

1984 October 10

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOLAS EFTHYMIU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent,

(Cases Nos. 129/83, 130/83,
132/83 and 183/83).

5 *Public Officers—Promotions—Qualifications—Higher or additional qualifications—Effect—Recommendations of Head of Department—Departure from by respondent Commission which gave reasons for so doing, one such reason being the seniority of the interested parties—Reasonably open to the Commission to select the interested parties—Applicants had no striking superiority over interested parties.*

10 The applicants and the interested parties were candidates for promotion to the post of Assistant Customs Officer. The Public Service Commission promoted the interested parties in preference and instead of the applicants; and hence this recourse by the applicants. All the interested parties had better confidential reports and long seniority over the applicants in recourse 129/83 and 183/83. Two of the applicants—Poyiatzis and Stavrou—were recommended for promotion by the Head of Department in priority to two of the interested parties—Damianou and Efstathiou—and had slightly better confidential reports. The Public Service Commission gave special reasons for not following the priority suggestion of the Head of Department one such reason being the seniority of these two interested parties over the two applicants. Moreover applicant Poyiatzis had a University degree which, however, was not considered by the relevant schemes of service as an additional qualification.

Held, (1) that the decision of the respondent Commission cannot

be interfered with in the case of recourses 129/83 and 183/83 in view of the better confidential reports and seniority of the interested parties over the applicants.

(2) That once all the candidates possess the academic qualifications required for a particular post additional qualifications should not weigh so greatly in the mind of the Commission, but they should decide in selecting the best candidate on the totality of all the circumstances before them; that having regard to the reasons given by the respondent Commission for the departure from the recommendations of the Head of Department and the criteria established by Law it was reasonably open to the respondent to choose the interested parties as the applicants had nothing like striking superiority over the interested parties; accordingly the recourses must fail.

Applications dismissed. 15

Cases referred to:

Papadopoulos v. Republic (1982) 3 C.L.R. 1070 at p. 1075;
Korai and Another v. C.B.C. (1973) 3 C.L.R. 546;
Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417;
Georghakis v. Republic (1977) 3 C.L.R. 1;
Hadjigcorghiou v. Republic (1977) 3 C.L.R. 35;
Cleanthous v. Republic (1978) 3 C.L.R. 320

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Recourses.

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

A. Haviaras, for the applicants.

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

Cur. adv. vult. 30

HADJIANASTASSIOU J. read the following judgment. The four applicants, namely Nicolas Efthymiou, Costas Loizou, Kyriakos Stavrou and Charalambos Poyiatzis, applied by the present proceedings to annul the decision of the Public Service Commission to promote the 13 interested parties to the post of Assistant Customs Officer.

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As the four recourses are directed against the same decision

they were heard together in the interest of convenience and saving valuable judicial time.

5 I shall not refer in great detail to the preliminary steps to the filling of the posts because the Departmental Committee set up under section 36 of Law 33/67 found all 48 candidates including applicants and interested parties as eligible for promotion.

10 The departmental head recommended 16 of them as better qualified than the rest in the list of recommended candidates. The applicants as well as the interested parties were amongst the 16 candidates recommended by the Head of Department.

15 Counsel appearing for the applicants did not press very much the case of applicants Efstathiou and Loizou. Bearing in mind the material before the Commission, there is no reason for interfering with the decision of the respondents in the cases of Efthymiou and Loizou. The interested parties had better confidential reports and long seniority over applicants Efthymiou and Loizou. Therefore, the decision of the Public Service Commission cannot be interfered with in the case of Recourses
20 Nos. 129/83 and 183/83.

For the reasons I have endeavoured to explain the Recourses Nos. 129/83 and 183/83 are dismissed.

25 As mentioned above the other two applicants, namely Poyiatzis and Stavrou were indeed amongst the candidates recommended by the Head of the Department. Moreover the Departmental Head in his recommendation recommended the above applicants in priority to the two interested parties namely A. Damianou and A. Efstathiou.

30 Indeed examination of the confidential reports of the two applicants and those of the above two interested parties shows that the applicants had slightly better confidential reports. Also, interested party Poyiatzis has a degree of the University of Salonica which, however is not considered by the relevant schemes of service as additional qualification. At this point
35 I am content with citing what I said on the subject in *Bagdades v. The Central Bank* (1973) 3 C.L.R. p. 417 at p. 427.

“There is no doubt, of course, that every diploma or degree

signifies an educational accomplishment, but on the other hand in the course of study as a result of which it was obtained goes beyond what is required for regarding the efficient discharge of the duties of a particular post in my view, once all the candidates possess the academic qualifications required for that post that reason alone (higher qualifications) should not weigh so greatly in the mind of the Committee, but they should decide in selecting the best candidate on the totality of all the circumstances before them. 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".

The Public Service Commission in its decision quite rightly gave special reasons for not following the priority suggestion by the Head of the Department.

The two interested parties, as they said, had showed much improvement during 1982 and indicated that having regard to the overall merits, qualifications and seniority of the candidates the two interested parties were on the whole most suitable for promotion.

It must be mentioned that the two interested parties had long seniority over the two applicants.

With this in mind what I must decide is whether it was reasonably open to the Public Service Commission to promote the interested parties in preference of the applicants. And no question arises with regard to the remaining interested parties who were not only senior to the applicant but had better confidential reports as well.

In the judgment of this Court it was reasonably open to the Public Service Commission to promote the interested parties instead of the applicants, all four of them, were recommended by the Departmental Head having regard to the reasons given for the departure from the recommendations of the Head of the Department and the criteria established by law that it was reasonably open to the Public Service Commission to choose the interested parties. The applicants had nothing like striking

superiority over the interested parties. In *Papadopoulos v. The Republic*, (1982) 3 C.L.R. 1070, Píkis, J. had this to say at p. 1075:

5 “STRIKING SUPERIORITY: In *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76, 78, 79, I made a brief attempt to analyse the constituents of ‘striking superiority’ in the field of administrative law. Such superiority must emerge on a consideration of the worth of the candidates by reference to the criteria laid down by law for the evaluation of the suitability of candidates for promotion or
10 appointment, i.e. merits, qualifications and seniority (s.44—Law 33/67). Superiority cannot be established exclusively by reference to anyone of the three criteria earmarked by law. Striking superiority must arise as an inevitable result from the assessment of the overall merits of the candidates. In order to be striking, superiority must be self-evident and strike one at first sight, so compelling as ignoring it would lead inexorably to a case of manifest injustice to a candidate’s suitability for promotion.

20 The possession of qualifications, additional to those envisaged by the schemes of service, is never by itself a decisive consideration. Such qualifications have never been held as sufficient by themselves to make out a case of striking superiority. (See *Elli Chr. Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546; *K. Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417; *Andreas D. Georghakis v. The Republic (P.S.C.)* (1977) 3 C.L.R. 1; *E. Hadji-georghiou v. The Republic* (1977) 3 C.L.R. 35; *Cleanthous v. The Republic* (1978) 3 C.L.R. 320).

30 In the result all four recourses are dismissed.

No order as to costs.

*Recourses dismissed with no order
as to costs.*