

1983 April 8

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS ALEXANDROU TOKKAS,

Applicant

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Case No. 154/82).

Public Officers—Promotions—Merit—Qualifications—Seniority—Interested parties having better confidential reports and recommended for promotion by Head of Department—All candidates possessing the qualifications required by the schemes of service but applicant possessing an additional qualification (University degree in Law)—Interested parties senior to applicant—Burden on applicant to establish that he had striking superiority over the interested parties and he has not discharged such burden—Interested parties strikingly superior, on the totality of the circumstances—Possession of the above additional qualification cannot be considered as an advantage over other candidates if it is not expressly stated, as in this case, to be so by the relevant scheme of service.

The applicant in this recourse challenged the decision of the respondent Public Service Commission to promote the interested parties to the post of Senior Surveyor in the Department of Lands and Surveys in preference and instead of himself. All the interested parties and the applicant possessed the qualifications required by the scheme of service but applicant possessed, also, a university degree in Law. The interested parties were senior to applicant, had better confidential reports and were recommended for promotion by the Head of Department.

Held, that the burden is on the applicant to establish that he had striking superiority over the interested parties and he has not in any way discharged that duty; that on the contrary on the totality of the circumstances, the interested parties appear to be strikingly superior; that, also, there was the recommendation of the head of the Department in respect of the two interested parties, but no recommendation for the applicant; that the possession by the applicant of the Diploma in Law, cannot be considered as an advantage over other candidates if it is not expressly stated, as it is in this case, to be so by the relevant schemes of service and that the possession of higher qualifications should not weigh so greatly in the mind of the Public Service Commission but they should decide on selecting the best candidate on the totality of all circumstances before them; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

- Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at pp. 426, 427, 428;
- Zafirides v. Republic* (1980) 3 C.L.R. 140 at pp. 147, 148;
- Evangelou v. Republic* (1965) 3 C.L.R. 292;
- Georghiades v. Republic* (1970) 3 C.L.R. 257;
- Larkos v. Republic* (1982) 3 C.L.R. 513 at p. 518;
- Cleanthous v. Republic* (1978) 3 C.L.R. 320 at p. 327;
- Ioannou v. Republic* (1976) 3 C.L.R. 431.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Surveyor (Survey Branch) in the Department of Lands and Surveys in preference and instead of the applicant.

- C. *Loizou*, for the applicant.
- A. *Vladimerou*, for the respondent.
- A. *Panayiotou*, for interested party 1.
- D. *Papachrysostomou*, for interested party 2.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the

decision of the respondent Commission by which Andreas M. Kammass, Lyssandros Demetriou and Andreas HadjiKallis, hereinafter to be referred to as the interested parties, were promoted to the permanent (Ord.) post of Senior Surveyor, Survey Branch - Survey Office - in the department of Lands and Surveys, as from the 1st February 1982, instead of the applicant. is null and/or contrary to Law and/or of no effect whatsoever.

The said post is a promotion post and all relevant documents were forwarded by the respondent Commission to the Chairman of the appropriate departmental board, which in its turn examined the matters falling within its competence and by letter dated 7th December 1981, transmitted its report to the respondent Commission which considered the filling of the vacancies at its meetings of the 22nd and 23rd January 1983.

The relevant minute (Appendix 6) reads as follows:

“At its meeting present was the Acting Director of the Department of Lands and Surveys Mr. Andreas Christophi.

He expressed the following views and recommendations.

None of the candidates possesses the qualifications for the filling of the vacant post of Senior Surveyor, (Survey Computations.)

For the filling of the first five vacant posts of Senior Surveyor (Survey Branch) the following are recommended in order of merit.

1. Hepis Constantinos.
2. Kammass Andreas.
3. Tsianakkas Georghios.
4. Cleanthous Panayiotis.
5. Demetriou Lyssandros.

For the filling of the sixth vacant post, Messrs. Charalambos Samoutis and Iacovos Lakerides were recommended for selection.

Mr. Lakerides is considered of equal merit to Mr. Samoutis although he follows him in seniority, on account of his performance and the initiative which he develops. When work is assigned to him it is certain that he will perform it

correctly and to the full without becoming necessary to return from miles away to the office in order to seek advice. developing his initiative and solving correctly the problems which appear.

Answering to a relevant question of the Commission as regards Mr. Andreas HadjiKallis, who possesses several qualifications as compared with certain of those recommended, the Acting Director mentioned that he is simply a good officer lacking behind those recommended, both in performance and the execution of difficult and complicated tasks. Some of the candidates possess qualifications which are not necessary for the Survey Branch, as for example Mr. Antonios Tokas, who possesses a diploma in Law which does not help in surveying. He is among the good officers, he was promoted, however, recently (as from the 15th January 1981) to the post of Surveyor 1st Grade in the department of Lands and Surveys and instead of following studies in surveying, given that he was working in that branch, he followed law. Efforts are being made to post him to a service where his qualifications will be utilized.”

After the Acting Director of the Department of Lands and Surveys withdrew, the Commission postponed the further examination of the subject to its meeting the next day.

The relevant minute (Appendix 7) reads as follows:

“The Commission made an assessment of the candidates and a comparison among them.”

The Commission after examining the substantial elements from the Personal Files and the confidential reports of the candidates and taking into consideration the conclusions of the Departmental Board and the views and recommendations of the Acting Director of the department of Lands and Surveys adopted the said recommendations except those for Messrs. Charalambos Samoutis and Iacovos Lakerides, which the Acting Director recommended for selection for the 6th post. Instead of them the Commission selected as better on the whole Mr. Andreas Hadji-Kallis, who from the point of view of seniority is ahead of Mr. Lakerides and he follows slightly Mr. Samouti and he

has in his favour generally better confidential reports. Indicatively the grading of the three officers during the last two years is as follows."

5 There follows this grading, but I need not refer to those of Messrs Samouti and Lakerides as we are not concerned with them in this recourse.

10 "With regard to Andreas HadjiKallis it is pointed out that for the year 1979 his general grading is "Very Good" ("Excellent" in respect of three paragraphs of the analytical grading and "Very Good" in eight and "Good" in one). For the year 1980 his general grading is "Very Good". ("Very Good" in respect of eight paragraphs of the analytical grading and "good" in respect of four)".

15 The minute of the Commission goes on then to say the following:

20 "In conclusion the Commission on the basis of all elements before it considered that the following are superior to the rest of the candidates on the basis of the totality of the established criteria (merit, qualifications, seniority), it found them suitable and decided to promote them to the vacant permanent post of Senior Surveyor as from 1st February 1982 as follows:

- (a) To the vacant post of the Ordinary Budget are promoted:
- 25 1. HEPIS Constantinos
 2. KLEANTHOUS Panayiotis
 3. TSIANAKKAS Georghios
 4. KAMMAS Andreas
 5. DEMETRIOU Lyssandros.
- 30 (b) To the vacant post of the Development Budget is promoted:
1. HADJIKALLIS Andreas.

35 The above allocation to the respective posts of the two Budgets of those promoted has been made on the basis of the seniority of the officers in accordance with the established practice of the Commission."

The grounds upon which the applicant challenges the validity of the aforesaid decision are the following:

(1) The respondent Commission in the exercise of its discretionary power in taking the sub judice decision acted contrary to the case law of the Supreme Court and contrary to the principle that they should have selected the best candidate. (2) The respondent Commission did not take into consideration duly that the applicant possesses a diploma in Law and consequently they acted under a misconception of fact. 5

Relevant to the issue of selection of the best and most suitable candidate for promotion are the careers of the candidates to which brief reference may be made. 10

The applicant is a graduate of the Lanition Gymnasium Limassol; he passed the Government qualifying examinations, attended courses in draughtsmanship, surveying, plane-table and levelling at the Lands & Surveys Dept., passed the Departmental Examinations for Surveyor 1st Grade and whilst in the service he obtained a Diploma in Law from the University of Salonica in March 1978 and he passed the Legal Board Examinations in Cyprus for registration as an advocate in 1979. He entered the service on the 1st January, 1971, as a Surveyor 2nd Grade, he was made permanent to that post on the 1st July, 1974, and promoted to the post of Surveyor 1st Grade on the 15th January, 1981. 15 20

Interested Party Andreas M. Kammas, is a graduate of the Pancyprian Gymnasium, he passed the examinations in Mathematics, O.L. of the G.C.E., and 'A' level of the Cyprus Certificate of Education and Deptl. Examinations for Surveyor 1st Grade. He entered the service as a Surveyor 2nd Grade on the 1st December, 1962 and he was made permanent on the 1st November, 1969. He was seconded to the post of Surveyor 1st Grade on the 1.12.1970 and made permanent on the 1.6.1977. 25 30

Interested Party Lysandros Demetriou is a graduate of the English High School Trikomo, he passed Book-keeping Elementary Examinations, the Cyprus Certificate Examinations in English Lower and Mathematics 'A', and the Departmental Examinations for Surveyor 1st Grade. He entered the service on 1.11.1963 as a Surveyor 2nd Grade, he became permanent a month later and as from the 15.11.1971 he was seconded to the 35

temporary post of Surveyor 1st Grade and became permanent in that post on the 1st June, 1977.

Interested Party Andreas HadjiKallis is a graduate of the Pancyprian Gymnasium and passed the Departmental Examinations for Surveyor 1st Grade. He entered the service on 1.12.1966 as a Surveyor 2nd Grade and he was made permanent on 15.5.1969. He was seconded to the post of Surveyor 1st Grade on 1.3.1974 and he was made permanent to that post on 1.6.1977.

10 In so far, therefore, as seniority is concerned, there is a marked difference between the applicant and the interested parties, both as regards the date of appointment to the last post, as well as the overall length of service. I do not intend to go into the details of their confidential reports but it is sufficient to say that on the whole those of the interested parties are better than those of the applicant, inasmuch as the interested parties are described as "very good" in the report of the last two years, whereas the applicant is described as "very good" for the year 1979 and "good" for the year 1980.

20 With regard to the seniority, I need not go into the principles affecting same as here we are concerned with the reverse process, that is, had the respondent Commission decided to ignore the marked seniority of the interested parties it ought to have given cogent reasons for so doing (*Kyriacos Bagdadis v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417, at 426; *Zafirides v. The Republic* (1980) 3 C.L.R. 140 at pp. 147, 148). Moreover, the burden is on the applicant to establish that he had striking superiority over the interested parties and he has not in any way discharged that duty. On the contrary on the totality of the circumstances, the interested parties appear to be strikingly superior (*Evangelou v. The Republic* (1965) 3 C.L.R., 292; *Georghiades v. The Republic* (1970) 3 C.L.R. 257; *Larcos v. The Republic* (1982) 3 C.L.R., 593). Also there was the recommendation of the head of the Department in respect of the two of the interested parties, but no recommendation for the applicant. This disposes of the first ground of law relied upon on behalf of the applicant which must fail.

As regards the second ground, namely, the possession by the applicant of the Diploma in Law, it has been said time and again

that a qualification cannot be considered as an advantage over other candidates if it is not expressly stated, as it is in this case, to be so by the relevant schemes of service and that the possession of higher qualifications should not weigh so greatly in the mind of the Public Service Commission but they should decide on selecting the best candidate on the totality of all circumstances before them (see *Cleanthous v. The Republic* (1978) 3 C.L.R., p.320, at p. 327, and the authorities therein mentioned namely, *Bagdadis* (supra) at pp. 427 and 428; *Ioannou v. The Republic* (1976) 3 C.L.R., p.431; and *Larcos v. The Republic* (1982) 3 C.L.R., p.513, at p.518, where Pikis, J., deals with the matter by reference also to the previous caselaw of this Court). 5 10

The respondent Commission, however, dealt with the question of the possession by the applicant of this Diploma and the statement of the Acting Director of the Department that its possession could not help the applicant in surveying. This, in fact, was a matter of opinion by a man who knows what are the qualifications necessary for the carrying out of duties in his Department and in my view no complaint can be made against such statement having been made by the Director. The second ground of law should also fail. 15 20

Needless to say that the sub judge decision has been arrived after a proper inquiry and is duly reasoned and the respondent Commission acted under neither misconception of law nor misconception of fact. 25

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs.

Recourse dismissed. No order as to costs.