

1984 June 20

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

XENOPHON MICHAEL AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 408/82 and 425/82).

*Public Service Law, 1967 (Law 33/67)—Service on daily wages—
Not public service within the meaning of “public service” and
“service” in the definition section 2 of the Law.*

5 *Public officers—Schemes of service—Expressions used therein to be
used with the same meaning as in the Public Service Law, 1967
unless otherwise clearly indicated—“Service” in the relevant
scheme of service construed as not including service on daily
wages—Section 2 of the Law definition of “public service”
and “service”.*

10 *Public Officers—Promotions—Head of Department—Recommendations—
Disregarded because of the better confidential reports
and the seniority of the interested party.*

15 These recourses were directed against the validity of the pro-
motion of the interested parties to the post of Technician 1st
Grade in the department of Antiquities in preference and instead
of the applicants. The relevant scheme of service required, inter
alia, “at least ten years total service in the Department of Anti-
quities”. Though applicant in recourse 408/82 was recom-
20 mended for promotion by his Head of Department the
respondent disregarded such recommendation on the ground
that the interested party had better confidential reports than

this applicant and was ahead, also, to him in seniority on account of the previously held by them posts.

On the questions:

- (a) Whether the service of applicant in recourse 425/82 on daily wages could be considered as "service" within the meaning of the relevant schemes of service; and 5
- (b) Whether the respondent Commission has given cogent reasoning for disregarding the recommendations of the Head of Department in favour of the applicant in recourse 408/82. 10

Held, (1) that service by persons whose remuneration is calculated on a daily basis is not considered as a public service within the meaning of "public service" and "service" in section 2 of the Public Service Law, 1967 (Law 33/67); that the making of schemes of service by the Council of Ministers is a matter governed by section 29 of the Public Service Law; and, that, consequently expressions used therein have to be taken as being used with the same meaning as in the Law itself unless otherwise clearly indicated; accordingly applicant in recourse 425/82 did not satisfy the requirements of the schemes of service and his recourse should fail on the ground that he had no legitimate interest. 15 20

(2) That the respondent Commission gave a clear and cogent reasoning as to why the recommendation of the Head of Department was disregarded which consisted of the better confidential reports and the seniority of the interested party; accordingly recourse 408/82 must, also, fail. 25

Application dismissed.

Cases referred to:

Aivaliotis v. Republic (1970) 3 C.L.R. 149; 30

Theodossiou v. Republic, 2 R.S.C.C. 44;

HadjiConstantinou v. Republic (1973) 3 C.L.R. 65.

Recourses.

Recourses against the decision of respondents to promote the interested parties to the post of Technician 1st Grade in 35

the Department of Antiquities in preference and instead of the applicants.

A. *Ladas*, for applicant in Case No. 408/82.

C. *Emilianides*, for applicant in Case No. 425/82.

5 A. *Papasavvas*, for the respondent.

A. *Xenophontos*, for interested party Ioannis Cleanthous.

G. *Teoulides*, for interested party *Ioannis HadjiSavvas*.

Cur. adv. vult.

10 A. LOIZOU J. read the following judgment. By these two
recourses which have been tried together as they challenge
the legality of the same administrative decision, the two appli-
cants were seeking the annulment of the promotion of the
interested parties Christofis Polykarpou, Ioannis HadjiSavvas
and Marinos Vaios to the post of Technician 1st Grade in the
15 department of Antiquities instead of themselves.

It should, however, be pointed out here that as far as recourse
No. 408/82 is concerned same was withdrawn against interested
parties Cleanthous, Polykarpou and Vaios and it was dismissed
accordingly and proceeded for hearing only as against interested
20 party HadjiSavvas.

As regards Recourse No. 425/82 which proceeded against all
interested parties, an objection was raised that the applicant in
this recourse had no legitimate interest inasmuch as he did not
satisfy the Scheme of Service which required in the second note
25 to the qualifications within which all candidates became eli-
gible, "at least ten years total service in the department of Anti-
quities". It will simplify matters if I deal with this legal point
first, but it is essential for that purpose to refer briefly to the
relevant facts of the case.

30 The post of Technician 1st Grade is a promotion post from the
lower post of Technician 2nd Grade. For the purpose of the
filling of this promotion post a Departmental Board was set up
under the Chairmanship of the Director of Antiquities. Appli-
clicant Demetriou was not included among those recommended
35 by the said Board as he was found not to satisfy the Scheme of
Service for the post. That is, he did not have at least ten years
service in the Department of Antiquities. In fact after the
first report of the Board, dated 22nd April 1982, a second report

dated 6th May, 1982, was forwarded to the respondent Commission in substitution of the first one but the applicant was once more not included in this report for the same reason.

Applicant Demetriou after some service in the Antiquities department on daily wages, did his national service and on the 25th August 1966 he was re-employed by the Antiquities department on daily wages. He was appointed as Museum Attendant on the 16th October 1972 and became a Museum Assistant, permanent, on the 1st February 1976. The title of the last post he held was changed to Archaeological Assistant on 1st January 1981. The request for the filling of the post of the vacancies in question under section 17 of the Public Service Law was received by the respondent Commission on or about the 3rd March, 1982. It is an admitted fact that if the service of the applicant on daily wages, cannot in law be considered as included in the notion of service referred to in the relevant Scheme of Service, he was not eligible for promotion under the Scheme, as he had not by then completed ten years of service in the department of Antiquities.

In the Public Service Law, 1967, "service" and "public service" are defined in section 2 thereof as meaning:

" 'public service' means any service under the Republic other than the judicial service of the Republic or service in the Armed or Security Forces of the Republic or service in the office of Attorney-General of the Republic or Auditor-General or Accountant-General or their Deputies or service in any office in respect of which other provision is made by law or service by persons whose remuneration is calculated on a daily basis;

'service' means public service".

By virtue of this definition service by persons whose remuneration is calculated on a daily basis is not considered as a public service within the meaning of the said Law. Furthermore "office" is defined as meaning a public office and the combined effect of sections 22 and 32 is that offices, are classified into permanent and temporary and they may be filled either on a permanent basis or on a temporary basis on contract for a limited period or on a month to month basis, as far as permanent offices are concerned and as far as temporary offices are concerned they may be filled either by the secondment of a permanent officer or by the appointment

of a person on contract for a limited period or on a month to month basis. Moreover sections 40 and 41 of the Law regulate the appointments on contract and on a month to month basis. The Law as such leaves no room to consider employment on
5 daily basis as service and to my mind the terms used in a Scheme of Service must be given the meaning which is given to them by the Public Service Law, unless from the context in which they are used in the Scheme of Service a different meaning has to be ascribed to them.

10 Needless to say that the making of Schemes of Service by the Council of Ministers in which are prescribed the general duties and responsibilities of offices and the qualifications required for the holding thereof, is a matter now governed by section
15 29 of the Public Service Law (See *Aivaliotis v. The Republic* (1970) 3 C.L.R. 149). Consequently expressions used therein have to be taken as being used with the same meaning as in the Law itself unless otherwise clearly indicated.

For all the above reasons recourse No. 425/82 by applicant Andreas Demetriou should fail on the ground that he has no
20 legitimate interest.

As regards the applicant in recourse No. 408/82 the main ground upon which learned counsel on his behalf argued was that though he had been recommended by the Head of the Department, the respondent Commission disregarded same
25 without giving cogent reasoning for doing so, contrary to the well established principles of Administrative Law as expounded in the case of *Theodosiou v. The Republic*, 2 R.S.C.C. p. 44 and followed in a number of cases inter alia *HadjiConstantinou v. The Republic* (1973) 3 C.L.R. 65. The relevant minute of the
30 respondent Commission of the 17th May, 1982 reads as follows:

“The Commission having examined the material elements from the personal files and the Confidential Reports of the candidates and having taken into consideration the conclusions of the Departmental Board and the views and
35 recommendations of the Director of the department of Antiquities, adopted the recommendation of the Director, except in the case of Xenophon Michael in the place of it selected Mr. Ioannis HadjiSavva who has excellent

confidential reports during the recent years as compared to Mr. Michael who was graded as 'very good'.

Mr. HadjiSavva is ahead also to Mr. Michael in seniority on account of the previously held by them posts. The Commission noted also that Mr. Michael was graded during 1978 by the Director himself as 'very good' in three items and 'good' in seven, whereas Mr. HadjiSavvas was rated by the Director as 'excellent' in the ten rateable items.

In conclusion the Commission on the basis of the element before it decided that the following are superior to the rest of the candidates on the basis of the totality of the established criteria (merit, qualification, seniority), found them suitable and decided to promote them to the (Permanent Ordinary Budget) post of Technician 1st Grade as from the 1st June, 1982.

.....
.....

4. HadjiSavva Ioannis".

The aforesaid minute speaks for itself and gives the answer to the argument advanced on behalf of this applicant. There is clear and cogent reasoning as to why the recommendation of the Head of the Department was disregarded.

In fact the Head of the Department, never recommended the applicant as being superior to the others, but in a way, he did recommend him for promotion because he was in charge of one of the technical branches of the Department of Antiquities, namely the Photographic Studio and his work was very satisfactory having specialised as a photographer and was working in that capacity for the department and also for which purpose he had been sent to England on a six months course in order to specialize in colour-photography (see Appendix 8).

These matters, however, are more relevant to matters relating to the structure of the service and not to the promotion of candidates in posts which do not make such qualifications an advantage.

On the totality of the material before the respondent Commission the sub judice decision was reasonably open to it and cogently reasoned, both as regards the selection of the applicant

as being the most suitable for the post and also as regards their disregard and the recommendation of the Head of the Department.

5 For all the above reasons this recourse should also fail. In the result both recourses are dismissed but in the circumstances there will be no order as to costs.

*Recourses dismissed with no order
as to costs.*