

1985 May 2

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THEODOSIS MAKRIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent*

(Case No. 204/82).

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Public Officers—Promotions—Principles applicable—Merit, qualifications, seniority—To be duly taken into account in that order—Recommendations of Head of Department—Due weight must be attached to—And special reasons should be given in case of departure therefrom—Seniority prevails if all other factors equal—Which were not because the interested party was superior in merit having regard to the recommendations of the Head of Department in his favour—Therefore reasonably open to the Commission to act upon such recommendations and select the interested party—Moreover the applicant had to prove striking superiority, mere superiority not being enough, and he failed to do so—Possession of qualifications not required by the scheme of service does not, necessarily put their holder in an advantageous position—Nor is it necessary for cogent reasons to be given for disregarding such qualifications—No need for the Commission to make specific reference to the applicant since he was neither recommended nor did he have any qualifications constituting an additional advantage under the scheme of service nor did he enjoy striking superiority over the interested party—Fact that applicant has been rated as “excellent” in two or three items in the confidential reports whilst the interested party was not is not a sufficient reason to weigh the scales in

*his favour since on the average they were both rated as "very good".*

*public Officers—Schemes of Service—Publication—Though advisable and useful for general information not essential for their validity.*

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The applicant and the interested party were candidates for promotion to the post of Senior Draughtsman in the Department of Lands and Surveys. Their confidential reports were more or less the same, applicant was senior to the interested party and both of them possessed the qualifications which were required for promotion by the scheme of service. Applicant, however, possessed a qualification which was not required by the scheme of service. The interested party was recommended for promotion by the Head of Department whilst applicant was not. The respondent Public Service Commission promoted the interested party to the above post and hence this recourse.

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*Held*, that due weight must be attached by the Commission to the recommendations of the Head of Department and special reasons should be given by it in case of departure from such recommendations; that in effecting promotions the merit, qualifications and seniority of the candidates must be duly taken into consideration in that order; that seniority prevails if all other factors are equal; that the interested party is superior in merit, which is the most consequential factor, to the applicant, having regard to the recommendations of the Head of the Department and it was reasonably open to the Commission to act upon such recommendations and select the interested party for promotion.

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*Held, further*, (1) that it is also necessary for the applicant in order to succeed in a recourse to prove striking superiority over an interested party, as mere superiority is not enough, which the applicant has failed to establish in the present case.

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(2) That the possession by the applicant of a diploma in the Theoretical and Practical Part in the Conservation of Registry and Bibliography of the Cyprus Paedagogical Academy, is not a qualification required by the scheme of service and, therefore, does not, necessarily, put the ap-

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5 plicant in an advantageous position vis-a-vis the interested party in the sense that it should be singled out for separate and distinct consideration; nor, even if it were completely disregarded, would it be necessary for the Commission to give cogent reasons for doing so as this qualification was not one that could be considered to be an additional advantage under the scheme of service.

10 (3) That there was no need for the Commission to make specific reference to the applicant and explain why he was not preferred for promotion since he was neither recommended nor did he have any qualifications constituting an additional advantage under the scheme of service nor did he enjoy striking superiority over the interested party.

15 (4) That although the publication of schemes of service in the Gazette is advisable and useful for general information it is not essential for their validity.

20 (5) That the fact that the applicant has been rated as "excellent" in two or three items in the confidential reports whilst the interested party was not is not a sufficient reason to weigh the scales in favour of the applicant since on the average they were both rated as "very good".

*Application dismissed.*

Cases referred to:

- 25 *HajiSavva v. Republic* (1982) 3 C.L.R. 76 at p. 79;  
*Georghiades and Others v. Republic* (1967) 3 C.L.R. 653;  
*Tryfon v. Republic* (1968) 3 C.L.R. 28;  
*Larkos v. Republic* (1982) 3 C.L.R. 513 at p. 519;  
*Thalassinos v. Republic* (1973) 3 C.L.R. 386;  
30 *Zinieris (No. 1) v. Republic* (1975) 3 C.L.R. 13;  
*Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417;  
*Kleanthous v. Republic* (1978) 3 C.L.R. 320;  
*Tapakoudis v. Republic* (1981) 3 C.L.R. 9;

*Hadjiloannou v. Republic* (1983) 3 C.L.R. 286;

*Karageorghis v. Republic* (1983) 3 C.L.R. 435;

*Ioannou v. Republic* (1983) 3 C.L.R. 75;

*Marathevtou and Others v. Republic* (1982) 3 C.L.R.  
1088 at p. 1096; 5

*Ishin v. Republic*, 2 R.S.C.C. 16 at p. 20;

*Economides v. Republic* (1972) 3 C.L.R. 506 at pp.  
516-517.

### Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Draughtsman in the Department of Lands and Surveys in preference and instead of the applicant. 10

*E. S. Karaviotis*, for the applicant.

*A. Vladimirov*, for the respondent. 15

### *Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The applicant by this recourse prays for a declaration that the decision of the Public Service Commission dated 23rd January, 1982, to promote Mrs. Sophoula Lambertidou, the interested party, to the post of Senior Draughtsman in the Department of Lands and Surveys in preference and instead of himself is null and void and of no effect whatsoever. 20

Both the applicant and the interested party were holding, prior to the sub judice decision, the post of Draughtsman 1st Grade in the Department of Lands and Surveys. 25

In 1981 there were certain vacancies in the post of Senior Draughtsman, a promotion post, and a Departmental Board was set up under the provisions of s. 36 of the Public Service Law, 1967, in order to consider the candidates eligible for promotion and advise the Commission. The Board met on the 4th December, 1981 and having considered all officers holding the immediately lower post of 30

Draughtsman 1st Grade prepared a list of all candidates, 27 in number, eligible for promotion under the scheme of service. This list is appendix "A" attached to the minutes of the meeting of the Board. The Board then evaluated the merits of the candidates on the basis of their confidential reports. The list appendix "B" also attached to the minutes of the meeting contains the names of all candidates in alphabetical order with the rating of the Board opposite the name of each candidate. Both the applicant and the interested party were rated as "very good".

The Commission met on the 22nd January, 1982, to consider the filling of eight vacancies in the above post. The Acting Director of the Department who was present at the meeting recommended seven candidates for promotion to the first seven posts and for the eighth post he recommended two candidates, for the Commission to choose one of the two, namely, the interested party and a Mr. Spyros Theophanous. The applicant was not recommended for any of the posts.

The Commission met again on the 23rd January, 1982, and having considered all relevant material from the personal files and confidential reports of the candidates and after taking into consideration the report of the Departmental Board and the recommendations of the Head of the Department decided to promote the first seven candidates recommended to an equal number of vacant posts in the ordinary budget and the interested party to the vacant post in the development budget.

The applicant filed the present recourse challenging the promotion of the interested party.

The recourse is based on the grounds that the respondents failed in their paramount duty to select the best candidate; that they disregarded applicant's superior merit and his substantial seniority and that the sub judice decision is not duly reasoned.

Counsel for applicant argued, in the course of his address, that applicant is superior as regards both merit and qualifications and is by far senior to the interested party and that his seniority could not have been disregarded with-

out cogent reasons. More particularly, counsel submitted that the interested party did not possess even the qualifications for appointment to the lower post whilst applicant had better qualifications, having obtained a diploma in the Theoretical and Practical Part of the Conservation of Registry and Bibliography of the Cyprus Paedagogical Academy. Counsel also submitted that the applicant has a wide experience in the post of draughtsman whilst the interested party was all along serving as a Maps Store Keeper thus lacking in experience for the post of Senior Draughtsman.

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With regard to seniority counsel stated that applicant was appointed as Draughtsman 2nd Grade on the 1st March, 1956, and was promoted to 1st Grade on the 15th January, 1971, whereas the interested party was serving on an unestablished basis since 1st October, 1947 and was only appointed on a permanent basis on the 1st November, 1965, and was promoted to 1st Grade on 1st June, 1977. Counsel submitted in this respect that since the respondents promoted the interested party on account of her long service and gave no reasons for preferring the interested party as against the applicant the sub judice decision must be annulled as based on misconceived and/or unlawful reasoning.

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In effecting promotions the merit, qualifications and seniority of the candidates must be duly taken into consideration in that order. (See *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76 at p. 79).

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In the present case both the applicant and the interested party were found eligible for promotion to the post of Senior Draughtsman by the Departmental Board. Their confidential reports are more or less the same, both being rated as "very good". The fact that the applicant has been rated as "excellent" in two or three items whilst the interested party was not is not, in my view, a sufficient reason to weigh the scales in favour of the applicant since on the average they were both rated as "very good". On the other hand, the interested party was recommended for promotion by the Head of the Department whilst applicant was not and this fact carries considerable weight in her favour in so far as the factor of merit, which is the most consequential, is concerned. (See, *Georghiades & Others v. The*

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*Republic* (1967) 3 C.L.R. 653; *Tryfon v. The Republic* (1968) 3 C.L.R. 28; *HadjiSavva and The Republic* (supra); *Larkos and the Republic* (1982) 3 C.L.R. 513 at p. 519).

5 Coming now to the qualifications of the parties, the possession by the applicant of a diploma in the Theoretical and Practical Part in the Conservation of Registry and Bibliography of the Cyprus Paedagogical Academy, is not a qualification required by the scheme of service and, therefore, does not, necessarily, put the applicant in an advantageous position vis-a-vis the interested party in the sense that it should be singled out for separate and distinct consideration; nor, even if it were completely disregarded, would it be necessary for the Commission to give cogent reasons for doing so as this qualification was not one that 10 could be considered to be an additional advantage under the scheme of service. (*Thalassinos v. The Republic* (1973) 3 C.L.R. 386; *Zinieris (No. 1) v. The Republic* (1975) 3 C.L.R. 13; *Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417; *Kleanthous v. The Republic* (1978) 3 C.L.R. 20 320). But, in any case, the fact that the applicant possessed this qualification was before the Commission as were the qualifications and other details of service and the confidential reports of all candidates.

25 With regard to the argument of counsel that the interested party lacks the necessary experience for promotion to the post of Senior Draughtsman in that she had been performing the duties of Maps Store Keeper it may be pointed out that this is one of the duties and responsibilities for the post of Senior Draughtsman under the relevant 30 scheme of service and that, in any case, the interested party held the post of Draughtsman 1st Grade since 1977 and the Commission decided that she possessed the required qualifications and it is not for this Court to question such finding at it was reasonably open to the Commission.

35 Another argument of counsel regarding qualifications is that the interested party did not even possess the qualifications required for appointment to the post of Draughtsman 2nd Grade in that she did not possess a school leaving certificate. In the first place this is a mere allegation as it 40 has not been proved by the applicant on whom the burden

of proof lied but, in any event, it is the promotion to the post of Senior Draughtsman that is in question, and not her appointment to the post of Draughtsman 2nd Grade in 1965, and a school leaving certificate is not one of the requirements for promotion to the senior post under the relevant scheme of service. 5

Considering now the factor of seniority, it is true that the applicant is considerably senior to the interested party. Seniority, however, prevails if all other factors are equal. (*Tapakoudis v. The Republic* (1981) 3 C.L.R., 9; *Hadjioannou and 2 Others v. The Republic* (1983) 3 C.L.R. 286). As I have already indicated the interested party is superior in merit, which is the most consequential factor, to the applicant, having regard to the recommendations of the Head of the Department and it was reasonably open 15 to the Commission to act upon such recommendations and select the interested party for promotion. It has been held in a number of cases that due weight must be attached by the Commission to the recommendations of the Head of Department and special reasons should be given by it in 20 case of departure from such recommendations. It is also necessary for the applicant in order to succeed in a recourse to prove striking superiority over an interested party, as mere superiority is not enough, which the applicant has failed to establish in the present case. (*HdjiSavva and The Republic* (supra); *Karageorghis v. The Republic* (1983) 3 C.L.R. 435; *Ioannou v. The Republic* (1983) 3 C.L.R. 75). 25

Coming now to the ground of reasoning, counsel argued that the Commission promoted the interested party because 30 of her long service, since 1947, whilst at such time she was serving on an unestablished basis and was only appointed on a permanent basis in 1965. This, however, does not seem to be the case. For although the interested party did in fact serve on an unestablished basis from 1947 to 1965 35 and this in view of the fact that under General Order II/1.21 in force until then married women were not eligible for appointment to the established staff, save in exceptional circumstances, by making reference to her long service it does not mean that the Commission disregarded or miscon- 40 ceived the factor of seniority and that it promoted the interested party solely by reason of her long service. On

the contrary, it is obvious from the wording of the decision that the Commission never lost sight of the fact that the interested party was not senior to other officers. The fact that she was less senior to other candidates was all along  
5 before the Commission if one reads its minutes of the 22nd January, 1982. where it was stated by the Head of Department that "Mrs. Lambertidou is less senior even from other female officers, such as Mrs. Papacleovoulou who was employed later but became permanent before her."

10 Therefore, no question of misconception arises in the present case. What the Commission did was, after hearing the recommendations of the Head of Department regarding the interested party, to make a short reference to her long service and to the reasons why she was not appointed on  
15 a permanent basis before 1965 and the history of her career. The Commission then proceeded to compare her with the other candidate who was also recommended for promotion, Mr. Theophanous, and found that although they were both rated as "very good" in their last two confidential  
20 reports, with a slight superiority of the latter, in the two preceding reports, the interested party had a clearly better rating and finally selected her for promotion. There was no need for the Commission to make specific reference to the applicant and explain why he was not preferred for  
25 promotion since he was neither recommended nor did he have any qualifications constituting an additional advantage under the scheme of service nor did he enjoy striking superiority over the interested party. (See, *Marathevtou and Others v. The Republic* (1982) 3 C.L.R. 1088 at p. 1096).

30 Before concluding I would like to refer to another point made by counsel for applicant in his reply to the address of counsel for the respondents to the effect that the scheme of service in question was not published in the official Gazette of the Republic and was thus invalid. With regard  
35 to this I need only say that although the publication of schemes of service in the Gazette is advisable and useful for general information (see *Iler Ishin v. The Republic*, 2 R.S.C.C. 16 at p. 20) it is not essential for their validity. (See *Economides v. The Republic* (1972) 3 C.L.R. 506 at  
40 pp. 516-517).

Having carefully considered this case in the light of

all the above I am clearly of the view that it was, in all the circumstances, reasonably open to the Commission to promote the interested party and I have not been persuaded that there is any valid ground for interfering with such decision.

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In the result this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*