

1983 October 13

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

MYRIANTHI C. HJIOANNOU,

Appellant.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Revisional Jurisdiction Appeal No. 302).

*Public Officers—Promotions—“Striking Superiority”—Notion of—
Academic qualifications additional to those required by the scheme
of service which are not specified therein as an advantage—Whether
they indicate by themselves striking superiority.*

- 5 *Constitutional Law—Equality—Principle of equality—Article 28
of the Constitution—Age-limit provisions in scheme of service
for post of Welfare Officer—Not an arbitrary differentiation
and discriminatory—Not repugnant to the provisions of Article
28 of the Constitution—But even if unconstitutional Court has
10 no power to re-write a scheme of service.*

This was an appeal against a decision of a Judge of this Court
whereby he dismissed the recourse of the appellant against the
validity of the decision of the respondent Public Service Commis-
sion to promote the interested parties to the post of Welfare
15 Officer, a first entry and promotion post, in preference and
instead of the appellant.

It was not in dispute that the interested parties possessed
the minimum qualifications required by the relevant scheme
of service* but appellant possessed, also, many academic qualifi-
20 cations additional to those required by the scheme of service.

Counsel for the appellant mainly contended:

- (a) That the trial Court erred in not finding that the appel-

* The scheme of service is quoted at 1044–1045 post.

lant has striking superiority over most of the interested parties, in view of her qualifications.

(b) That the trial Court failed to accept that the decision of the respondent Commission was not duly reasoned.

(c) That the part of the scheme of service restricting the age-limit for first entry is repugnant to the principle of equality and, therefore, contrary to Articles 6 and 28 of the Constitution. 5

Held, (1) that in order to validate an allegation of "striking superiority", a party's superiority must be self-evident and apparent from perusal of the files of the candidates and it must emerge as an unquestionable fact; that possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them; that additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority; that on the totality of the material before this Court the appellant failed to establish that there existed striking superiority over the interested parties or any of them as to lead to the conclusion that the subject decision was taken in excess or abuse of power; and that, moreover, the sub judice decision was duly reasoned (p. 1047 post). 10
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(2) That the principle of equality has as its goal justice and fairness; that a classification that has reasonable basis does not offend against the principle of equality because in practice it results in some inequality; that one who asserts the classification as unjustified must carry the burden of showing that it does not rest upon a reasonable basis but it is essentially arbitrary; that the appellant failed to satisfy this Court beyond reasonable doubt that the age-limit provision in the scheme of service was an arbitrary differentiation, discriminatory and, therefore, repugnant to the provisions of Article 28 of the Constitution. 30
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Held, further, that even if it could be held that the scheme of service was repugnant to the provisions of Article 28 of the Constitution this could not carry the case for the appellant any

5 further as the power of this Court is restricted to declaring null and void the unconstitutional provision and read the scheme of service as if the obnoxious requirement were not there because it has no power to re-write a scheme of service if provisions of it are unconstitutional.

Appeal dismissed.

Cases referred to:

- 10 *Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83;
HjiSavva v. Republic (1982) 3 C.L.R. 76 at p. 78;
 10 *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546;
Georghakis v. Republic (1977) 3 C.L.R. 1;
HjiGeorghiou v. Republic (1977) 3 C.L.R. 35;
Cleanthous v. Republic (1978) 3 C.L.R. 320;
 15 *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at
 p. 428;
Mikrommatis v. Republic, 2 R.S.C.C. 125;
Republic v. Arakian (1972) 3 C.L.R. 294.

Appeal.

20 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 12th March, 1983 (Revisional Jurisdiction Case No. 120/81)* whereby appellant's recourse against the decision of the respondents to promote the interested parties to the post of Welfare Officer in preference and instead of her was dismissed.

25 *A. Xenophontos*, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

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

35 STYLIANIDES, J.: This appeal is directed against the decision of a Judge of this Court dismissing the recourse of the appellant whereby she was challenging the decision of the respondent Commission to promote and/or second the interested parties to the post of Welfare Officer as from 1st December, 1980, as being null and void and of no effect whatsoever.

* Reported in (1983) 3 C.L.R. 286.

The post of Welfare Officer is, according to the relevant scheme of service, a first entry and promotion post. The relevant scheme of service requires different qualifications for promotion and for a first entry. It reads as follows:-

“Qualifications Required: 5

For Promotion:

- (a) Extensive experience in social work in the fields of probation, child-care, relief work, and community organization.
- (b) Successful completion of the Training Programme of the Department (including the passing of a Departmental Examination). 10
- (c) A Certificate or Diploma of specialized training in one or more of the above fields of social work from a recognised institution will be an advantage. 15

For First Entry:

- (a) A University Diploma or Degree in Social Science or other appropriate subject.
- (b) Age: not less than 21 and not more than 45 years.

For Both: 20

- (a) Sound personality, maturity and temperamental stability; initiative and imagination in dealing with the social problems of the individual. A good understanding of social problems besetting society or individuals including capability of dealing with cases presenting intense and deep-seated social problems. A high standard of moral attitude and ability to initiate participation of local institutions and charitable organizations in the efforts of the Department. Ability to win confidence and deal with others patiently and sympathetically. 25 30
- (b) A good knowledge of English”.

The grounds of appeal are:-

- (a) The trial Court erred in not finding that the appellant has striking superiority over most of the interested parties; 35

(b) The Court failed to accept that the decision of the respondent Commission was not duly reasoned; and,

5 (c) That the part of the scheme of service restricting the age-limit for first entry is repugnant to the principle of equality and, therefore, contrary to Articles 6 and 28 of the Constitution.

STRIKING SUPERIORITY:

10 It is a settled principle of administrative law that when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision
15 regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to
20 have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning—
25 —(*Odysseas Georghiou v. Republic*, (1976) 3 C.L.R. 74, at p. 83).

The applicant is the holder of a B.A. Degree from the University of Beirut on Development Psychology, a Master's Degree from the University of Iowa in Social Work and a Normal Diploma in the Branch of Developmental Psychology.
30 She was serving as an Assistant Welfare Officer on contract from August, 1975, until 1978, when she left for studies abroad and she was re-engaged on contract in February, 1978.

Her counsel argued during the hearing of this appeal that interested parties Elli Saveriadou, Andreas Kyriakides and
35 Many Tekki had only the minimum qualifications required by the scheme of service and, therefore, much inferior to the appellant. Her qualifications rendered her strikingly superior to the aforesaid interested parties.

Interested party Saveriadou graduated the Secondary Gymnasium, the Teachers' Training College; she passed some examinations of the Cyprus Certificate of Education and the departmental examination for promotion to the post of Welfare Officer. She has been in the service of the Welfare Office as an Assistant Welfare Officer as from 1.6.1957. 5

Andreas Kyriakides graduated only a secondary school in Egypt and passed the departmental examinations. He has been serving as an Assistant Welfare Officer in the Welfare Office. 10

Interested party Mary Tekki, after graduating a secondary school in Cyprus, she attended for three years the Pearce American College of Athens in Social Welfare and also passed the departmental examinations. She has been serving in the Welfare Office as an Assistant Welfare Officer as from 1st August, 1969. 15

The trial Judge found that the appellant failed to establish that there existed a striking superiority over the interested parties or any of them as to lead him to the conclusion that the subject decision was taken in excess or abuse of power. 20

The notion of striking superiority is appropriately analysed by Pikis, J., in *HjiSavva v. The Republic*, (1982) 3 C.L.R. 76, at p. 78, in the following terms:—

“As the expression ‘striking superiority’ suggests, a party’s superiority, to validate an allegation of this kind, must be self-evident and apparent from a perusal of the files of the candidates. Superiority must be of such a nature as to emerge on any view of the combined effect of the merits, qualifications and seniority of the parties competing for promotion; in other words, it must emerge as an unquestionable fact; so telling, as to strike one at first sight”. 25
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Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them. Additional academic qualifications to those provided 35

by the scheme of service do not indicate by themselves a striking superiority. (See *Elli Chr. Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546; *Andreas D. Georghakis v. The Republic*, (1977) 3 C.L.R. 1; *Evangelos Hadji Georghiou v. The Republic*, (1977) 3 C.L.R. 35; *Cleanthis Cle-anthous v. The Republic*, (1978) 3 C.L.R. 320).

As was aptly observed by Hadjianastassiou, J., in *Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417, at p. 428:—

“Had it been otherwise, I would be inclined to the view that there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the candidates there was a person with higher qualifications”.

On the totality of the material before us we are disposed to agree with the trial Judge that the appellant failed to establish that there existed striking superiority over the interested parties or any of them as to lead to the conclusion that the subject decision was taken in excess or abuse of power. All the qualifications of the appellant and her rather short experience in the Welfare Service were before the respondent Commission, as set out in her application for appointment (Form G.6). Furthermore the Commission had the assessment of the representative of the Head of the Department on the performance of the appellant at the interview and the assessment of the qualifications as well as her performance during her service with the Department. Therefore, we find no merit in the submission that the sub judice decision was not duly reasoned. It was reasoned on the whole and reasonably open to the Public Service Commission in the light of the material before them.

30 *EQUALITY:*

Learned counsel for the appellant argued that the provision in the scheme of service that a candidate for first entry should not be less than 21 and not more than 45 years of age is unconstitutional as being contrary to the principle of equality enunciated in Article 28 of the Constitution, as this age-limit is not applicable to the candidates in the service who are eligible for promotion.

The applicant was a candidate for first entry appointment, and she, having been born on 3.4.1952, at the material time was

28 years old. She was not prevented from being an eligible candidate due to the age-limit.

The principle of equality enunciated and safeguarded by Article 28 of the Constitution was first judicially considered in *Mikrommatis* case, 2 R.S.C.C. 125, and in numerous other cases thereafter, including the *Republic (Ministry of Finance) v. Nishan Arakian and Others*, (1972) 3 C.L.R. 294, a Full Bench case. This principle has as its goal justice and fairness. A classification that has reasonable basis does not offend against the principle of equality because in practice it results in some inequality. One who asserts the classification as unjustified must carry the burden of showing that it does not rest upon a reasonable basis but it is essentially arbitrary.

Even if the appellant satisfied us beyond reasonable doubt that the age-limit provision in the scheme of service was an arbitrary differentiation, discriminatory and, therefore, repugnant to the provisions of Article 28 of the Constitution, this would not carry the case for the appellant any further as the power of this Court is restricted to declaring null and void the unconstitutional provision and read the scheme of service as if the abnoxious requirement were not there. We have no power to re-write a scheme of service if provisions of it are unconstitutional. We would have no power, even if we found that the age-limit for first entrants were unconstitutional, to impose a similar age-limit for those who were eligible for promotion and thus exclude Kyriakides and Elli Saveriadou, who were at the material time over 45 years of age. These observations must not be construed as to suggest that there are no valid reasons for differentiating between the two classes of candidates.

Before concluding, however, we would like to state that the young appellant with the worthy academic qualifications enumerated earlier should not be disappointed for not being selected for the post of Welfare Officer. Her qualifications and age afford her every chance to look to the future with hope and confidence.

For the aforesaid reasons this appeal fails and it is hereby dismissed with no order as to costs.

*Appeal dismissed with no order
as to costs.*