

1984 June 7

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI S. XINARI AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Consolidated Cases Nos. 12/83,
19/83 and 20/83).

*Public Officers—Schemes of service—Construction and application
—Principles applicable—A scheme of service has to be read
as a whole—Construction placed upon the schemes of service
for the post of Assessor (Income Tax) by the respondent Com-
mission not one reasonably open to it.*

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The sole issue in this recourse turned on the interpretation of the schemes of service and its application with regard to the eligibility of the interested parties for appointment.

The principal qualifications under the relevant scheme of service were “five-years’ experience on taxation of income, of which three years’ experience must have been gained at the post of Assistant Assessor First Grade (Income Tax) or Assistant Assessor”; and the secondary qualifications were “five-years’ experience in matters of taxation, audit or accounting, of which three years experience must have been gained at the post of Assistant Assessor First Grade (Income Tax) or Assistant Assessor”.

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Before joining the Department of Income Tax, on 15.3.1979 interested party Tseriotis was an examiner of accounts at the Department of the Auditor-General; and his duties included audit of deductions made for income tax purposes from the

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emoluments of temporary government employees and labourers employed by Government. Interested party Koullis was a Clerical Assistant at the Ministry of Education before joining the Income Tax Department; and in the course of his duties
 5 he dealt with matters of taxation of the income of primary and secondary school teachers. Interested party Loizou was an examiner of accounts before joining the Department of Income Tax and was concerned with the audit of the accounts of the Inland Revenue Department. The Public Service Commission
 10 took the view that the above interested parties satisfied the principal qualifications envisaged by the schemes of service.

Held, that though the construction and application of the schemes of service is in the first place a matter within the discretion of the Public Service Commission such discretion is
 15 not absolute and, like every discretionary power, it must be reasonably exercised in the light of the facts before the Commission; that the only reasonable construction of the scheme read as a whole is that the principal qualifications envisaged at least two-years' experience outside the Department of Inland Revenue, gained by applying one's self, wholly or primarily,
 20 to income tax matters in contrast to experience incidentally gained in income tax matters; that the experience gained by interested parties Tseriotis and Loizou before joining the Department of Inland Revenue, was mainly in the field of auditing of accounts and concern with income tax matters was incidental to their main duties; that in the case of Loizou, it is doubtful whether he had the necessary five-year experience envisaged by both the principal and secondary qualifications; that, therefore, the construction placed upon the schemes of service by
 25 the Public Service Commission was not one reasonably open to them; and that, consequently, they abused their discretion by holding that interested parties did possess the principal qualifications; accordingly their decision with regard to the appointment of the three interested parties to the promotion post of
 30 Assessor (Income Tax) is hereby annulled.

Sub judice decision annulled.

Cases referred to:

Lana der Parthogh v. C.B.C. (1984) 3 C.L.R. 635;

Georgiades v. Republic (1967) 3 C.L.R. 653;

Kyriacou v. Republic (1975) 3 C.L.R. 35;

Makrides v. Republic (1983) 3 C.L.R. 622.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Assessor (Income Tax) in preference and instead of the applicants.

Th. Ioannides, for applicant in case No. 12/83.

P. Pavlou, for applicants in Case Nos. 19/83 and 20/83.

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

Cur. adv. vult.

PIKIS J. read the following judgment. The fate of these recourses turns solely on the interpretation of the scheme of service and its application with regard to the eligibility of the interested parties for appointment. The scheme of service postulated two sets of qualifications for appointment that, I may, for convenience's sake, term, the principal and secondary qualifications. Possession of the secondary qualifications made a candidate eligible only in the event of absence of candidates possessing the principal qualifications.

It is common ground that the interested parties, namely, Christakis Tseriotis, Andreas Koullis and possibly Costas Loizou, satisfied the secondary qualifications. What is at issue, is, whether they possessed the principal qualifications. If they did not, they were ineligible to be appointed. For there existed a sufficient number of candidates possessing the principal qualifications recommended by the departmental committee as suitable for appointment. On the other hand, it is an undisputed fact that applicants possessed the principal qualifications. At the trial, it was made clear this is the sole issue that calls for resolution in these proceedings. Other contentious issues emerging from the pleadings of the parties were abandoned. Applicants confined their challenge to the eligibility of the interested parties for appointment.

A score of decided cases lays down the principles governing the construction and application of the schemes of service*.

* See, inter alia, *Georgiades v. The Republic* (1967) 3 C.L.R. 653; *Kyriacou v. The Republic* (1975) 3 C.L.R. 35; *Makrides v. Republic* (1983) 3 C.L.R. 622.

It is, in the first place, a matter for the Public Service Commission who must, as a necessary incident of the exercise of their discretionary power, construe and apply a scheme to the circumstances of the particular case. Recently, I had occasion to review the nature of their discretion at some length and, indicate the reasons justifying the acknowledgment of such discretion to an appointing body (see, *Lana der Parthogh v. C.B.C.*, decided on 19.5.1984, unreported as yet)*. Wide though the discretion is, it is not absolute and, like every discretionary power, it must be reasonably exercised in the light of the facts before the Commission. The prominent factor, in this respect, is the wording of the scheme of service to which I shall presently turn attention.

Principal Qualifications:

Five-year experience on taxation of income, of which three years experience must have been gained at the post of Assistant Assessor First Grade (Income Tax) or Assistant Assessor, constituted the gravamen of the principal qualifications.

As it is expressly provided therein, eligibility of those possessing the secondary qualifications is exclusively dependent on the absence of candidates possessing the principal qualifications.

Secondary Qualifications:

Five-year experience in matters of taxation, audit or accounting, of which three years experience must have been gained at the post of Assistant Assessor First Grade (Income Tax) or Assistant Assessor.

It is common ground that each one of the three interested parties had the three-year experience at the Department of Income Tax, gained by serving at the post nominated by the principal and secondary qualifications. What must be decided, is whether the experience they gained elsewhere, was of the kind envisaged by the principal qualifications.

Qualifications of interested parties:

Before joining the Department of Income Tax, on 15.3.1979, Christakis Tseriotis was an examiner of accounts at the Department of the Auditor-General. A certificate of the Deputy

* Now reported in (1984) 3 C.L.R. 635.

Auditor-General verifies that he held the position of Examiner of Accounts Third Grade, in the Audit Department. It is certified therein that his duties included audit (Έλεγχον) of deductions made for income tax purposes from the emoluments of temporary government employees and labourers employed by government (sec. red 67 in his personal file). 5

Before joining the Income Tax Department, Andreas Koullis was a Clerical Assistant at the Ministry of Education, appointed on a temporary basis in 1973, made permanent in 1977. A certificate issued on behalf of the Director-General of the Ministry of Education certifies that in the course of his duties he also dealt with matters of taxation of the income of primary and secondary school teachers and, in consequence, it could be said that he gained experience in matters of taxation. I regard it rather presumptuous on the part of the officer who issued this certificate to offer a definitive opinion on the nature of the experience gained at the Ministry of Education in relation to a matter in which he could not be regarded as competent to express an opinion. (Sec. red 74 in his personal file). 10 15

Lastly, Costas Loizou was, like Tseriotis, an examiner of accounts before joining the Department of Income Tax. A certificate of the Auditor-General, dated 16.3.1982, certified that between the periods of 9.12.1976 and 14.3.1979 Costas Loizou was concerned with the audit of the accounts of the Inland Revenue Department. His work included the auditing of individual assessments, the collection of taxes, as well as departmental accounts. 20 25

It is evident that experience gained by the interested parties in the domain of income tax, was incidental to their other duties. In the case of Mr. Tseriotis and Mr. Loizou, it was incidental to their audit duties, whereas in the case of Mr. Koullis, to his clerical duties. The departmental committee, chaired by the Director of Inland Revenue, set up to advise the Public Service Commission, expressed serious reservations about the qualifications of the three interested parties, doubting whether they satisfied the principal qualifications. In the case of Mr. Tseriotis and Mr. Koullis, they inclined to the view that they satisfied only the secondary qualifications, whereas in the case of interested party Loizou they doubted whether he had the necessary five-year experience, under any circumstances. 30 35 40

The Public Service Commission took a contrary view of the qualifications of the three interested parties and, found they satisfied the principal qualifications envisaged by the scheme.

Scheme of Service—Construction:

5 A scheme of service, like every document, the provisions of which have to be construed, must be read as a whole. Therefore, we can validly presume that the two-year experience gained outside the Department of Income Tax, referred to in the principal qualifications, on the one hand and, the secondary quali-
 10 fications, on the other, was experience of a different kind. Otherwise, provision for the secondary qualifications would be superfluous. The reasonable construction of the scheme read as a whole, is the following: The principal qualifications envisaged at least two-year experience outside the Department
 15 of Inland Revenue, gained by applying one's self, wholly or primarily, to income tax matters in contrast to experience, incidentally, gained in income tax matters. Quite rightly, the departmental committee drew attention to the inadequacy of the qualifications of the interested parties under the first part
 20 of the scheme. The experience gained by interested parties Tseriotis and Loizou before joining the Department of Inland Revenue, was mainly in the field of auditing of accounts. Concern with income tax matters was incidental to their main duties. In the case of Loizou, it is doubtful whether he had the necessary
 25 five-year experience envisaged by both the principal and secondary qualifications, as the departmental committee observed. In the case of Koullis, I have this to observe: His duties were clerical. It is hard to envisage circumstances under which a clerical assistant may be said to gain experience in income
 30 tax matters by concerning himself incidentally with the taxation of the income of teachers. In my judgment, the construction placed upon the schemes of service by the Public Service Commission was not one reasonably open to them; consequently, they
 35 abused their discretion by holding that interested parties did possess the principal qualifications. Hence, their decision with regard to the appointment of the three interested parties to the promotion post of Assessor (Income Tax) is hereby annulled.

The recourse against the remaining interested parties is dismissed. Let there be no order as to costs.

40 *Sub-judice decision partly annulled.
 No order as to costs.*