

1983 March 11

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS HADJICHRISTOPHOROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 228/82).

Constitutional Law—Public Officers—Terms and conditions of service—Article 192 of the Constitution—Does not safeguard a right to promotion.

Public Officers—Promotions—Schemes of service—There cannot be safeguarded a right to promotion by prescribing against the alteration of Schemes of Service. 5

Public Officers—Promotions—Promotion post—Class of candidates for promotion limited to those holding a position immediately below the post in the particular branch or sub-division of the Public Service. 10

The applicant, a foreman in the Public Works Department, complained against his exclusion, by the Public Service Commission and the appropriate Departmental Committee from the list of candidates for the post of Senior Technical Assistant in the Civil Engineering and Architectural Division of the same Department. The decision to exclude him was based on the ground that the post to be filled was exclusively a promotion post, open only to those holding the post immediately below—Technical Assistant 1st Grade—in the Civil Engineering and Architectural branch of the above Department; and as the applicant was not the occupant of such a position or any position in the division of the Department where the vacancy 15 20

occurred, he was excluded from consideration as candidate for the above post.

Counsel for the applicant mainly contended:

- 5 (a) That in omitting applicant from consideration the respondents ignored his rights safeguarded by Article 192 of the Constitution.
- (b) That the Public Service Commission erroneously found that the post was a promotion post because, in reality, it was a first entry and promotion post.

10 *Held*, (1) that Article 192 of the Constitution does not safeguard any rights to promotion; accordingly contention (a) must fail.

15 *Held*, further, that if any attempt had been made to safeguard a right to promotion by prescribing against the alteration of schemes of service, such a position would be antagonistic to the interests of the public service that dictate flexibility in determining schemes of service. A scheme of service should reflect the needs of the public service from time to time and properly heed scientific knowledge.

20 (2) That in the relevant scheme of service the post is declared as a promotion post; that in a post properly declared as a promotion one, the class of candidates is limited to those holding a position immediately below the promotion post in the particular branch or sub-division of the Public Service, as the case may be; that here, candidature would be limited to those holding the position of Technical Assistant Grade 1, in the Civil Engineering and Architectural branch of the Public Works Department; that since applicant was not the holder of such a position but of a totally different one, that of a foreman, he was rightly excluded from the list of candidates; accordingly

30 the recourse must fail.

Application dismissed.

Cases referred to:

- 35 *Constantinides v. Republic* (1969) 3 C.L.R. 523;
Pankyrios Syntechnia Dimosion Ypallilon v. Republic (1978)
 3 C.L.R. 27.

Recourse.

Recourse against the decision of the respondent whereby applicant was excluded from the list of candidates for the post of Senior Technical Assistant.

M. Christofides, for the applicant. 5

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

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant complains at his exclusion from the list of candidates for the post of Senior Technical Assistant in the Civil Engineering and Architectural division of the Public Works Department. The Public Service Commission and the departmental committee earlier set up to scrutinize candidates, took the view he was ineligible for appointment under the operative scheme of service. They formed the view that the post to be filled was exclusively a promotion one, open only to those holding the post immediately below—Technical Assistant 1st Grade—in the Civil Engineering and Architectural branch of Public Works. And as the applicant was not the occupant of such a position or any position in the division of the Department where the vacancy occurred, he was excluded from consideration as candidate for the post.

The gravamen of the case for the applicant, as postulated in the address of counsel, is that respondents misconstrued the scheme of service in question and wrongly left him out of the list of candidates for promotion. Their misconception arose from a misinterpretation of the scheme of service and misappreciation of the status and position of the applicant in the Public Works Department. In his contention, the Public Service Commission erroneously found that the post was a promotion one because, in reality, it was a first entry and promotion post. An additional argument grounding their case for misconception, though one I found difficult to follow, is that respondents, in omitting him from consideration, ignored the rights of the applicant safeguarded by Article 192 of the Constitution. I find it convenient to dispose of the second leg of the case for the applicant, because of the brevity of the issues involved. Article 192.1 safeguarded the terms and condi-

tions of service of colonial civil servants and stipulated that they should not be altered to their disadvantage.

Article 192.7(b) defined the "terms and conditions of service" encompassed in Article 192, set up for protection, a comprehensive enough definition to exclude any suggestion that they relate to anything other than material benefits and benefits incidental thereto. The submission propounded on behalf of applicant that Article 192 safeguarded any rights to promotion, is unfounded on a review of the provisions of Article 192. Moreover, if any attempt had been made to safeguard a right to promotion by prescribing against the alteration of schemes of service, such a position would be antagonistic to the interests of the public service that dictate flexibility in determining schemes of service. A scheme of service should reflect the needs of the public service from time to time and properly heed scientific knowledge. To accomplish these tasks, power must be retained to change a scheme of service where necessary, in response to the changing needs of the service and current scientific knowledge. The submission of applicant that respondents ignored any right of the applicant safeguarded by Article 192, is untenable. (It is worth mentioning that the implications of Article 192 were examined by the Full Bench in *George Constantinides v. The Republic* (1969) 3 C.L.R. 523).

The interpretation of a scheme of service is not a matter confined to the jurisdiction of the Supreme Court in the exercise of its revisional jurisdiction. The construction of a scheme of service is a matter within the competence of the Public Service Commission. Without such a power the Public Service Commission would find it impossible to discharge its functions. Need would arise for constant recourse to the Courts for an authoritative definition of the terms of a scheme of service. Being a matter within its purview, an interpretation of the scheme of service by the Public Service Commission, will be upheld so long as it is a reasonable one, that is, it puts upon the scheme a construction reasonably open to a body bona fide concerned to construe these provisions. So long as the limits of this discretion are not transgressed, the construction placed upon a scheme of service will be upheld.

In Pankyprios Syntechnia Dimosion Ypallilon v. The Republic

(1978) 3 C.L.R. 27, Triantafyllides, P. espoused the view that schemes of service approved by the Council of Ministers under s.29 of the Public Service Law—33/67, are a species of delegated legislation and must be approached as such. Consequently, the adoption of a scheme of service is not an administrative act liable to review under Article 146.1. It is unnecessary, in these proceedings, to pronounce on the nature of the act of the Council of Ministers approving a scheme of service. I need only mention that if the approval of a scheme of service is a legislative act, it is all the more necessary to construe a scheme of service as a whole in order to determine its effect and implications. However, the construction of the provisions of the scheme of service under consideration presents no special complications. The post is declared as a promotion post. This is a strong pointer to the classification of the post as a promotion post under s.30(1)(c) of the Public Service Law—33/67. In a post properly declared as a promotion one, the class of candidates is limited to those holding a position immediately below the promotion post in the particular branch or sub-division of the Public Service, as the case may be. Here, candidature would be limited to those holding the position of Technical Assistant Grade 1, in the Civil Engineering and Architectural branch of the Public Works Department.

Next, we must examine whether there is anything in the substantive provisions of the scheme of service, qualifying or modifying the avowed intention of the Council to make the position of Senior Technical Assistant in the department in question, exclusively a promotion one. The first considerations are the qualifications envisaged under the scheme. The qualifications are perfectly consistent with the classification of the position as a promotion post. Holding the position of Technical Assistant Grade 1, is postulated as a prerequisite. Counsel for the applicant submitted that the proviso to the qualifications qualifies the intention of the Council of Ministers as emerging from the declaration of the position as a promotion one and, the qualifications envisaged for appointment. I disagree. All that the proviso accomplishes is to relax the educational qualifications otherwise envisaged in respect of those who joined the service, like the applicant, prior to 1961. The applicant joined the colonial civil service in 1941. The concluding words of

Note 2 of the proviso, though apt to give rise to confusion, in no way alter the character of the position. Service in the post immediately below to that filled by the sub judge appointment, is, here again, grafted as a pre-condition for appointment.

- 5 Very probably, the last qualification reproduced, as counsel for the Republic suggested, a policy decision of the Council of Ministers, reached on 1st August, 1968, under 7989, for the relaxation of educational qualifications in relation to persons who joined the service prior to 1961, competing for a first entry or a promotion post. I cannot see how the argument of applicant that, the post was not exclusively a promotion post but a first entry as well, helps the applicant for, in either case, service in the position of Senior Technical Assistant 1st Grade is likewise a prerequisite for appointment. Applicant was not the holder of such a position but of a totally different one, that of a foreman, apparently in a separate branch or division of the Public Works Department.
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The application is dismissed. Let there be no order as to costs.

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Application dismissed. No order as to costs.