

1983 March 12

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MYRIANTHI C. HADJIOANNOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 120/81, 130/81, 133/81,
and 45/81).

*Public Officers—Promotions—Judicial control—Principles applicable
—Seniority—Not the decisive factor—It only prevails if all other
factors are equal—Which were not in view of the better confidential
reports of the interested parties and the views of the Head of
the Department regarding their performance at the interview.*

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*Public Officers—Schemes of service—Provision for different age
for first entry and promotion—A reasonable differentiation—Not
amounting to unequal treatment contrary to Article 28 of the
Constitution.*

The applicants in these recourses challenged the decision of
the respondent Commission to promote the interested parties
to the post of Welfare Officer.

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Both the applicants and interested parties possessed the qua-
lifications required by the schemes of service but the interested
parties were better reported upon in the confidential reports
than the applicants. Two of the interested parties were senior
to applicants but applicants were senior to the remaining inter-
ested parties.

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*Held, (I) that when an administrative 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*

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5 others; that an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate 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 have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; that also, in such a situation the complained of decision of the
10 organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning, (see *Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83).

15 (2) That in the present case the applicants have failed to establish that there existed such striking superiority over the interested parties or any of them as to lead this Court to the conclusion that the subject decision was taken in excess or abuse of power; that their seniority as against those interested parties who are somehow junior to them cannot prevail as not all other factors are equal; that seniority is not the decisive factor that
20 governs promotions but one that should be duly taken into consideration and should only prevail if all other things were equal; that this, however, does not appear to be the case in the light of the views expressed by the Head of the Department regarding their performance at the interview and the contents of the confidential reports; that, furthermore, the subject decision and that includes the disregard of the seniority of those applicants who are senior to certain of the interested parties, is duly reasoned; that the reasoning to be found in the minutes of the respondent Commission of the meeting at which the sub-
25 ject decision was taken, is duly supplemented by the rest of the material that was before them; accordingly the recourse should fail.

35 *Held*, further, with regard to the question whether the provision in the schemes of service for different age limit for first entry and promotion constitutes unequal treatment contrary to Article 28 of the Constitution, that reasonable differentiation is made between first entrants and those eligible for promotion whose avenues should not have been impaired in any way by age limits and no question of unequal treatment arises.

40 *Application dismissed.*

Cases referred to:

- Evangelou v. Republic* (1965) 3 C.L.R. 292 at p. 300;
Georghiades and Another v. Republic (1970) 3 C.L.R. 257 at
 p. 269;
Georghiou v. Republic (1976) 3 C.L.R. 74 at p. 83; 5
Georghiades and Another v. Republic (1975) 3 C.L.R. 143 at
 p. 152.

Recourses.

Recourses against the decision of the respondent to promote
 the interested parties to the post of Welfare Officer in preference 10
 and instead of the applicants.

Ch. Panayides for *N. Neocleous*, for applicant in Case
 No. 45/81.

A. Xenophontos, for the applicant.

St. Amyrosiou for *E. Efstathiou*, for applicants in Case Nos. 15
 130/81, 133/81.

Cl. Antoniadis, Senior Counsel of the Republic, for the
 respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By these four 20
 recourses which have been heard together because of their
 nature, the applicants challenge the decisions of the respondent
 Commission to promote and/or second the interested parties,
 later to be named in this judgment, to the post of Welfare
 Officer as from 1st December 1980, as being null and void and 25
 of no effect whatsoever.

In recourse No. 45/81, the applicant Andreas Papadopoulos,
 challenges the decision of the respondent Commission to appoint
 and/or second and/or promote Zoe Adamidou, Maria Dikomi- 30
 tou, Chryso Neophytou, Vera Paraskevopoulou, Mary Tekki.

In recourse No. 120/81 the applicant Myrianthi HadjiIoannou
 challenges the decision of the respondent Commission to promote
 and/or second Andreas Kyriakides, Ellie Saveriadou, Zoe
 Adamidou, Maria Dikomitou, Chryso Neophytou and Vera
 Paraskevopoulou. 35

In recourse No. 130/81 Sophia Papadopoulou challenges the
 aforesaid decisions which interested parties, Zoe Adamidou,
 Chryso Neophytou, Vera Paraskevopoulou, Mary Tekki, were

seconded to the temporary post of Welfare Officer (Dev. Budget) and the promotion of Avgi Charalambous to the permanent post of Welfare Officer (Dev. Budget).

5 By recourse No. 133/81, applicant Christina Kyriakou challenges the decision of the respondent Commission to promote to the post of Welfare Officer Zoe Adamidou, Chryso Neophytou and Vera Paraskevopoulou.

10 The aforesaid decisions were published in the official Gazette of the Republic of the 23rd January 1981 under Notifications 116 and 117.

15 The post of Welfare Officer is, according to the relevant Scheme of Service, a first entry and promotion post. Approval was given for the filling of seven vacancies in this post, one permanent, (ordinary) six temporary (development) and they were advertised in view of their being first entry posts as well. One-hundred and three applications were in all submitted but as by decision of the Council of Ministers No. 12.948 of the 20th December 1973, these posts were declared to be specialised posts, the respondent Commission referred all the applications to the Chairman of the appropriate Advisory Board as provided by section 35(2) of the Public Service Law, 1967, who in his turn submitted to the respondent Commission the report of the Advisory Board, whereby they were recommended in alphabetical order 34 candidates, among which were included the applicants and the interested parties.

20 The respondent Commission at its meeting of the 12th September 1980, having taken into consideration the views and recommendations of the Advisory Board decided to invite for interview all those recommended by it, except Stavros Roussounides, who is a missing person. At its meetings of the 6th, 23rd, 24th and 27th October, with the exception of one officer who was posted at our Embassy in Athens and could not attend, all but one of the candidates were interviewed in the presence of Linos Shakallis, Principal Welfare Officer, representing the Director of the Department. The relevant minutes of these interviews appear as Appendices 11, 12, 13 and 14 respectively.

35 At its meeting of the 8th November 1980, the respondent Commission took the subject decisions. The relevant minutes

after referring to the minutes of the previous meetings (Appendix 15) read as follows:

“In accordance with the minutes of the Commission dated 11th November 1978, the vacancies were seven, namely that is i.e. one permanent (Ordinary Budget) and six temporary (Development Budget). 5

The Acting Director-General of the Ministry of Labour and Social Insurance by letter under number 4-7-02/XI and dated 13th June 1980, informed the Commission that by the Development Budget of 1980 five permanent posts of Welfare Officer were created as against the abolition of an equal number of temporary posts. The Minister of Finance agreed to the filling of these five permanent posts and so the vacant posts were shaped as follows: 10

1 permanent (Ord. Budget) 15
5 permanent (Dev. Budget)
1 temporary (Dev. Budget).

In the meantime, one permanent post (Ord. Budget) of Welfare Officer resulted from the promotion of Mr. Andreas Ioannides to the post of Inspector of Public Assistance (item 1 of the minutes of the meeting, dated 18th March 1980) and so the vacancies for filling arose to 8. 20

The Acting Director-General of the Ministry of Labour and Social Insurance by letter under number 14/77 and dated 22nd October 1980, asked the suspension of the filling of one temporary (Dev. Budget) post of Welfare Officer until it became possible to settle one casual Welfare Officer by the necessary legislative regulation in accordance with the agreement between PASYDY and Government for the appointment to organic posts of casual officers who did not complete five years service but were in the Government service on the 1st February 1977. 25 30

So the posts for filling are two permanent (Ord. Budget) and five permanent (Dev. Budget). }

The Commission was informed of the opinion of the Deputy Attorney-General under number 34(C)/61/4 and 35

dated 31st October 1980 in accordance with which, in case the Diploma possessed by Charalambos Mahlouzarides, Assistant Welfare Officer, one of the candidates, was found by the Public Service Commission that it is on an appropriate subject as provided by the relevant Scheme of Service for 'First Appointment' then the candidate might take the post although he does not satisfy the qualifications for 'Promotion' to it, and if finally he would be selected for the filling of one of the vacant posts then there should be offered to him *promotion* and not appointment.

As regards the suitability of the Diploma of Mr. Mahlouzarides the views of the Appropriate Authority and the Ministry of Education were requested in writing as from the 16th October 1980, but until this moment no reply has been received.

As the Commission observed that the Principal Welfare Officer as representative of the Director of the Department evaluated at its meeting of the 27th October 1980 the performance of Mr. Mahlouzarides at the interview before the Commission as average (*metria*) and the Commission itself in fact considers, on the basis of all the facts before it, and his performance at the interview, that the said officer is not as good as other candidates, and consequently even if it was found that he satisfies all the requirements of the Scheme of Service for appointment to the post he would not be selected for it, it decided not to wait for the views of the appropriate Authority and the Ministry of Education, but to proceed with the filling of the vacant post.

At the assessment of the candidates the Commission did not agree fully with the assessment of the representative of Director of the Department as regards the performance at the interviews of Mr. Andreas Papadopoulos and Mrs. Sophia Papadopoulou and it observed that the Confidential Reports on them lack as against those of other candidates.

The Commission, further considered that Mr. Andreas Charalambous does not possess the qualifications required by the relevant Scheme of Service.

The Commission having examined all facts before it,

namely the applications with the necessary certificates, the personal files of the candidates, who are civil servants and the Confidential Reports about them and after taking into consideration the conclusions of the Advisory Board and the performance of each one of the candidates at the inter- 5
views with the Public Service Commission, in the light of the views and assessments of the representative of the Director of the Department of Social Welfare Services for the purpose, it decided that those on secondment to the temporary post of Welfare Officer are clearly superior to the 10
remaining candidates and that they are the most suitable and decided to promote them to the post of Welfare Officer as from 1st December 1980 as follows:

(a) To the two permanent (Ord. Budget) are promoted:

1. THEOPHILOU Eleni 15
2. KYRIAKIDOU Koula

(b) To the three permanent (Dev. Budget) are promoted:

1. CONSTANTINIDOU Niovi
2. PAPADOPOULOU Stavroula
3. CHARALAMBOUS Avgi. 20

As regards the filling of the remaining two permanent (Dev. Budget) posts and the five temporary (Dev. Budget) posts of Welfare Officer which were vacated on account of the aforesaid promotions, the Commission considered that the following are on the whole superior to the remaining 25
candidates, found them suitable and decided to promote/second them to the Post of Welfare Officer as from 1st December 1980 as follows:

(i) To the two permanent (Dev. Budget) posts are promoted:- 30

- (1) KYRIAKIDES Andreas,
- (2) SAVERIADOU Ellie.

(ii) To the temporary (Dev. Budget) posts are seconded:-

- (1) ADAMIDOU Zoe,
- (2) DIKOMITOU Maria, 35
- (3) NEOPHYTOU Chryso,

(4) PARASKEVOPOULOU Vera,

(5) TEKKI Mary.

5 The member of the Commission Mr. Loizos Christodoulou considered as best for secondment Mrs. Chrysi Adamou instead of Mary Tekki."

10 Applicant Papadopoulos, is a graduate of a secondary school of the Pantios Highest School of Political Science and a student of the Law School of Salonica University. He entered the service as a Temporary Assistant Welfare Officer on the 16th December 1968 and he became permanent on the 15th March 1975.

15 Applicant Myrianthi HadjIoannou became an Assistant Welfare Officer on contract, - hence the absence of any confidential reports on her, - in August 1975 and remained so until 1976 when she left for studies abroad, and she was re-engaged on contract once more in February 1978. She is a graduate of a secondary school and she has 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.

25 Applicant Sophia Papadopoulou became an Assistant Social Worker on daily wages on the 13th September 1965 and an Assistant Welfare Officer, temporary on the 1st August 1969 and permanent on the 1st July 1970. She is a graduate of a secondary school and of the School for Social Welfare XEN Greece.

30 Applicant Christina Kyriakou became a temporary Assistant Welfare Officer on the 12th February 1970 and then permanent on the 15th March 1975. She is a graduate of a secondary school, also of the School for Social Services of Diakonisse, Athens.

Interested party Andreas Kyriakides, was appointed temporary Assistant Welfare Officer on the 1st March 1958 and became permanent on the 1st October 1962. He graduated a secondary school in Egypt.

35 Interested party Ellie Saveriadou became a temporary Assistant Welfare Officer on the 1st June 1957 and permanent on 1.8.59. She is a graduate of secondary school and of the

Teachers' College Nicosia and has passed certain exams of the Cyprus Certificate of Education.

Interested party Zoe Adamidou became a daily paid Assistant Welfare Officer on 15th March 1971. On the 15th October 1971 she became temporary and permanent on the 15th March 1975. She is a graduate of a secondary school, also and she has a diploma from the Pierce American College in Social Welfare. 5

Interested party Maria Dikomitou was first engaged as an Assistant Welfare Officer on daily wages on 3rd May 1965, temporary on 1st August 1969 and permanent on 15th March 1971. She is a graduate of a secondary school and she attended the first two years studies of the Pierce College for Social Welfare. 10

Interested party Chryso Neophytou was first appointed as a temporary Assistant Welfare Officer on the 15th October 1971 and she became permanent on 1st April 1975. She is a graduate of a secondary school, and she has a diploma from the School of Social Welfare XEN Greece. 15

Interested party Vera Paraskevopoulou was first appointed as a temporary Assistant Welfare Officer on the 15th May 1972 and she became permanent on the 1st April 1975. She has a diploma from the Pierce American College at Athens, B.A. in Sociology. 20

Interested party Mary Tekki became a temporary Assistant Welfare Officer on the 1st August 1969, from month to month on the 15th March 1971 and permanent on the 15th March 1975. She is a graduate of a secondary school and she has a diploma from Pierce American College Athens in Social Welfare. 25

Interested party Avgi Charalambous was first appointed as an Assistant Welfare Officer on daily wages in September 1967, was made temporary on the 1st August 1969, then from month to month on the 1st October 1971 and permanent on the 15th March 1973. She is a graduate of a secondary school and she has a Diploma from the School of Social Welfare XEN Greece. 30

All applicants and interested parties passed also the departmental examinations. 35

Before proceeding any further I feel that I should stress the

marked seniority and at that the longer service and experience which interested parties Andreas Kyriakides and Ellie Saveriadou have as against all applicants and all other interested parties. The seniority and the length of service of the remaining
5 appear from the summary of their careers which I have just set out in this judgment.

As against these two applicants the provision in the relevant Scheme of Service under paragraph 3 that for first entry the age limit of a candidate should not be less than 21 and not more
10 than 45 years of age was challenged in recourse No.120/81 as being unconstitutional, as constituting unequal treatment and/or discrimination contrary to Article 28 on the ground that it is not applicable to all candidates in the service eligible for promotion, the applicant in that recourse being a candidate for
15 a first entry appointment. It was submitted on her behalf that once it was decided by the drafters of the Scheme of Service to impose an age limit restriction, such age restriction should be universal. Though this applicant was born on the 3rd April 1952, which makes her at the time the subject decision was taken
20 as being 28 years of age and therefore not excluded by this provision, yet her counsel pursued this argument on differentiation as had it been universal, as he put it, these two interested parties, Mr. Kyriakides and Mrs. Saveriadou should have been excluded on account of age.

25 I find no merit for this ground whatsoever. A reasonable differentiation is made between first entrants and those eligible for promotion whose avenues should not have been impaired in any way by age limits. I need hardly say anything more on this point.

30 Whilst dealing with this recourse there is one more point to be disposed of, namely that on her behalf an affidavit was filed before me regarding her career and qualifications, the duties she performed and her participation in relevant community functions and activities. The respondents filed an affidavit in reply there-
35 to. I shall not enter into the contents of these affidavits as to my mind this applicant, who was a candidate for first entry, had the opportunity of bringing to the knowledge of the respondent Commission everything that she thought it might be relevant when submitting her application in Form Gen. 6, which contains

a column for the Schools attended, the qualifications possessed and the examinations passed, as well as the professional activities of a candidate. In fact she had the opportunity to and indeed she did submit all her diplomas and certificates including an analytical list on her marks and letters of recommendation and testimonials in addition to her reference to her previous career. Therefore she cannot complain that everything that was relevant was not placed before the respondent Commission. Any omission, in that respect, and I see none, cannot be blamed on anybody else.

I turn now to the ground argued on behalf of all the applicants against the validity of the sub judice decision which are that the respondent Commission failed in its paramount duty to select the best candidate for the said post contrary to the general principles of Administrative Law and in excess or abuse of power and that it also failed to carry out a due inquiry, it disregarded and/or wrongly evaluated the applicants' striking superiority and/or their seniority in respect of those as against whom they are senior and/or their qualifications where the applicants possess such, as against the interested parties and/or that the subject decision is not duly reasoned.

I do not intend to reproduce here the contents of the confidential reports on the applicants and the interested parties but a comparison of them shows that on the whole the interested parties were better reported upon than the applicants. In addition there were before the respondent Commission the views expressed by the head of the Department as regards their performance at the interviews and which appear in Appendix 14, moreover there were the views formed by the personal experience of the members of the respondent Commission themselves.

It is a settled principle of Administrative Law and this principle appears from the Case Law in Greece which was adopted by this Court in a number of Cases such as *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300 and *Georghiades and another v. The Republic* (1970) 3 C.L.R. 257 at p. 269 referred to also by the Full Bench in *Odyseas Georghiou v. Thé Republic* (1976) 3 C.L.R. p. 74 at p. 83 that when an administrative 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 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 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.”

In the present case the applicants have failed to establish that there existed such striking superiority over the interested parties or any of them as to lead me to the conclusion that the subject decision was taken in excess or abuse of power. Their seniority as against those interested parties who are somehow junior to them cannot prevail as not all other factors are equal. Time and again it has been said that seniority is not the decisive factor that governs promotions but one that should be duly taken into consideration and should only prevail if all other things were equal. This, however, does not appear to be the case in the light of the views expressed by the Head of the Department regarding their performance at the interview and the contents of the confidential reports. See *Iosif Georghiades and another v. The Republic* (1975) 3 C.L.R. 143 at p. 152 and the authorities therein mentioned.

Furthermore the subject decision and that includes the disregard of the seniority of those applicants who are senior to certain of the interested parties, is duly reasoned. The reasoning to be found in the minutes of the respondent Commission of the meeting at which the subject decision was taken, is duly supplemented by the rest of the material that was before them.

Also a proper inquiry was in the circumstances carried out and the respondent Commission took into consideration, as stated in their minutes, every relevant factor.

For all the above reasons these recourses are dismissed but in the circumstances there will be no order as to costs.

Recourses dismissed. No order as to costs.