

1982 May 11

[HADJIANASTASSIOU, DEMETRIADES, SAVVIDES, LORIS,
STYLIANIDES AND PIKIS, JJ.]

1. THE REPUBLIC OF CYPRUS THROUGH
THE PUBLIC SERVICE COMMISSION,
2. ANASTASSIA HAVIARA,

Appellants,

v.

CHARILAOS ARISTOTELOUS, AND OTHERS,

Respondents.

(Revisional Jurisdiction Appeals Nos.
246, 247, 248 and 249).

*Public Officers—Appointments and promotions—First entry and
promotion post—Promotion by more grades than one at any
one time is permissible when the vacancy to be filled is a first
entry and promotion post—Public Service Law, 1967 (Law 33/67)
section 28, definition of “promotion” and section 30(1)(b).*

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These proceedings arose out of the decision of the Public Service
Commission to promote Anastassia Haviara (“the interested
Party”) to the post of Liaison Officer in the Public Information
Office. The post in question was a first entry and promotion
post and the qualifications required under the relevant scheme
of service for first entry were a university diploma or degree
in certain subjects. The qualifications for promotion were,
inter alia, a general standard of education not below that of
a six-year secondary school. The interested party was a press
Assistant 2nd Grade, in the Public Information Office and was
not in possession of the qualifications required for first entry
to the above post of Liaison Officer.

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Upon a recourse by the unsuccessful candidates the trial Judge
held that the principle of administrative Law that no public
officer may be promoted for more than one grade at a time, as
expounded in the case of *Arkatitis v. The Republic* (1967) 3

C.L.R. 429, was applicable because it found expression in s. 31(2)* of the Public Service Law, 1967, and in the absence of express provision to the contrary it should be given full effect; and that as the promotion of the interested party involved jumping more than two steps in the ladder, at a time, her promotion had to be declared void as being contrary to section 31(2) of Law 33/67. 5

Upon appeal by the Public Service Commission and the interested party the sole issue for consideration was whether the Public Service Law, 1967 (Law 33/67) permits promotion under any circumstances by elevation, by more grades than one at any one time, in deviation from the principles of administrative Law as approved in the Arkatitis case (supra). 10

*Held, that the definition of "promotion" in section 28** of Law 33/67 and its use without qualification in section 30(1)(b)*** does not limit its meaning to ascending any particular step on the ladder; that any elevation in the service, judged from the viewpoint of status or emoluments, is regarded in law as promotion; that distinction is drawn by the law between a first entry and promotion post on the one hand, and a promotion post on the other; that the need for advertisement in the first case signifies the difference between the two; that a first entry and promotion post is open to everyone who has the qualifications envisaged in the relevant scheme of service whereas the filling of a promotion post is limited to those in the service holding a post immediately below that to be filled; that, therefore, a promotion by more grades than one at any one time is permissible when the vacancy to be filled is a first entry and promotion office; accordingly the appeal must be allowed.* 15 20 25

Appeal allowed. 30

Cases referred to:

Arkatitis and Others (No. 2) v. The Republic (1967) 3 C.L.R. 429 at pp. 434-435;

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

Papapetrou v. Republic, 2 R.S.C.C. 61 at p. 69; 35

Shamassian and Others v. Republic (1973) 3 C.L.R. 341 at p. 351.

* Section 31(2) is quoted at pp. 504, 506 post.

** Section 28 is quoted at pp. 503, 505 post.

*** Section 30(1)(b) is quoted at pp. 504, 505 post.

Appeals.

Appeals against the judgment of a Judge of the Supreme Court (Malachtos, J.) given on the 7th February, 1981 (Revisional Jurisdiction Cases Nos. 238/77 and 239/77) whereby the decision of appellant 1 to promote appellant 2 to the post of Liaison Officer, Public Information Office was annulled.

Cl. Antoniadēs, Senior Counsel of the Republic, for appellant in Appeals 246 & 247.

A. Triantafyllides, for appellant in Appeals 248 & 249.

M. Christofides, for respondents in Appeals 246 & 247 and for respondent 1 in Appeals 248 & 249.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Stylianides, J.

STYLIANIDES J.: By these four consolidated appeals the Public Service Commission and Anastassia A. Haviara, who is referred to in these proceedings as "the interested party", appeal against the first instance judgment of a Judge of this Court—(See *Aristotelous and Another v. The Republic*, (1981) 3 C.L.R. 14)—whereby in Recourses No. 238/77 and 239/77 the decision of the Public Service Commission to promote to the post of Liaison Officer, Public Information Office, the interested party was annulled.

The salient facts of the case are as follows:—

The Director-General of the Ministry of Interior by letter dated 11.9.1976 informed the Chairman of the Public Service Commission that the Ministry of Finance had approved the filling of one vacancy in the post of Liaison Officer in the Public Information Office and requested him to take the steps necessary for its filling.

The qualifications envisaged by the scheme of service (exhibit No. 7) were:—

(i) *For First Entry:*

A University diploma or degree in Arts, Law or Political Science, or a diploma in Journalism from a recognised Institution; a very good knowledge of

Greek and English or Turkish and English; experience in public relations work would be an advantage.

(ii) *For Promotion:*

A good general standard of education not below that of a six-year secondary school; a very good knowledge of Greek and English or Turkish and English; extensive experience in public relations work.

The Public Service Commission considered the question of filling the post in a meeting held on 9.10.1976. They decided that the vacancy in question be advertised allowing two weeks for submission of applications; the post was advertised in the official Gazette on 22.10.1976 under Notification No. 1966. In response 16 applications, including those of the applicants and the interested party, were submitted.

At a second meeting on 18.12.1976 the Commission decided that 14 of the applicants eligible for the post should be required to undergo written examinations. Thereafter, taking into consideration the results of the examinations at its meeting of 30.4.1977, the Commission decided that four of the candidates, including the applicants and the interested party, should be invited to an interview on 24.5.1977 and that the Director of Public Information Office should be requested to be present.

At its meeting of 24.5.1977 and in the presence of the Assistant Director of the Public Information Office the Commission interviewed the four candidates. And, as it appears from their minutes, "after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities, service and experience of these candidates, as well as their suitability for appointment to the above post, as shown at the interview, and having regard to the results of the written examinations, which were held on 10.2.1977 and 11.2.1977, the Commission came to the conclusion that Mrs. A. Haviara was, on the whole, the most suitable candidate for promotion. The Commission accordingly decided that Mrs. A. Haviara be promoted to the permanent post of Liaison Officer with effect from 15.6.1977".

The respondent, Charilaos Aristotelous, who was holding the post of Press Assistant, 1st Grade, in the Public Information

Office as from 1.12.1968 filed Recourse No. 238/77. Respondent, Ioannis Solomou, a Press Assistant, 2nd Grade, in the Public Information Office as from 1.4.1969, filed Recourse No. 239/77. By the said recourses they challenged the validity
5 of the aforesaid administrative act and/or decision whereby the interested party was promoted to the post of Liaison Officer.

The interested party was as from 1.8.1970–14.6.1977 a Press Assistant, 2nd Grade, in the Public Information Office. She did not possess the qualifications prescribed in the scheme of
10 service for first entry.

The learned trial Judge, after reviewing the arguments advanced, decided that the principle of administrative law that no public officer may be promoted for more than one grades at a time, as expounded in the case of *Arkatitis v. The Republic*,
15 (1967) 3 C.L.R. 429, is applicable, because it found expression in s.31(2) of the Public Service Law, 1967. And in the absence of express provision to the contrary it should be given full effect. Consequently inasmuch as he found that the promotion of the applicant involved jumping more than two steps in the ladder,
20 at a time, he declared the act void as being contrary to s.31(2) of Law 33/67.

Learned counsel for both appellants submitted that the principle of administrative law adopted in *Arkatitis* was incorporated in s.30(1)(c) which refers to “promotion offices” only and that
25 the application of s.31(2), that provides for the procedure for filling vacancies in offices, refers only to “a promotion office”; the combined effect of ss. 28, 30(1)(b) and 44 is that promotion to “a first entry and promotion post” for more than one grades is permissible. They further argued that the post of Liaison
30 Officer has no immediate lower grade or office; therefore, the interpretation of the schemes of service to that effect was reasonably open to the Public Service Commission.

Learned counsel for the respondents contended that no legislative provision exists in this country contrary to the general principle of administrative law that no promotion can be for more
35 than one grades at a time, and he referred to the Greek authorities. He further submitted that the office held by the interested party at the material time—Press Assistant, 2nd Grade—was by two grades lower than that of the Liaison Officer to which
40 she was promoted.

Before the coming into operation of the Constitution, administrative law in Cyprus had very limited application. Article 146 of the Constitution introduced into this country the administrative law, based on the general principles of administrative law, as developed in Greece, France and elsewhere. Before Independence there was no code comprehensively governing the manning and functioning of the civil service. 5

In Greece, the Council of State in Case No. 512/1950, Vol. 1950A, p. 451, at p. 452, enunciated the general principle of public service law that every promotion be made for one grade only. In Case No. 457/1955, Vol. 1955A, p. 613, at p. 615, the promotion to more than one grades in the absence of clear legislative provision was declared void as contrary to the principles of public service and administrative law. This principle was adopted and applied by Triantafyllides, J., as he then was, in *Nicos Arkatitis and Others (No. 2) v. The Republic (Public Service Commission)*, (1967) 3 C.L.R. 429, at pp. 434-5. 10 15

In *Andreas Tryphon v. The Republic of Cyprus, through the Public Service Commission*, (1968) 3 C.L.R. 28, the applicant challenged the validity of the decision of the respondent Commission to promote the interested party to the post of Senior Statistics Assistant. The post of Senior Statistics Assistant was a "first entry and promotion post". Triantafyllides, J., as he then was, said at p. 42:- 20

"Another reason for which the sub judice decision of the Commission has to be annulled, in any case, is that, contrary to the relevant Administrative Law principle governing promotions, and in the absence of express legislative provision authorizing such a course, the Commission promoted the Interested Party two grades at a time". 25 30

The decisions for promotion in both *Arkatitis* and *Tryphon* cases were taken prior to the enactment of the Public Service Law, 1967 (No. 33 of 1967).

It was submitted that it was reasonably open to the Public Service Commission, in interpreting the schemes of service, to arrive at the decision that the interested party was eligible for promotion to this post. 35

In *Papapetrou v. The Republic*, 2 R.S.C.C. 61, at p. 69, it was said:-

"In deciding whether or not the Public Service Commission 40

in a given case has conformed with the relevant scheme of service, the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission; provided that such interpretation
 5 was reasonably open to it on the basis of the wording of the scheme in question”.

The question that poses for decision is not the interpretation of the scheme of service but whether, contrary to the general principle of administrative law, the Public Service Law, 1967,
 10 provides or permits promotion by more grades than one at any one time.

The material sections of this statute are ss. 28, 30 and 31. Section 28 defines “appointment” and “promotion”. In s. 30 the offices are divided into three categories: first entry, first
 15 entry and promotion, and promotion offices. Section 31 provides for advertisement in the official Gazette of the Republic of a vacancy in a first entry office and in a first entry and promotion office. Subsection (2) makes unnecessary the advertisement of a vacancy in a promotion office. The promotion office in
 20 31(2) is the promotion office in 30(1)(c). A distinction is drawn by law between a first entry and a first entry and promotion post on the one hand and a promotion post on the other. We consider it pertinent to quote the provisions of these sections:—

25 “28. Διὰ τοὺς σκοποὺς τοῦ παρόντος Μέρους, ἐκτὸς ἐὰν ἐκ τοῦ κειμένου προκύπτῃ διάφορος ἔννοια—

30 ‘διορισμὸς’ σημαίνει τὴν ἀπονομὴν θέσεως εἰς πρόσωπον μὴ τελοῦν ἐν τῇ δημοσίᾳ ἢ τὴν ἀπονομὴν εἰς ὑπάλληλον θέσεως ἄλλης ἢ τῆς ὑπ’ αὐτοῦ μονίμως κατεχομένης, μὴ ἀποτελοῦσαν προαγωγὴν, ὃ δὲ ὅρος ‘διορίζειν’ ἐρμηνεύεται ἀναλόγως.

35 ‘προαγωγὴ’ σημαίνει ἀλλαγὴν εἰς τὴν μόνιμον κατάστασιν ὑπαλλήλου ἢ τῆς συνεπάγεται αὔξησιν εἰς τὴν ἀμοιβὴν τοῦ ὑπαλλήλου ἢ συνεπάγεται τὴν ἔνταξιν αὐτοῦ εἰς ἀνώτερον βαθμὸν τῆς δημοσίας ὑπηρεσίας ἢ ἐπὶ μισθοδοτικῆς κλίμακος ἐχούσης ὑψηλότερον ἀνώτατον ὄριον, εἴτε ἢ ἀμοιβὴ τοῦ ὑπαλλήλου αὐξάνεται ἀμέσως διὰ τῆς τοιαύτης ἀλλαγῆς εἴτε μὴ, ὃ ὅρος ‘προάγειν’ ἐρμηνεύεται ἀναλόγως.

29. _____

30.-(1) Διὰ τοὺς σκοποὺς διορισμοῦ ἢ προαγωγῆς αἱ θέσεις διαιροῦνται εἰς τὰς ἀκολούθους κατηγορίας:

(α) Θέσεις Πρώτου Διορισμοῦ, εἰς τὰς ὁποίας δύνανται νὰ διορισθῶσι πρόσωπα μὴ τελοῦντα ἐν τῇ δημοσίᾳ ὑπηρεσίᾳ ἢ ὑπάλληλοι. 5

(β) Θέσεις Πρώτου Διορισμοῦ καὶ Προαγωγῆς, εἰς τὰς ὁποίας πρόσωπα μὴ τελοῦντα ἐν τῇ δημοσίᾳ ὑπηρεσίᾳ δύνανται νὰ διορισθῶσιν ἢ ὑπάλληλοι δύνανται νὰ διορισθῶσιν ἢ προαχθῶσι.

(γ) Θέσεις Προαγωγῆς, αἱ ὁποῖαι πληροῦνται διὰ τῆς προαγωγῆς ὑπαλλήλων ὑπηρετούντων εἰς τὴν ἀμέσως κατωτέραν τάξιν ἢ θέσιν τοῦ συγκεκριμένου κλάδου ἢ ὑποδιαίρεσεως τῆς δημοσίας ὑπηρεσίας, ἀναλόγως τῆς περιπτώσεως. 10

(2) Ἡ κατηγορία ἐκάστης θέσεως ὀρίζεται ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου εἰς τὸ οἰκεῖον σχέδιον ὑπηρεσίας. 15

(3) Διὰ τοὺς σκοποὺς τοῦ παρόντος ἄρθρου, 'κλάδος ἢ ὑποδιαίρεσις τῆς δημοσίας ὑπηρεσίας' σημαίνει κλάδον ἢ ὑποδιαίρεσιν τῆς δημοσίας ὑπηρεσίας ἀποτελούμενον ἐκ δύο ἢ πλειόνων τάξεων τῆς αὐτῆς θέσεως, ἢ ἐκ διαφόρων θέσεων παρομοίας φύσεως συνεπαγομένων διαφόρους μισθοὺς ἢ μισθοδοτικὰς κλίμακας. Ἐν περιπτώσει ἀμφιβολίας ὡς πρὸς τὰς θέσεις αἵτινες ὑπάγονται εἰς ὠρισμένον κλάδον ἢ ὑποδιαίρεσιν τῆς δημοσίας ὑπηρεσίας ἀποφασίζει τὸ Ὑπουργικὸν Συμβούλιον. 20
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31.-(1) Κενὴ θέσις Πρώτου Διορισμοῦ ἢ κενὴ θέσις Πρώτου διορισμοῦ καὶ Προαγωγῆς δημοσιεύεται εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας.

Νοουμένου ὅτι _____

(2) Κενὴ θέσις Προαγωγῆς πληροῦται, ἄνευ δημοσιεύσεως, διὰ τῆς προαγωγῆς ὑπαλλήλου ὑπηρετούντος εἰς τὴν ἀμέσως κατωτέραν τάξιν τοῦ εἰδικοῦ κλάδου ἢ ὑποδιαίρεσεως τῆς δημοσίας ὑπηρεσίας. 30

Ἐν τῷ παρόντι ἐδαφίῳ 'κλάδος ἢ ὑποδιαίρεσις τῆς δημοσίας ὑπηρεσίας' ἔχει τὴν αὐτὴν ἔννοιαν ὡς ἐν τῷ ἄρθρῳ 30. 35

(3) Δημοσιεύσις κενῆς θέσεως παρέχει πλήρη στοιχεῖα

τοῦ σχεδίου ὑπηρεσίας καὶ καθορίζει τὴν προθεσμίαν ὑποβολῆς αἰτήσεων.

Νοουμένου ὅτι

5 (“28. For the purposes of this Law, unless the context otherwise requires—

‘appointment’ means the conferment of an office upon a person not in the public service or the conferment upon an officer of an office other than that which he substantively holds, not being a promotion; and the expression ‘to appoint’ shall be construed accordingly;

10 ‘promotion’ means any change in an officer’s substantive status which carries with it an increase in the officer’s remuneration or which carries with it the emplacement of the officer in a higher grade of the public service, or on a salary scale with a higher maximum, whether the officer’s remuneration at the time is increased by such a change or not; and the expression ‘to promote’ shall be construed accordingly;

29.

20 30.—(1) For the purposes of appointment or promotion, offices shall be divided into the following categories:—

(a) First Entry offices to which persons not in the public service or officers may be appointed;

25 (b) First Entry and Promotion offices to which persons not in the public service may be appointed and officers may be appointed or promoted;

30 (c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be.

(2) The category of each office shall be fixed by the Council of Ministers in the respective scheme of service.

35 (3) For the purposes of this section, ‘section or sub-section of the public service’ means a section or subsection of the public service composed of grades of the same office,

or of different offices of a similar nature to which different salaries or salary scales are attached. In case of doubt as to the offices comprised in any particular section or sub-section of the public service, the Council of Ministers shall decide in the matter. 5

31.—(1) A vacancy in a First Entry office or in a First Entry and Promotion office shall be advertised in the official Gazette of the Republic.

(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.

(3) An advertisement of a vacancy in an office shall give full particulars of the relevant scheme of service and shall specify the date by which applications shall be submitted"). 15

In *Bedros Shamassian and Others v. The Republic of Cyprus, through the Minister of Finance*, (1973) 3 C.L.R. 341, A. Loizou, J., observed at page 351:— 20

“In any event, in my view, the first three applicants were in fact promoted, because, in accordance with the definition in section 28 the word ‘promotion’ means ‘any change in an officer’s substantive status which carries with it increase in the officer’s remuneration or which carries with it the emplacement of the officer in a higher division of the Public Service or on a salary scale with higher maximum, whether the officer’s remuneration at the time is increased by such a change or not and the expression ‘to promote’ shall be construed accordingly’. 25 30

The limitation to promote by more than one grade relates to the machinery for promotion and although it may render a promotion so made contrary to law, if the post to which a person is promoted is only a promotion post and not a first entry or a first entry and promotion post, yet, it does not change the character of the promotion as such”. 35

5 Out task in this case lies essentially in deciding, as a matter
of construction, whether our law permits promotion under
any circumstances by elevation, by more grades than one at
any one time, in deviation from the principles of administrative
law, as shaped in Greece and approved in *Arkatitis* case, restrict-
ing promotion at a time by more than one step in the ladder.
The answer is in the affirmative because of the definition of
“promotion” in section 28 of Law 33/67 and its use without
qualification in section 30(1)(b). The definition of “promotion”
10 does not limit its meaning to ascending any particular step in
the ladder; any elevation in the service, judged from the view-
point of status or emoluments, is regarded in law as promotion.
A distinction is drawn by the law between a first entry and
promotion post on the one hand, and a promotion post on the
15 other. The need for advertisement in the first case signifies
the difference between the two. A first entry and promotion
post is open to everyone who has the qualifications envisaged
in the relevant scheme of service, whereas the filling of a promo-
tion post is limited to those in the service holding a post imme-
20 diately below that to be filled.

A promotion by more grades than one at any one time is
permissible when the vacancy to be filled is a first entry and
promotion office. The public service is a most important factor
for the efficient functioning of the State. The interests of the
25 citizens in a modern State, whose activities are expanding, are
best served by qualified, experienced and efficient civil servants.
The object of our law is to attract candidates from outside
the service and at the same time give the opportunity for promo-
tion to suitable persons already in the service. The existence
30 of the institution of promotion posts, restricted to members
of the service, safeguards adequately the interests of those in
the service. On the other hand there are posts entailing duties
that require in the public interest opening up the ranks of the
service to attract the best possible from a wider section of the
35 public. It seems that the Public Service Commission has, for
the past 12 years, rightly interpreted the law acting on advice
from the learned Attorney-General.

In view of our above decision on the first point raised, it
becomes unnecessary to consider whether, on the true inter-

pretation of the schemes of service, the post of Liaison Officer has any immediate grade or lower office.

The appeal is, therefore, allowed. There will be no order as to costs.

Appeal allowed. No order as to costs.

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