

1980 April 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS KOLOKOTRONIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 233/79).

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- Public Officers—Promotions—Qualifications—Schemes of service—
Whether a particular candidate possesses the qualifications required
thereunder is a matter within the discretion of the Public Service
Commission—Principles on which Court interferes with the mode
of the exercise of such discretion—Scheme of service requiring a* 5
*“very good knowledge of English”—Reasonably open to the
Commission in the circumstances of this case to find that the
interested party possessed above qualification—Sufficient inquiry
carried out in this connection—Moreover interested party previous-
ly appointed to a post requiring an “excellent knowledge of English”* 10
*—It may be inferred, on the basis of the presumption of regularity,
that he had been found by the Commission on the previous occasion
to possess an “excellent knowledge of English”—Written recom-
mendations by Head of Department stating that interested party
possessed all required qualifications.* 15
- Public Officers—Promotions—Qualifications—Applicant’s superior
qualifications—Not sufficient to tilt the scales in his favour in
view of all other relevant factors including the recommendations
of the Head of Department in favour of the interested party—
Applicant failed to satisfy Court that he was a candidate strikingly* 20
*superior to the interested party—Due reasons appearing in Com-
mission’s minutes for not preferring applicant notwithstanding his
qualifications.*
- Public officers—Promotions—Seniority—Notion of “experience”
includes necessarily the notion of “seniority”.* 25

Public Officers—Promotions—Head of Department—Recommendations—Both applicant and interested party candidates for promotion—Head of Department recommending only interested party that he was “very suitable” for promotion—Whether such recommendation meant that he was “the most suitable”.

Administrative Law—Presumption of regularity—Allowed to operate in favour of a decision of the Public Service Commission regarding possession by a candidate of the qualifications required under the relevant schemes of service.

10 The applicant, an Industrial Relations Officers, 1st Grade, was a candidate for promotion to the post of Senior Industrial Relations Officer, a “first entry and promotion” post. Following the interview of the candidates by the respondent Commission, in the presence of the Director-General of the Ministry of Labour and
15 Social Insurance, the Commission considered* “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” came to the conclusion
20 that the interested party was on the whole the best and decided to appoint him to the above post. Hence this recourse.

25 The Director-General of the Ministry concerned, who was present at the meeting of the Commission, stated before the Commission that the services of the interested party had been very satisfactory and that he “considered him very suitable for the post of Senior Industrial Relations Officer”.

30 Both the applicant and the interested party were holding, at the material time, the post of *Industrial Relations Officer, 1st Grade*, to which the applicant was appointed on November 1, 1977 and the interested party on October 1, 1970, in a temporary capacity, and on January 1, 1972, in a permanent capacity. They were both graduates of secondary education schools and of the Highest School of Economics and Commercial Sciences of Athens. The applicant has, also, obtained a Diploma in
35 Management studies at the City of Leicester Polytechnic, a Diploma in *Industrial Relations and Labour Studies* from the Institute of Social Studies in The Hague and was a member of the

* See the relevant minutes at pp. 424–25 *post*.

British Institute of Management. The annual confidential reports of both of them showed them to be of, approximately, equal merit.

Counsel for the applicant contended:

- (a) That the Commission has failed to carry out a proper inquiry in order to ascertain whether the interested party possessed a "very good knowledge of English" which was an essential requirement under the relevant scheme of service. 5
- (b) That the applicant was not selected for appointment though he was better qualified than the interested party and that the Commission did not give due reasons for disregarding the better qualifications of the applicant. 10
- (c) That the seniority of the interested party, as compared with that of the applicant, in the post of Industrial Relations Officer, 1st Grade, should not have been treated by the respondent Commission as a decisive factor; and that, in any event, the Commission did not refer to the factor of seniority, but only referred to the "experience" of the candidates. 15
20
- (d) That the Director-General of the Ministry of Labour and Social Insurance, Mr. Sparsis, stated at the relevant meeting of the respondent Commission that he considered the interested party to be "very suitable" for promotion to the post in question, and that, therefore, he did not recommend him as being the "most suitable". 25

Regarding contention (a) above the Commission was satisfied* that the interested party possessed "a very good knowledge of English", as required by the relevant scheme of service, because he had graduated from a six-year secondary school, in which the English language was one of the subjects taught, and because of his long and satisfactory service in the Government. 30

Moreover, in forwarding the application of the interested party for appointment to the above post and in recommending him for acting appointment to such post the Director-General of the Ministry concerned stated that the interested party possessed 35

* See the relevant minutes at p. 425 *post*.

the required qualifications. Also, the interested party was in 1970 appointed to the post of Industrial Relations Officer 1st Grade and amongst the qualifications required for promotion to such post was "an excellent knowledge of English and Greek".

5 Held, (1)(a) that in determining whether a particular applicant possesses the qualifications required by a scheme of service the Public Service Commission exercises a discretion and this Court will only interfere with the mode of the exercise of such discretion if the conclusion reached by the commission was not reasonably
10 open to it on the material before it.

(1)(b) That since the interested party was initially promoted to the post of Industrial Relations Officer, 1st Grade—from which he was later promoted to the post of Senior Industrial Relations Officer—it may be inferred, on the basis of the presumption
15 of regularity, that he had been found on that occasion to possess "an excellent knowledge of English and Greek" (see, in this respect, *inter alia*, *Antoniou v. The Republic* (1975) 3 C.L.R. 510); that, therefore, the respondent Commission, when it stated in its relevant minutes that it was satisfied "having regard to his
20 long and satisfactory service in the Government" that the interested party did possess the required qualification of a "very good knowledge of English" it, presumably, had in mind, among other things, that he had been earlier on promoted to the post of Industrial Relations Officer, 1st Grade, in relation to
25 which there was required "an excellent knowledge of English and Greek". (See, also, the above recommendations of the Director-General in which it was stated that the interested party possessed the required qualifications and from which it must be presumed that the Director-General had in mind that a "very
30 good knowledge of English" was such a qualification).

(1)(c) That in this case it was reasonably open to the respondent Commission to find that the interested party possessed knowledge of the English language of the required standard; that it cannot
35 be said that the Commission did not carry out, in this connection, a sufficient inquiry; and that, accordingly, contention (a) must fail (*Georghiades v. Republic* (1967) 3 C.L.R. 653 *distinguished*).

(2)(a) That as it appears from the relevant minutes of the Commission, the qualifications of the candidates were weighed together with their merits, as well as with their performance when
40 interviewed; that it is clear, therefore, from the said minutes

that the educational qualifications of the applicant—which are regarded as being relevant to the duties of the post concerned—did not tilt the scales in his favour, because when the Commission examined them together with all other relevant factors, having in mind, also, the recommendations of the Director-General in favour of the interested party, it decided that the interested party “was on the whole the best”; and that, thus, the aforesaid minutes of the Commission contain, also, due reasons for not preferring the applicant notwithstanding his qualifications. 5

(2)(b) That this is a case where, though the applicant was superior to the interested party as regards qualifications, he was not found by the Commission to be on the whole superior to him; that he has, indeed, failed to satisfy this Court that he was a candidate strikingly superior to the interested party, due to qualifications or otherwise, so that it could intervene in his favour and annul the *sub judice* promotion of the interested party; and that, accordingly, contention (b) must fail. 10 15

(3) That the notion of experience includes necessarily the notion of seniority; that it is clear from the minutes of the respondent Commission that “experience” was weighed together with all other relevant considerations and was not treated as a decisive factor; and that, accordingly, contention (c) must fail. 20

(4) That it is abundantly clear from the relevant minutes of the Commission that though both the applicant and the interested party were, at the time, before the Commission as candidates for promotion to the post concerned the Director-General recommended only as “very suitable” the interested party; that the matter is put really beyond any doubt when it is noted that, in forwarding to the Commission the application for appointment of the interested party, he recommended him strongly for promotion to the post of Senior Industrial Relations Officer, whereas he forwarded the application of the applicant for appointment to the said post without any comment; and that, accordingly, contention (d) must also fail. 25 30

Application dismissed. 35

Cases referred to:

Antoniou v. Republic (1975) 3 C.L.R. 510;

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

Zinieris (No. 1) v. Republic (1975) 3 C.L.R. 13;

Georghiades v. Republic (1967) 3 C.L.R. 653. 40

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Industrial Relations Officer in preference and instead of the applicant.

- 5 *L. N. Clerides*, for the applicant.
 G. Constantinou, for the respondent.
 P. Ioannides, for the interested party.

Cur. adv. vult.

10 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the validity of the promotion, by the respondent Public Service Commission, of Andreas Demetriades, the interested party in this case, to the post of Senior Industrial Relations Officer. The said post is a "first entry and promotion" post and the relevant scheme of
 15 service reads as follows:-

"Duties and Responsibilities:

To organise, administer and train an effective Industrial Relations and Personnel Management Service in the Island; to advise the Minister of Labour and Social Insurance on
 20 all matters pertaining to Industrial Relations; to advise workers and employers (including Government) on the functions of Workers' and Employers' Organizations; to advise both sides of Industry on Industrial Relations and Personnel Management policy and on legislation
 25 relating to such matters; to foster the establishment of Wages Councils, Joint Industrial Councils, Consultative Committees, Grievance Committees, Arbitration Tribunals, etc., in Industry and to advise and guide such bodies when established; to collect and disseminate statistics on wages,
 30 hours of work, industrial disputes and conditions of employment; to conduct research on special matters affecting labour and any other duties assigned to him.

Qualifications Required:

35 A University degree or equivalent diploma in Industrial Relations or Personnel Management, Law, Economics or other appropriate degree or diploma; theoretical and practical experience in labour-management relations, personnel management, research and statistics; a thorough understanding of industrial relations problems and a

broad knowledge of labour problems generally; ability to organize and direct social and economic surveys and to analyse their results; strong personality; ability to cooperate with individuals and organizations, to win and inspire confidence and to conduct negotiations and mediations. A very good knowledge of English is essential.” 5

The *sub judice* decision of the respondent Commission was taken on January 2, 1979; and the material part of the relevant minutes of the Commission reads as follows:—

“Mr. M. D. Sparsis, Director-General, Ministry of Labour and Social Insurance, present. 10

The Commission interviewed the following candidates:

1. Demetriades Andreas
2. Polyviou Andreas
3. Kolokotronis Charalambos
4. Panayiotou Michael.

The Commission as well as the Director-General, Ministry of Labour and Social Insurance, 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. 15

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.). 20

The Personal Files and the Annual Confidential Reports of all the candidates were also taken into consideration. 25

The Commission observed that, during the interview, Mr. Andreas Demetriades gave very satisfactory replies to questions put to him and generally he proved to be the best candidate for promotion to the above post. 30

The Director-General, Ministry of Labour and Social Insurance, stated that Mr. A. Demetriades was serving in the post of Industrial Relations Officer, 1st Grade, as from January, 1972, his services had been very satisfactory and that he considered him very suitable for the post of Senior Industrial Relations Officer. 35

5 According to the relevant scheme of service, candidates for appointment or promotion to the post of Senior Industrial Relations Officer must possess 'a very good knowledge of English'. The Commission observed that Mr. Andreas Demetriades had graduated from a Six-year *Secondary School in which the English language was one* of the subjects taught. In view of the above, and having regard to his long and satisfactory service in the Government, the Commission was satisfied that the officer in question did possess 'a very good knowledge of English'.

15 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 Mr. Andreas Demetriades was on the whole the best. The Commission accordingly decided that Mr. Andreas Demetriades be promoted to the permanent post of Senior Industrial Relations Officer w.e.f. 1.2.79."

25 From a comparative table, which has been produced before me in the course of the present proceedings, it appears that both the applicant and the interested party were holding, at the material time, the post of Industrial Relations Officer, 1st Grade, to which the applicant was appointed on November 1, 1977, and the interested party on October 1, 1970, in a temporary capacity, and on January 1, 1972, in a permanent capacity.

30 Both the candidates concerned are graduates of secondary education schools and of the Highest School of Economics and Commercial Sciences of Athens.

35 The applicant has, also, obtained a Diploma in Management Studies after an one year's course at the City of Leicester Polytechnic; and a Diploma in Industrial Relations and Labour Studies from the Institute of Social Studies in The Hague, which he obtained in 1978. He is, also, a Member of the British Institute of Management.

It is common ground that the annual confidential reports in respect of both of them show them to be of, approximately, equal merit.

One of the main grounds on which counsel for the applicant has relied is that the Commission has failed to carry out a proper inquiry in order to ascertain whether the interested party possessed a “very good knowledge of English”, which is an essential requirement under the relevant scheme of service. As it appears 5
from the aforementioned minutes of the respondent Commission, it was satisfied that the interested party possessed a knowledge of English of the required standard, because he had graduated from a “Six-year Secondary School”—actually the Pancyprian Gymnasium—“in which the English language was one of the 10
subjects taught”, and, also, in view of his “long and satisfactory service in the Government”.

The course of the career of the interested party as a public officer appears from his personal file and from the file of the annual confidential reports about him, both of which were before 15
the Commission at the material time.

The interested party entered the Public Service in 1968 as an Industrial Relations Officer, on daily wages, and, as already stated in this judgment, he was first appointed to the post of Industrial Relations Officer, 1st Grade, in 1970. 20

As it appears from the minutes of a meeting of the respondent Commission on September 21, 1977, in relation to promotions to the post of Industrial Relations Officer, 1st Grade, a qualification required for promotion to the said post is “an excellent knowledge of English and Greek.” 25

Since, therefore, the interested party was initially promoted to the post of Industrial Relations Officer, 1st Grade—from which he was later promoted to the post of Senior Industrial Relations Officer—it may be inferred, on the basis of the presumption of regularity, that he had been found on that occasion to possess “an excellent knowledge of English and Greek” 30
(see, in this respect, *inter alia*, *Antoniou v. The Republic*, (1975) 3 C.L.R. 510); therefore, the respondent Commission, when it stated in its minutes dated January 2, 1979, that, in promoting the interested party to the post of Senior Industrial Relations 35
Officer, it was satisfied “having regard to his long and satisfactory service in the Government” that he did possess the required qualification of a “very good knowledge of English” it, presumably, had in mind, among other things, that, as already stated,

he had been earlier on promoted to the post of Industrial Relations Officer, 1st Grade, in relation to which there was required "an excellent knowledge of English and Greek."

5 It is worth noting, also, in this connection, that when the Director-General of the Ministry of Labour and Social Insurance, Mr. Sparsis, recommended on September 19, 1978, to the respondent Commission the acting appointment of the interested party to the post of Senior Industrial Relations Officer he stated expressly that the interested party possessed all the qualifications
10 required for appointment to such post (see document No. 32 in the personal file of the interested party).

Moreover when Mr. Sparsis, on November 16, 1978, forwarded to the respondent Commission the application of the interested party for appointment to the post of Senior Industrial
15 Relations Officer he stated, in strongly recommending the interested party for such appointment, that he possessed the required qualifications; and it must be presumed that Mr. Sparsis had in mind that a "very good knowledge of English" was such a qualification.

20 As it has been held in, *inter alia*, *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, and *Zinieris (No. 1) v. The Republic*, (1975) 3 C.L.R. 13, in determining whether a particular applicant possesses the qualifications required by a scheme of service the Public Service Commission exercises a discretion; and this
25 Court will only interfere with the mode of the exercise of such discretion if the conclusion reached by the Commission is not reasonably open to it on the material before it.

In the present instance I am satisfied that it was reasonably open to the respondent Commission to find that the interested
30 party possessed knowledge of the English language of the required standard; and it cannot be said that the Commission did not carry out, in this connection, a sufficient inquiry; therefore, the present case is clearly distinguishable from that of *Georgiades v. The Republic*, (1967) 3 C.L.R. 653, to which I
35 have been referred by counsel for the applicant.

The other complaints of counsel for the applicant with which I shall deal are that the applicant was not selected for appointment though he is better qualified than the interested party and

that the respondent Commission did not give due reasons for disregarding the better qualifications of the applicant.

I have already referred to the respective qualifications of the two candidates in question. As it appears from the relevant minutes of the Commission, dated January 2, 1979, their qualifications were weighed together with their merits, as well as with their performance when interviewed. It is clear, therefore, from the said minutes that the educational qualifications of the applicant—which I do regard as being relevant to the duties of the post concerned—did not tilt the scales in his favour, because when the Commission examined them together with all other relevant factors, having in mind, also, the recommendations of Mr. Sparsis in favour of the interested party, it decided that the interested party “was on the whole the best”; and, thus, the aforesaid minutes of the Commission contain, also, due reasons for not preferring the applicant notwithstanding his qualifications.

In my opinion this is a case where, though the applicant was superior to the interested party as regards qualifications, he was not found by the Commission to be on the whole superior to him; and he has, indeed, failed to satisfy me that he was a candidate strikingly superior to the interested party, due to qualifications or otherwise, so that I could intervene in his favour and annul the *sub judice* promotion of the interested party.

Another submission of counsel for the applicant has been that the seniority of the interested party, as compared with that of the applicant, in the post of Industrial Relations Officer, 1st Grade, should not have been treated by the respondent Commission as a decisive factor; and that, in any event, the Commission did not refer to the factor of seniority, but only referred to the “experience” of the candidates.

In my view the notion of experience includes necessarily the notion of seniority; and it is clear from the aforementioned minutes of the respondent Commission that “experience” was weighed together with all other relevant considerations and was not treated as a decisive factor.

The last submission of counsel for the applicant with which I have to deal is that the Director-General of the Ministry of Labour and Social Insurance, Mr. Sparsis, stated at the relevant

meeting of the respondent Commission that he considered the interested party to be "very suitable" for promotion to the post in question, and that, therefore, he did not recommend him as being the "most suitable".

- 5 It is abundantly clear from the relevant minutes of the Commission, dated January 2, 1979, that though both the applicant and the interested party were, at the time, before the Commission as candidates for promotion to the post concerned Mr. Sparsis recommended only as "very suitable" the interested
10 party; and the matter is put really beyond any doubt when it is noted that, in forwarding to the Commission the application for appointment of the interested party, Mr. Sparsis recommended him strongly for promotion to the post of Senior Industrial Relations Officer (see document No. 35 in the personal
15 file of the interested party), whereas he forwarded the application of the applicant for appointment to the said post without any comment (see *exhibit X*).

- For all the above reasons I find that the recourse of the applicant cannot succeed and has to be dismissed accordingly; but in the light of all pertinent considerations I shall not
20 make an order of costs against the applicant.

Application dismissed. No order as to costs.