

1984 May 4

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DINOS CONSTANTINIDES,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case No. 112/81).

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*Educational Officers—Schemes of service—Interpretation—Post of Technologist in the Technical Education—Schemes of service requiring University degree of the level of B.Sc. in Engineering—H.N.D. diploma rightly found by the respondent Commission as not satisfying the requirements of the relevant scheme of service in view of a decision of the Council of Ministers that such diploma is recognised as being equivalent to the diploma of the Higher Technical Institute, which is not of a B.Sc. level but inferior to it.*

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The applicant in this recourse challenged the promotion of the interested parties to the post of Technologist in the Technical Education in preference and instead of him. The scheme of service for the post in question required, inter alia, a “title/degree of a university or higher school or institution of an equal standing, of the level of B.Sc. in Engineering or an equivalent qualification in the above sections depending on the requirements of the service;” and applicant who was the holder of the H.N.D. diploma was found by the respondent Commission not to be qualified thereunder.

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The Council of Ministers by means of a decision taken on the 27th August, 1978 decided that “the qualifications obtained in England known as Higher National Diploma (H.N.D.) and Higher National Certificate (H.N.C.) will be considered as equivalent to the Diploma of the Higher Technical Institute.

Therefore where these qualifications are required in existing schemes of service or Regulations, they could be also satisfied by persons possessing the Diploma of the H.T.I. (Higher Technical Institute)".

Before deciding that the qualifications of the interested parties were equivalent to a B.Sc. in Engineering the respondent Commission obtained the advice of, inter alia, the Department of Education and Science in England and the British Council which was to the effect that their qualifications were equivalent to the B.Sc. in Engineering.

On the question:

- (a) Whether the respondent Commission rightly found that the applicant did not satisfy the requirements of the Scheme of service.
- (b) Whether the qualifications of the interested parties were inferior to applicant's qualifications and not equivalent to a B.Sc. in Engineering.

*Held*, (1) that once there was an official decision regarding the standard of the H.N.D. that decision had to be followed by the respondent; that it is clear from the decision of the Council of Ministers that the H.N.D. is officially recognised as being equivalent to the diploma of the H.T.I. which is not of a B.Sc. level, but inferior to it and no other evidence was adduced proving or indicating that the H.N.D. is equivalent in standard to a B.Sc.; that the power of interpreting the schemes of service is within the absolute discretion of the appointing organ and this Court will not interfere if it was reasonably open to such organ to decide as it did; that at the time of effecting the appointments or promotions in question the respondent found that the applicant did not satisfy the requirements of the scheme of service regarding qualifications and could not have found otherwise, in view of the contents of the decision of the Council of Ministers mentioned above.

(2) That it was reasonably open to the respondent Commission to decide as it did regarding the qualifications of the interested parties; and that, therefore, the contention of counsel that the qualifications of the interested parties are below the B.Sc. level and inferior to those of the applicant must be dismissed.

*Application dismissed.*

## Cases referred to:

- Papapetrou v. Republic*, 2 R.S.C.C. 61 at pp. 69-70;  
*Michael (No. 2) v. Republic* (1975) 3 C.L.R. 432 at p. 436;  
*Andreou v. Republic* (1979) 3 C.L.R. 379 at pp. 386-387;  
5 *Paraskevopoulou v. Republic* (1971) 3 C.L.R. 426 at p. 432;  
*Lambrakis v. Republic* (1975) 3 C.L.R. 136 at p. 141;  
*Stylianou v. Republic* (1980) 3 C.L.R. 11 at pp. 17-18.

## Recourse.

10 Recourse against the decision of the respondent to promote the interested parties to the post of Technologist in the Technical Education in preference and instead of the applicant.

*L. N. Clerides*, for the applicant.

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

15 *Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant challenges by this recourse the promotion to the post of Technologist in the Technical Education of five other persons, the interested parties in this recourse, in preference and instead of him.  
20 The interested parties whose promotion is challenged are:

1. Ioannis Nicolaou,
2. Andreas Christoforou,
3. Andreas Anastassiou,
4. Christakis Christofi,
- 25 5. Andreas HadjiKypris.

Applicant was first appointed in the Technical Education in 1973 on a contractual basis and since 1.7.1977 he holds the permanent post of Instructor of Schools of Technical Education.

30 On 5.1.1981, the Educational Service Committee (hereinafter to be referred to as ESC) met to consider the filling of 7 vacant posts of Technologist, after the filling of same had been approved by the Minister of Finance. The ESC in considering the candidates eligible for promotion to the above post found that:

35 ".....the following persons who hold the post of Instructor and who possess a Degree or title or diploma of a Polytechnic or a University or a higher school of equal

standing or an equivalent qualification are prevailing in seniority and decides to emplace them to the post of Technologist (Scale B.12) as from 1.1.1981:

- (a) Charalambos Christodoulides.
- (b) Ioannis Nicolaou, 5
- (c) Andreas Christoforou,
- (d) Panayiotis Neocleous
- (e) Andreas HadjiKypris
- (f) Andreas Anastassiou
- (g) Christakis Christofi". 10

The applicant addressed, on 15.1.1981, a letter to the Chairman of the E.S.C. complaining against such decision and his non-emplacement or promotion to scale B.12. In that letter applicant pointed out that he was evaluated in 1973 and placed on the list of candidates for appointment to scale B.12. He further mentioned that he had information that 3 out of the 7 persons appointed as above, had either entered the service after him or were not included in the list of those eligible for emplacement at scale B.12 and requested a reconsideration of his case. 15

The E.S.C. met again on 23.1.1981 and after consideration of his complaint, concluded as follows: 20

".....the applicant could not have been emplaced to the post of Technologist because his qualification (H.N.D.) is not a degree/diploma of a University or of a higher school or institution of a standard equal to B.Sc. (Eng.) or an equivalent qualification". 25

The applicant was informed accordingly by letter dated 24.1.1981. On 10.2.1981, the applicant addressed another letter to the Chairman of the E.S.C. (attached to the opposition as Appendix 'H') objecting to such decision. The following are stated in his letter: 30

- "1. I do not accept the decision of the Educational Service Committee that my qualifications are not proper for emplacement to the post of Technologist.
2. Your letter does not afford any explanation to me as to why, although originally I was evaluated for emplace- 35

ment at scale B.12 (Technologist), now, all of a sudden, my qualifications are not considered as satisfactory.

3. There is also no explanation as to how 3 out of those 7 emplaced to the post of Technologist who for many years were not considered as possessing the proper qualifications for emplacement to such post, now all of a sudden they have been considered as possessing the proper qualifications.

4. I reserve my rights to seek legal advice in pursuance of my legitimate claim.”

In answer to the above letter of the applicant the E.S.C. wrote, on 18.2.1981, the following letter (which is attached to the opposition as Appendix ‘O’):-

“I refer to your letter dated 10.2.1981 and inform you as follows:

(a) The Schemes of Service in force require for the post of Technologist, a Diploma of a Polytechnic or a degree or title of a University or other higher school of equal standing or of an institution of B.Sc. (Eng.) standard.

The Educational Service Committee examined your qualifications both during the filling of the 7 posts of Technologist as well as after your letter dated 15.1.1981, and found that they are not equivalent to those required by the schemes of service.

(b) Your colleagues who have been emplaced to the post of Technologist possess a diploma or title of a University or higher school or their qualifications have been evaluated by the Educational Service Committee as equivalent to them”.

The applicant, as a result, filed the present recourse on 20.3. 1981, challenging the validity of such decision. The grounds of law on which he relied, as subsequently amended on 29.3. 1982 by leave of the Court and with the consent of counsel for the respondent, are the following:

1. The respondent, in violation of the schemes of service and/or as a result of a misinterpretation of same came

to the conclusion that applicant's H.N.D. diploma in Mechanical Engineering is not such as to entitle the applicant to be emplaced at the scale of a Technologist in that such diploma is not a Diploma of a Polytechnic or title or degree of a University or other school of equal standing or of an institution of B.Sc. (Eng.) standard. 5

2. The respondent has exclusive jurisdiction, inter alia, to promote members of the Educational Service.
3. Such power should be exercised by the selection of the best candidates. 10
4. Having regard to the seniority, grading, merit, qualifications, as well as all matters which should have been taken into consideration by the respondent, the applicant was undoubtedly superior to all other candidates and should have been promoted to the post of Technologist. 15

In arguing applicant's case, counsel for applicant contended by his written address that in another case, similar to that of the applicant, which is pending before the Court, the H.N.D. was recognised as equivalent to B.Sc., and also that in other cases, the E.S.C. had decided that the H.N.D. diploma, taken prior to 1970, was equivalent to B.Sc., in Engineering. The fact that applicant was considered in 1973, when he was first appointed, as eligible for emplacement in the future at scale B.12, counsel maintained, is an indication that his qualifications were regarded as sufficient for such emplacement. He further contended that the qualifications of the interested parties are below the level of B.Sc. in Engineering, that the qualifications of the applicant are higher than those of any of the interested parties, none of whom possesses any qualifications in Mechanical Engineering and that the applicant is senior to at least one of the interested parties, namely Mr. Andreas Christoforou. 20 25 30

Counsel also submitted that the sub judge decision is not duly reasoned and that the respondent acted in excess or abuse of its powers in that the creation of new posts and the power of making or amending schemes of service vests in the Council of Ministers and not in public officers. Lastly, counsel argued that the sub judge decision was taken in violation of Article 28 of the Constitution, because in previous cases the respondent 35

decided that the H.N.D. is equivalent to a B.Sc. in Engineering and now it revoked its previous decisions by deciding that applicant's H.N.D. does not amount to a B.Sc., which is discriminatory against the applicant.

5 Counsel for the respondent submitted that the qualifications of the interested parties amount to qualifications of a degree or diploma of a University or have been evaluated as equivalent to those by the E.S.C. With regard to the H.N.D. of applicant  
10 there is a decision of the Council of Ministers to the effect that it is considered as equivalent to the Diploma of Technician Engineer which is granted by the Higher Technical Institute of Cyprus, which does not amount to a University degree or title. Besides, counsel continued, the interpretation and application of the schemes of service is within the discretionary power of  
15 the E.S.C. With reference to the case mentioned by counsel for the applicant, in which the H.N.D. was recognised as equivalent to B.Sc., counsel contended that the letter sent in that case was written by mistake and soon after another letter was sent to the person concerned revoking the previous letter, as  
20 a result of which a recourse was filed, against the revocation. As far as the reasoning is concerned counsel maintained that the sub judice decision is reasoned and that moreover, its reasoning may be supplemented by the material in the file. She also argued that the 7 posts were in existence in the budget  
25 law and the schemes of service on which the E.S.C. based its decision had been approved by the Council of Ministers on 7.8. 1969. Lastly, counsel for the respondent argued that there has not been established any violation of Article 28 of the Constitution and refuted the allegation that in any previous case the  
30 respondent acted in a different manner creating inequality of treatment against the applicant. Even if it might have done so, a fact which is denied, its action would have been contrary to law and applicant cannot base a claim for equal treatment in a case emanating from an unlawful act.

35 I shall deal first with legal ground (1) which is composed of grounds (a) and (b) in the written address of counsel for applicant. In making a promotion or appointment the E.S.C. is bound to apply the Schemes of Service, and only persons qualified under such schemes may be considered as candidates for  
40 such appointment or promotion. The schemes of service for

the post of Technologist, which is a first entry post (Appendix 'Γ' to the opposition) provide in this respect, the following:

*“Required qualifications:*

- 1. Diploma of the Metsovion National Polytechnic or a higher Greek school of an equal standing in Mechanical or Electrical Engineering or Architecture, or Civil Engineering or Chemical Engineering depending on the requirements of the service. 5

or

- (a) Leaving certificate of a Greek or other equivalent school of secondary education of Cyprus or overseas. 10

and

- (b) Title/degree of a university or higher school or institution of an equal standing, of the level of B.Sc. in Engineering or an equivalent qualification in the above sections depending on the requirements of the service. 15

.....

*Note:* In order to face problems concerning decisions about equivalence or not of qualifications or educational institutions and evaluation of the level of qualifications or educational institutions for the purposes of the present scheme of service such procedure is established, as the Ministry of Education might have regulated by directions issued from time to time”. 20

It is obvious from paragraph 1(b) of the scheme of service cited above that an academic qualification of the level of a B.Sc. in Engineering is indispensable in order that a candidate be eligible for appointment to the post of Technologist. The E.S.C., at its meeting of 5.1.1981, abiding by the schemes of service, decided to offer appointment to certain Instructors who possessed the qualifications required by the Schemes of Service, taking into account their seniority in the service. 25 30

It is the allegation of counsel for applicant that applicant’s H.N.D. is equivalent to a B.Sc., in Engineering. This contention of counsel can be answered by the contents of a decision of the Council of Ministers which is contained in an announcement by 35

the Minister of Labour and Social Insurance (Appendix 'IA' to the opposition) which reads, as follows:

“The Ministry of Labour and Social Insurance under which the Higher Technical Institute is classified (H.T.I.) announces that after a relevant decision of the Council of Ministers (Decision No. 17.125 dated 27.8.1978) the following are defined, with regard to the diploma of Technician Engineer, granted by the H.T.I:

(a) .....

(b) The qualifications obtained in England known as Higher National Diploma (H.N.D.) and Higher National Certificate (H.N.C.) will be considered as equivalent to the Diploma of the Higher Technical Institute. Therefore where these qualifications are required in existing schemes of service or Regulations, they could be also satisfied by persons possessing the Diploma of (H.T.I. (Higher Technical Institute)).  
.....”

Although no evidence was adduced about the established procedure mentioned in the Schemes of Service and the directions regulating it, once there is an official decision regarding the standard of the H.N.D. that decision had to be followed by the E.S.C. It is clear from the above announcement that the H.N.D. is officially recognised as being equivalent to the diploma of the H.T.I. which is not of a B.Sc. level, but inferior to it. No other evidence was adduced proving or indicating that the H.N.D. is equivalent in standard to a B.Sc.

I feel that I should also mention that studying the personal file of the applicant (exhibit 1), I came across a note from the Chairman of the E.S.C., dated 21.1.1981, (to be found at blue 47); which reads as follows:

“The applicant was in fact on the list of Technologists eligible for promotion and he is in fact senior to certain others who have been lately emplaced at this post.

The applicant possesses the Higher National Diploma and the decision of the Committee was to emplace at the post of Technologist only those possessing a degree or title, of a University or an equivalent qualification.

The allegation that certain of the Technologists were not on the relevant list is also correct, but there has been regarding them, a decision of the Committee (after an opinion from the evaluation Committee) that their qualifications were equivalent to a degree/title of a University". 5

I am not going to examine now whether applicant was correctly placed on such list in the first place since I consider it immaterial for the outcome of the present recourse. It is the duty of appointing organs when effecting appointments or promotions, to consider the qualifications of candidates and find whether they satisfy the required qualifications for the particular post to which the appointment or promotion is effected. The respondent found at the time of effecting the appointments or promotions in question that the applicant did not satisfy the requirements of the scheme of service regarding qualifications and could not have found otherwise, in view of the contents of the decision of the Council of Ministers mentioned above. 10  
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Moreover, the power of interpreting the schemes of service is within the absolute discretion of the appointing organ and this Court will not interfere if it was reasonably open to such organ to decide as it did (see *Papapetrou v. Republic*, 2 R.S.C.C. 61, 69-70, *Michael (No. 2) v. Republic* (1975) 3 C.L.R. 432, 436 and *Andreou v. Republic* (1979) 3 C.L.R. 379, 386-387). With regard to the allegation of counsel for applicant that in another case, similar to that of his client, the respondent wrote a letter recognising his H.N.D. as equivalent to a B.Sc., I find that, as counsel for the respondent has put it, that letter was written by mistake and was later withdrawn, hence recourse No. 7/80, which turns against such withdrawal. 20  
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I, therefore, find, on the basis of the above, that this ground of law (which contains grounds (a) and (b) as set out by counsel in his written address) should be dismissed. 30

I come now to examine legal ground (3) of the original application which contains grounds (c), (d) and (e) of counsel's address. This ground is based on the comparison of applicant and the interested parties. It is the applicant's allegation that the qualifications of the interested parties are inferior to his and are not equivalent to a B.Sc., in Engineering. 35

As I have already said, the power to interpret the schemes of service and decide whether a particular candidate possesses the qualifications required by a particular scheme of service, is vested in the appointing organ, which in this case, is the E.S.C., and this Court will not interfere if it was reasonably open to such organ to decide, on the material before it, that a particular candidate possessed or not such a qualification. (See *Paraskevopoullou v. Republic* (1971) 3 C.L.R. 426, 432; *Lambrakis v. Republic* (1973) 3 C.L.R. 29, 33; *Michael (No. 1) v. Republic* (1975) 3 C.L.R. 136, at p. 141; *Stylianou v. Republic* (1980) 3 C.L.R. 11, at pp. 17-18).

In this particular case, the qualifications of the interested parties were different than those of the applicant. The E.S.C., bearing also in mind, in this respect, the views of the Evaluation Committee, considered these qualifications as equivalent to B. Sc. There is a specific decision of the respondent, date 29.3.1979 (Appendix 'I') with regard to the qualifications of interested parties Christakis Christofi and Andreas Christoforou that their qualifications are equivalent to a B.Sc. The qualifications of interested party Chr. Christofi, as set out in the comparative table attached to the opposition, are the following:

“(a) Leaving certificate of the Lanition Gymnasium.

(b) Diploma in Telecommunication Engineering and Electronics of the Norwood Polytechnic.

(c) Graduate of the Institute of Electronics and Radio Engineers.

(d) Post-graduate Diploma in Electronics, of the University of Wales”.

This interested party as it seems from his personal file which is exhibit 5 before the Court, had applied to the E.S.C. for a recognition of his qualifications as equivalent to B.Sc., for the purpose of emplacement on B.12 (see blues 46-60) attaching a letter from the British Council in which it was certified that the Diploma in Telecommunication Engineering and Electronics from Norwood Technical College is regarded as being of the standard of B.Sc., of a British University, and that the post-graduate Diploma from the University of Wales is above first degree standard (blue 51).

It appears also that a letter was written on behalf of the Evaluation Committee addressed to the Department of Education and Science in England, seeking information about the standard of the Diploma of the interested party. As a result, the above department sent a letter to the Evaluation Committee attaching a list of colleges and universities and other institutions granting degrees and equivalent qualifications (blues 53-58). It also sent a letter to the interested party, which reads as follows (blue 59):-

“Dear Mr. Christofi,

In reply to your letter of 4 January, I can confirm that the College Diploma in Telecommunication Engineering and Electronics from Norwood Technical College is regarded as being of the standard of a first degree (B. Sc.); of a British University. The diploma gives entire exemption from the Graduateship examination of the Institution of Electronics and Radio Engineers, the academic requirement for graduate membership being a pass degree in Engineering or an allied discipline obtained in the United Kingdom.

The Post-graduate Diploma in Electronics from the University of Wales Institute of Science and Technology is above first degree standard, since a B.Sc. is a condition of entry:

I hope this help solve your problem”.

Thereafter, the E.S.C. having all the material before it and the views of the Evaluation Committee, accepted this interested party's qualifications as equivalent to a B.Sc. in Engineering; and decided to place him on the list of those qualified for appointment to B.12.

Interested party Andreas Christoforou possesses the following qualifications:

- (a) Leaving certificate of the Lanition Gymnasium.
- (b) Diploma in Electronics and Communication Engineering of the Northern Polytechnic.
- (c) Graduate of the Institute of Electronics and Radio Engineers.

A similar procedure to that taken by interested party Christofi was also taken by this interested party, attaching a letter from the Institution of Electronics and Radio Engineers to the effect that the course leading to the award of the Diploma of the Polytechnic of North London has been recognised as being of degree standard and those who follow it now are awarded the degree of B.Sc. in Engineering (personal file exhibit 3). The E.S.C. had also decided, in the case of this interested party, on 29.3.1979 that he possessed the qualification required by the scheme of service for the post of Technologist.

Regarding interested party Ioannis Nicolaou there is no individual decision in his personal file (exhibit 2) recognising his qualifications, but since he possesses the Diploma of the Northern Polytechnic, which was recognised by the E.S.C. in the case of interested party Christoforou as equivalent to a B.Sc. it was reasonably open to the respondent E.S.C. to act in the same way in his case. He also possesses the City and Guilds Certificate.

An individual decision of the E.S.C. regarding the qualifications of interested party Andreas Anastassiou is also to be found in his file (exhibit 4) dated 27.11.1979 which was taken on the basis of a letter from the British Council regarding the level of his qualifications, which are the same as those of interested party Christofi (stated above, except for the post-graduate diploma of the University of Wales possessed by Christofi), and in respect of whom a decision had already been taken by the E.S.C. on 29.3.1979.

Lastly, regarding interested party Andreas HadjiKypriis, who possesses (a) a leaving certificate of the Lanition Gymnasium, (b) Hochschulingenieur of Dresden University and (c) Diplomingenieur of the same University, he had submitted, together with his application for appointment, a certificate from Dresden University to the effect that the "Diplom-Ingenieur" is equivalent to the title of Master of Science awarded by British Universities (file exhibit 6).

With all the above in mind, I find that it was reasonably open to the respondent E.S.C. to decide as it did regarding the qualifications of the interested parties, and I therefore dismiss the

contention of counsel that the qualifications of the interested parties are below the B.Sc. level and inferior to those of the applicant.

Counsel's submission that the sub judice decision is not duly reasoned is utterly untenable since such reasoning is very clearly stated in the letters of the E.S.C. sent to the applicant, dated 10.2.1981 and 18.2.1981, reference to which has already been made.

I also find as completely groundless and untenable the ground concerning excess and abuse of powers as I have already found that it was reasonably open to the respondent to decide as it did.

Lastly, concerning the ground of unequal treatment of the applicant, no evidence was adduced on his behalf to substantiate his allegations that the H.N.D. has, in other cases, been regarded as equivalent to a B.Sc., and I therefore dismiss it, having also in mind the decision of the Council of Ministers dated 27.8.1978, reference to which has already been made earlier in this judgment.

In the result, this recourse fails and is therefore dismissed, with no order for costs.

*Recourse dismissed with no order  
as to costs.*