanent ones—Holder of temporary post promoted to the permanent post without taking into consideration as candidates any other persons serving in the immediately lower grade—Course adopted not possible in law—Sections 31(2), 32 and 44(2) of the Public Service Law, 1967 (Law 33/67).

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This recourse was directed against the promotion of G. Gavriel* and A. Pantazis (“the interested parties”) to the permanent post of Senior Surveyor in the Lands and Surveys Department, a promotion post. These two permanent posts were created against the abolition of two temporary (Dev.) posts of Senior Surveyor, which were held on secondment by the interested parties; and the Head of Department by a letter to the respondent Commission recommended that the holders of the abolished posts be emplaced on the corresponding permanent posts.

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It was clear that, in promoting interested party Pantazis to the permanent post of Senior Surveyor, the respondent Commission has not taken into consideration as candidates any other

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* The recourse against interested party Gavriel was withdrawn and dismissed.

persons serving in the immediately lower grade of surveyor, 1st Grade, such as the applicant.

5 *Held*, (1) that once the temporary post of Senior Surveyor was converted into a permanent post the vacancy in such permanent promotion post could have been filled either on a permanent basis, by means of a promotion, or on a temporary basis (see section 32(1) of the Public Service Law, 1967 (Law 33/67)); that as the respondent Commission chose to fill it on a permanent basis by means of a promotion there had to be taken
10 into account the merit, qualifications and seniority of all public officers eligible for promotion to the post in question, that is of those already serving in the immediately lower grade of Surveyor, 1st Grade (see sections 31(2) and 44(2) of Law 33/67); that such course was not followed by the Commission and that
15 the course adopted was not possible in law; and that, therefore, the *sub judice* promotion of interested party Pantazis has to be annulled as having been effected contrary to Law.

20 *Promotion of interested party Pantazis annulled. Recourse against promotion of interested party Gavriel withdrawn and dismissed.*

Recourse.

25 Recourse against the decision of the respondent to promote the interested parties to the post of Senior Surveyor in the Lands and Surveys Department in preference and instead of the applicant.

C. Loizou, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

30 *A. Televantou (Miss)*, for the interested party A. Pantazis.

Cur. adv. vult.

35 TRIANTAFYLIDIS P. read the following judgment. By this recourse the applicant has challenged the promotions of G. Gavriel and A. Pantazis, who are consequently interested parties in these proceedings, to the post of Senior Surveyor in the Lands and Surveys Department.

The said post is a "promotion post".

At the commencement of the hearing of this recourse, on

February 22, 1980, counsel for the applicant withdrew it in so far as interested party Gavriel is concerned, and it was dismissed accordingly to that extent; there remains, therefore, only to be examined the validity of the promotion of interested party Pantazis to the post in question. 5

The said promotion was made by the respondent Commission on May 6, 1978, and the relevant part of its minutes (*exhibit 2*) reads as follows:-

“Conversion of temporary (Dev.) posts in the Department of Lands and Surveys to permanent (Dev.).” 10

As a result of the 1978 Development Estimates, the following temporary posts in the Department of Lands and Surveys have been converted to permanent (Dev.):

(a) *Senior Surveyor:*

Two temporary (Dev.) posts have been abolished against the creation of an equal number of permanent (Dev.) posts. 15

The abolished posts are held on secondment by Messrs. George Gavriel and Alexandros Pantazis, w.e.f. 1.3.74 and 15.11.76, respectively.

The Director of the Department of Lands and Surveys, by his letter No. 495/57/7 of 5.4.78, recommended that the holders of the above-mentioned abolished temporary (Dev.) posts be emplaced on the corresponding permanent (Dev.) posts. 20

The Commission considered the merits, qualifications, service and experience of the above officers, as reflected in their Personal Files and in their Annual Confidential Reports. 25

Bearing in mind all the above, and having regard to the views expressed as well as to the recommendations made by the Director of the Department of Lands and Surveys in his letter No. 495/57/7 of 5.4.78, the Commission decided that Messrs. George Gavriel and Alexandros Pantazis be promoted to the permanent (Dev.) post of Senior Surveyor w.e.f. 1.1.78”. 30 35

It is clear, and it did not seem to be disputed by any party

to the present proceedings, that in promoting interested party Pantazis to the permanent post of Senior Surveyor, who had been serving on secondment in a temporary post of Senior Surveyor, there were not taken into consideration as candidates any other persons serving in the immediately lower grade of Surveyor, 1st Grade, such as the applicant in this case.

It seems that the respondent Commission took the view that since interested party Pantazis was already seconded to the temporary post of Senior Surveyor, which was abolished, and since he was recommended by his Head of Department and was, also, found to be suitable for promotion to the permanent post of Senior Surveyor, which was created when his temporary post was converted into a permanent one, it was proper to promote him to the said permanent post without considering as candidates any other public officers eligible for promotion thereto.

In my opinion, the course adopted by the respondent Commission was wrong in law:

Sections 31(2), 32 and 44(2) of the Public Service Law, 1967 (Law 33/67), read as follows:-

31.--(1) -----

“Μέθοδος
ἐνεργείας
πρὸς πλήρωσιν
25 κενῶν θέσεων.

(2) Κενὴ θέσις Προαγωγῆς πληροῦται, ἄνευ δημοσιεύσεως, διὰ τῆς προαγωγῆς ὑπαλλήλου ὑπηρετούντος εἰς τὴν ἀμέσως κατωτέραν τάξιν ἢ θέσιν τοῦ ἐιδικοῦ κλάδου ἢ ὑποδιαίρέσεως τῆς δημοσίας ὑπηρεσίας.

Ἐν τῷ παρόντι ἑδαφίῳ ‘κλάδος ἢ ὑποδιαίρεσις τῆς δημοσίας ὑπηρεσίας’ ἔχει τὴν αὐτὴν ἔννοιαν ὡς ἐν τῷ ἄρθρῳ 30.

(3) -----

30 Μέθοδοι
πληρώσεως
θέσεων.

32.--(1) Μόνιμος θέσις πληροῦται μονίμως, εἴτε προσωρινῶς ἐπὶ συμβάσει δι’ ὠρισμένον χρονικὸν διάστημα, εἴτε ἀπὸ μηνὸς εἰς μῆνα, ὡς τὸ Ὑπουργικὸν Συμβούλιον ἤθελεν ἀποφασίσει.

35 (2) Προσωρινὴ θέσις πληροῦται εἴτε δι’ ἀποσπάσεως μονίμου ὑπαλλήλου μὴ τελούντος ἐπὶ δοκιμασίᾳ εἴτε διὰ τοῦ διορισμοῦ προσωποῦ ἐπὶ συμβάσει δι’ ὠρισμένον χρονικὸν

διάστημα ἢ ἀπὸ μηνὸς εἰς μῆνα, ὡς τὸ Ὑπουργικὸν Συμβούλιον ἤθελεν ἀποφασίσει.

Προαγωγαί.

44.-(1) -----

(2) Αἱ διεκδικήσεις τῶν ὑπαλλήλων πρὸς προαγωγὴν ἀποφασίζονται βάσει τῆς ἀξίας, τῶν προσόντων καὶ τῆς ἀρχαιότητος. 5

(3) -----

(4) -----

(5) -----

(6) -----

(7) -----

(31.-(1) -----

“Procedure for filling vacancies in offices.

(2) A vacancy in a Promotion office shall be filled, without advertisement, by the promotion of an officer serving in the immediately lower grade or office of the particular section or sub-section of the public service. 10

In this sub-section ‘section or sub-section of the public service’ has the same meaning as in section 30. 15

(3) -----

Methods of filling offices.

32.(1) A permanent office may be filled either on a permanent basis or on a temporary basis on contract for a limited period or on a month-to-month basis, as the Council of Ministers may direct. 20

(2) A temporary office may be filled either by the secondment of a permanent officer not serving on probation or by the appointment of a person on contract for a limited period or on a month-to-month basis, as the Council of Ministers may direct. 25

Promotions.

44.(1) -----

(2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority. 30

(3) -----

(4) -----

- (5)
- (6)
- (7) ”).

From the above provisions of Law 33/67 it appears that the vacancy in the temporary post (or “office”) of Senior Surveyor could have been filled by the secondment thereto of interested party Pantazis under section 32(2). Once, however, the said
 5 temporary post was converted into a permanent post the vacancy in such permanent promotion post could have been filled either on a permanent basis, by means of a promotion, or on a temporary basis, under section 32(1) of the same Law; and the respondent Commission chose to fill it on a permanent basis by means
 10 of a promotion.

How a promotion is effected is laid down by sections 31(2) and 44(2) of the aforesaid Law and, therefore, there had to be taken into account the merit, qualifications and seniority of all public officers eligible for promotion to the post in question,
 15 that is of those already serving in the immediately lower grade of Surveyor, 1st Grade, including, of course, of interested party Pantazis, who had been seconded to the abolished temporary post of Senior Surveyor, and of the applicant who was serving in the post of Surveyor, 1st Grade. As I have already stated,
 20 such course was not followed by the Commission; and my conclusion that such course was not followed is reinforced by the to that effect letter of the Director of the Department of Lands and Surveys, dated April 5, 1978 (*exhibit 3*), which is referred to in the relevant, above quoted, minutes of the Commission.
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That the course adopted by the Commission in this case was not possible in law is, also, to be derived from the fact that, in order to render such a course lawful in certain cases it was thought fit to amend accordingly the provisions of section 31
 30 of Law 33/67 by means of a Bill (see Sixth Supplement to the Official Gazette of the Republic, dated February 22, 1980) which, however, has not yet been enacted into law by the House of Representatives.

For the foregoing reasons, I have decided to annul the promotion of interested party Pantazis to the post of Senior Surveyor
 35 as having been effected contrary to law; it was not possible to

promote him merely by virtue of the conversion of his post from a temporary into a permanent one.

In relation to the costs of the present proceedings I have decided to award to applicant C£30 towards his costs.

Promotion of interested party 5
Pantazis annulled. Recourse
against promotion of interested
party Gavriel withdrawn and
dismissed. Order for costs as
above. 10