

1984 October 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSMAS SOSILOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 118/83).

5 *Public Officers—Promotions—Applicant having better confidential reports than the interested parties, superior qualifications to one of them, being the holder of a post-graduate qualification which constituted an advantage under the relevant schemes of service, and being senior to both interested parties—Head of Department not recommending him for promotion and his views about him in direct conflict with those of the Departmental Committee which he chaired—Confidential reports of the year 1982 not before the Public Service Commission—And their contents tended to contradict the views of the Head of Department—*

10 *Commission in coming to their decision not to select applicant for promotion was carried away by the views of the Head of Department which were contradictory and ill-founded—Sub*

15 *judice decision annulled due to misconception of facts in that the Commission failed to make a proper assessment of the facts before it respecting the merits of the applicant—And due to failure to carry out a proper inquiry in relation to the performance of the applicant in 1982—And to evaluate the merits of the candidates by reference to their career in its entirety and give due*

20 *weight to the post-graduate qualifications of the applicant.*

The applicant and the two interested parties were recommended for promotion, by a Departmental Committee to the post of Senior Commerce Officer at the Ministry of Commerce and Industry; and according to the report of this Committee

he emerged objectively as the candidate with the highest claims to promotion. His confidential reports for the two preceding years were better than those of interested party HadjiParaskevas and equal if not marginally better to those of interested party Mavrogenis. Moreover he had superior qualifications to interested party Mavrogenis, being the holder of a post-graduate degree, which constituted an advantage under the relevant schemes of service; and he was senior to both interested parties. 5

The respondent Public Service Commission selected the interested parties for promotion and in so doing it was evidently influenced by the views of the Head of Department whose views, orally expressed before the Commission came in direct conflict with those of the above Committee that he chaired and which he espoused by subscribing to its report. The Head of Department based his rejection of the applicant on his poor performance during the year 1982. The confidential reports of the candidates for 1982 were not before the Commission but they were produced before the Court; and those on applicant tended to contradict the views of the Head of Department. 10 15

Upon a recourse by the applicant: 20

Held, that the sub judge promotion must be annulled for each of the following reasons:

- (a) Misconception of facts: The P.S.C. failed to make a proper assessment of the facts before it respecting the merits of the applicant. 25
- (b) Failure to carry out a proper inquiry, especially in relation to the performance of the applicant in the year 1982.
- (c) Failure to evaluate the merits of the candidates by reference to their career in its entirety. By confining their inquiry to the three preceding years and by relying almost exclusively on the candidates' performance during the last year, they failed in their duty to carry out the necessary inquiry into the merits of the candidates as might be objectively defined by their service record (pp. 1138-1139 post). 30 35
- (d) Failure to give due weight to the post-graduate qualification of the applicant, specified to be an advantage

5 in the scheme of service and the superiority he enjoyed in this regard over one of his rivals, namely, Mr. Mavrogenis. The caselaw establishes that the non selection of a candidate in possession of an additional qualification must be cogently reasoned (see, inter alia, *Tourpeki v. Republic* (1973) 3 C.L.R. 592).

Sub judice decision annulled.

Cases referred to:

- 10 *Georgiou v. Republic* (1975) 3 C.L.R. 143;
Tourpeki v. Republic (1973) 3 C.L.R. 592;
Nissiotis v. Republic (1977) 3 C.L.R. 388;
Makrides v. Republic (1983) 3 C.L.R. 750;
Yourkos and Another v. Republic (1983) 3 C.L.R. 1442.

Recourse.

15 Recourse against the decision of the respondent to promote the interested parties to the post of Senior Commerce Officer in the Ministry of Commerce and Industry in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

20 *G. Constantinou (Miss)*, Counsel of the Republic, for the respondent.

E. Lemonaris, for interested party *L. HadjiParaskevas*.

Cur. adv. vult.

25 ΠΙΚΙΣ J. read the following judgment. Cosmas Sosilos, the applicant, was one of three applicants recommended for promotion by a Departmental Committee set up under s.36 of the Public Service Law 33/67 to advise on the eligibility and suitability of candidates for appointment to the two vacant posts of Senior Commerce Officer at the Ministry of Commerce and Industry. The other two were the interested parties, namely,
 30 Mr. A. Mavrogenis and Mr. L. HadjiParaskevas. Considering the report of the Departmental Committee and comments made therein in relation to the candidates, together with their service record that was made available to the Committee, the applicant emerged objectively as the candidate with the highest
 35 claims to promotion. The assessment made of his services in the confidential reports for the two preceding years, cited by the Departmental Committee as indicative of his abilities

and value of his services over the two years, was better than that of Mr. HadjiParaskevas and equal, if not marginally better, to that of Mr. Mavrogenis. Moreover, the applicant had superior qualifications to at least one of the interested parties, Mr. Mavrogenis, being the holder of a postgraduate degree, an advantage in accordance with the relevant schemes of service. The fact that he was senior to both interested parties sealed his claim to superiority over the two interested parties on each one of the three scores specified by the law as material for the determination of the suitability of a candidate for promotion. —s.44(2)—33/67.

Notwithstanding the implications of the report of the Departmental Committee and other relevant facts, the applicant was not selected for promotion. In not choosing him, the P.S.C. was evidently influenced by the views of Mr. M. Erotocritos, the Director-General of the Ministry of Commerce and Industry, expressed before the Commission in his capacity as Head of the Department—s.44(3)—33/67. Surprising as it may appear, the views of Mr. Erotocritos orally expressed before the Commission came in direct conflict with those of the high level Departmental Committee* that he chaired and which he espoused by subscribing to the report.

Counsel for the Republic candidly acknowledged the views expressed by Mr. Erotocritos on the two occasions indicated above were contradictory, a contradiction that remained altogether unexplained. He advised the P.S.C. to appoint the interested parties, while he explicitly told them that applicant was not recommended for promotion. So far as we may gather from his minuted statement before the P.S.C., he based his rejection of the applicant on his poor performance during the year 1982. It must be noted that the confidential reports on the value of the services for the parties for the year 1982 were not before the Commission. Now the confidential report for the applicant for the year 1982 is available as well as those of the interested parties and far from supporting the assessment made by Mr. Erotocritos of the value of his services for the year 1982, the report tends to contradict his views. It is worthy

* Composed, apart from Mr. Erotocritos, of three fellow Directors-General and the Head of the Consumers Protection Service.

of mention that the reporting officer certified that the overall performance of the applicant was excellent. Certainly the confidential report on the applicant for the year 1982 is at least as good as that on Mr. HadjiParaskevas.

5 The inescapable inference is that the P.S.C. in coming to their decision were carried away by the views of Mr. Erotocritos, contradictory and ill-founded as they were. And as counsel for the Republic acknowledged, they were apt to mislead the P.S.C. in material respects.

10 Another consideration that led Mr. Erotocritos to refrain from recommending the applicant was the limited scope of his experience at the Ministry on account of the duties he had been assigned to perform. Even if this statement was factually correct, which is doubtful on the material before the Court,
15 the appropriate authority had no right to penalize an employee for having discharged duties he had no option but carry out*.

The P.S.C. had sufficient material before it to query the advice of Mr. Erotocritos and depart from it, if they so judged necessary after a correct perception of the facts. Their duty
20 to carry out a proper inquiry into the merits of each one of the recommended candidates required them to elicit the facts as well as they could. In exercise of this duty they ought to have sought further information about the performance of the candidates during 1982. This they omitted to do and in consequence
25 their information was inadequate as well as misleading. Looking at the decision of the P.S.C., one may form the opinion they allowed the views of the Departmental Head to become the sole guide to their choice in breach or disregard of their duty to weigh and evaluate for themselves the totality of the facts
30 before them before coming to a decision.

We must remind the P.S.C. are in law the arbiters of the selection process for the appointment of public officers. The views of the Head of a Department, weighty though they are, are by no means sacrosanct. They can be questioned and ultimately
35 disregarded if in the light of the material before the P.S.C. they appear, for any reason, to be unreliable; as they were in this case because of the contradictory assessment made by Mr.

* See Conclusions from the Jurisprudence of the Greek Council of State, p. 357.

Errotocritos of the merits of the applicant and the erroneous information given relative to his performance in the year 1982.

Turning to the decision under review it must, in my judgment, be set aside for each one of the following reasons:-

- (a) Misconception of facts: The P.S.C. failed to make a proper assessment of the facts before it respecting the merits of the applicant. 5
- (b) Failure to carry out a proper inquiry, especially in relation to the performance of the applicant in the year 1982. 10
- (c) Failure to evaluate the merits of the candidates by reference to their career in its entirety*. By confining their inquiry to the three preceding years and by relying almost exclusively on the candidates' performance during the last year, they failed in their duty to carry out the necessary inquiry into the merits of the candidates as might be objectively defined by their service record. Although recent performance is ordinarily a pointer to present day ability, such performance is by no means the only guide to an officer's merits. Proper appreciation of an officer's record over the years is a valuable impersonal guide to an officer's ability, traits and aptitudes, as well as devotion to duty. Confinement of the inquiry to the performance of a candidate in anyone year, as the P.S.C. apparently restricted its inquiry in the instant case, was tantamount to ignoring or disregarding facts of material importance for the selection of the candidate best suited for appointment. 15
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- (d) Failure to give due weight to the postgraduate qualification of the applicant, specified to be an advantage in the scheme of service and the superiority he enjoyed in this regard over one of his rivals, namely, Mr. Mavrogenis. The caselaw establishes that the non 30

* *Odysseas Georghiou v. The Republic* (1975) 3 C.L.R. 143.

selection of a candidate in possession of an additional qualification must be cogently reasoned*.

- The disinclination of counsel for the Republic to support the sub judge decision is perfectly justified. It reflects an attitude consonant with the duties of counsel for the Republic to the Court and the State.

In the end the decision must be annulled and I order accordingly. Let there be no order as to costs.

Sub judge decision annulled.

No order as to costs.

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* *Tourpeki v. The Republic* (1973) 3 C.L.R. 592;
Omeros Nissiotis v. The Republic (1977) 3 C.L.R. 366;
Makrides v. The Republic (1983) 3 C.L.R. 750;
Yourkos and Another v. The Republic (1983) 3 C.L.R. 1442.