

1985 August 27

[TRIANTAFYLIDIS, P., A. LOIZOU, DEMETRIADES,  
LORIS, STYLIANIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

v.

ELENI S. XINARI AND OTHERS,

*Respondents.**(Revisional Jurisdiction Appeal No. 402).*

*Public Officers—Promotions—Schemes of Service—The Court will not place a different interpretation than the interpretation given by the Public Service Commission, if such interpretation was reasonably open to the Commission—Promotions to posts of Assessor (Income Tax)—The expression “experience in matters of taxation” referred to in the Scheme—Should not be restricted to experience gained by applying one’s self “wholly or primarily” to matters of taxation—The phrase leaves room for a much wider interpretation than that.*

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The promotion of the three interested parties to the post of Assessor (Income Tax) was annulled by the Judgment appealed from on the ground that the construction placed by the appellant Commission upon the relevant scheme of service was not one reasonably open to it.

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The scheme provided that candidates for the post should possess “five year experience on matters of taxation of income of which at least three years of service in the post of Assistant Assessor 1st Grade (Income Tax) and/or Assistant Assessor.

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The trial Judge found that the only reasonable construction of the scheme is the following: The principal qualifications envisaged at least two-year experience outside the Department of Inland Revenue, gained by apply-

ing one's self, *wholly or primarily*, to income tax matters in contrast to experience *incidentally gained in income tax matters*.

5 All three interested parties had the three years experience by serving in the posts referred to in the scheme. As regards the totality of their qualifications the Commission found that they satisfied the requirement of the remaining "two years experience on taxation matters."

10 Interested party Tseriotis had among his duties when he was an examiner of account at the Department of the Auditor-General the audit of deduction for income tax purposes *from the emoluments of Government temporary employees and labourers*. Interested party Koullis dealt in the course of his duties as a Clerical Assistant at the Ministry of Education with matters of taxation of primary and secondary schoolteachers and interested party Loizou dealt as an examiner of accounts at the department of the Auditor-General with the audit of the accounts of the Inland Revenue Department, including auditing of individual assessments and the correction of taxes imposed.

15 The Departmental Board set up under section 36 of Law 33/67 expressed serious doubts whether the interested parties were qualified for promotion, but the appellants Commission did not agree and took the view that "if among the duties they performed... there were included matters of taxation of income, even in the case in which they constitute only part of their duties, they can be considered as satisfying the... requirement of the scheme".

25 *Held, allowing the appeal* (1) The Court will not give to a scheme of service a different interpretation than the one given by the Public Service Commission provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question. In the circumstances of this case the interpretation given by the Commission was reasonably open to it.

30 (2) The trial Judge's construction of the scheme stems from the words "wholly or primarily" which he added to the expression "income tax-matters" in contrast, as he put it, to experience "incidentally gained in income-tax matters". Such interpretation is not warranted by the

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wording of the scheme. On the contrary such wording is so phrased that it leaves room for a much wider construction than that given by the trial Judge.

*Appeal allowed.*

Cases referred to: 5

*Frangoullides and Another v. The P.S.C.* (1985) 3 C.L.R. 1680;

*Papapetrou v. The Republic*, 2 R.S.C.C. 61.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 7th June, 1984 (Revisional Jurisdiction Cases Nos. 12/83, 19/83 and 20/83)\* whereby the decision of the Public Service Commission to promote the interested parties to the post of Assessor (Income Tax) was annulled. 10  
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*N. Charalambous*, Senior Counsel of the Republic, for the appellant.

*D. Ioannides* with *P. Liveras*, for respondents 1 and 3.

*P. Pavlou*, for respondent 2.

*Z. Katsouris* with *M. Christofides* and *A. S. Angelides*. 20  
for the interested parties.

*Cur. adv. vult.*

TRIANTAFYLIDES P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: This is an appeal from the judgment of a Judge of this Court by which the decision of the appellant Commission for the appointment of the three interested parties to the promotion post of Assessor (Income-Tax) was annulled. The grounds of such annulment are set out in the said judgment, and they are in effect that the construction placed upon the relevant Scheme of Service by the appellant Commission was not one reasonably open to it and consequently it abused its discretion by holding 25  
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\* Reported in (1984) 3 C.L.R. 598.

that the three interested parties did possess the required qualifications. The said construction turned on the qualification that candidates should possess "five year experience on matters of taxation of income of which at least three  
5 years service in the post of Assistant Assessor 1st Grade (Income-Tax) and/or Assistant Assessor."

The learned trial Judge had this to say on this issue:-

"The only reasonable construction of the scheme read as a whole, is the following: The principal qualifications envisaged at least two-years experience outside the Department 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 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 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 tax matters by concerning himself incidentally with the taxation of the income of teachers."  
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From the aforesaid passage it is apparent that the construction placed by the learned trial Judge stems from the words "wholly or primarily" that he has added to the expression "to income-tax matters", in contrast, as he puts it, to experience incidentally gained in income-tax matters. The scheme of service does not expressly contain such qualifying words to the matter of experience and in our view the respondent Commission in giving the construction that it did should not be expected to consider such an approach as the only reasonable one open to it.  
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The three interested parties had the three year experience at the Department of Income-Tax gained by serving at the post of Assistant Assessor 1st Grade, (Income-Tax) and or Assistant Assessor. As regards the totality of their qualifications that were found by the respondent Commission to satisfy the requirement of the remaining "two years of experience in taxation matters" each of the interested parties had the following service from which such interference was drawn. 5

Interested party Tseriotis was before joining the Department of Income-Tax on the 15th March, 1979, an Examiner of Accounts at the Department of the Auditor-General. His duties involved the audit of deductions made for income-tax purposes from the emoluments of temporary employees and labourers employed by Government. Interested party Andreas Koullis was a Clerical Assistant at the Ministry of Education appointed on a temporary basis in 1973 and made permanent in 1977. As regards the nature of the duties performed by him it was certified by the Director-General of the said Ministry that in the course of his duties he also dealt with matters of taxation of the income of primary and secondary school-teachers and that in consequence it could be said that he gained experience in matters of taxation. The learned trial Judge considered it as presumptuous on the part of this Director-General to offer such opinion on the matter in which he could not be regarded as competent to express opinion. 10  
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Interested party Costas Loizou, was like interested party Tseriotis an examiner of accounts before joining the Department of Income-Tax. It was certified by the Auditor-General that in between the periods of 9th December 1976 and 14th March, 1979 he was concerned with the audit of the accounts of the Inland Revenue Department and his work included the auditing of individual assessments, the correction of taxes imposed as well as departmental accounts. 30  
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The Departmental Board which was set up under section 36 of the Public Service Law, 1967, to advise the appellant Commission in respect of the promotions in question expressed serious doubts as to whether the interested parties acquired experience in matters of income-tax during 40

their service prior to becoming Assistant Assessors, so as to satisfy the qualifications required under the scheme.

5 The appellant Commission considered the report of the Departmental Board and taking into consideration all before it relevant material considered that it could not agree with the views of the Departmental Board, that paragraph 1 of the required qualifications as it is formulated, demands experience exclusively on matters of income-tax, and went on to say in its minutes of the 28th July 1982:

10 "The Public Service Commission has the view that if among the duties which they performed during the required period there were included matters of taxation of income, even in the case in which they constitute only part of their duties, they can be considered  
15 as satisfying the formal requirements of paragraph 1 of the Scheme of Service."

At its next meeting the appellant Commission considered the filling of the post and heard the Director of the Department of Inland Revenue saying the following:

20 "The seven officers whose promotion as from 1st June, 1982, to the post of Assessor (Income-Tax) was annulled by the Commission after re-examination of the subject (item 3 of the minutes of the meeting of the Commission dated 30th June, 1982) are suitable  
25 and recommended for promotion. For the filling of the 8th vacant post Mr. Andreas Koullis who shows exceptional interest in his work is recommended. The eight recommended have the same seniority and experience and are generally very good.

30 The rest of those recommended by the Departmental Board are all very good officers and it is difficult to differentiate among them, but they are inferior in general to those recommended."

35 It then proceeded and promoted the eight officers so recommended to the post in question.

It has been a well established principle of Administrative Law, constantly reiterated by this Court in a series

of cases recently reviewed, in *Frangoulides and Another v. The P.S.C* (Revisional Appeals 286 and 287\* as yet unreported) that in deciding whether or not the Public Service Commission in a given case has conformed with the relevant Scheme of Service, the Court will not give to such Scheme of Service a different interpretation other than that given to it by the Public Service Commission, provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question (see *Papapetrou and the Republic*, 2 R.S.C.C. 61 at p. 69.)

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In the present case considering the totality of the circumstances, we have come to the conclusion that the interpretation given by the appellant Commission to the Scheme of Service was reasonably open to it on the basis of its wording and it has applied it, as it was its duty to do, properly to the relevant facts. We are of the view that there does not exist the qualification placed by the learned trial Judge that the required qualifications envisaged "at least two years experience outside the department 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".

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Such interpretation of the scheme in question is not warranted by its wording. If there was required such kind of experience it would have said so. On the contrary, it is so phrased as to leave room for a much wider construction than that given to it by the learned trial Judge as regards the experience required for the two years in question.

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For all the above reasons the appeal is allowed and the sub judice decision of the appellant Commission is affirmed.

*Appeal allowed.*

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\* Now reported in (1985) 3 C.L.R. 1680.