

1985 June 24

[TRIANTAFYLLIDES, P., A. LOIZOU, STYLIANIDES,
PIKIS, KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

STELIOS PSARAS,

Respondent.

(Revisional Jurisdiction Appeal No. 442).

Public Officers—Promotions—Scheme of service requiring “at
least three years service” in the post of Labour Officer 2nd
Grade as qualification for the promotion to the post of
Insurance Officer, 1st Grade, in the Department of Social
5 Insurance of the Ministry of Labour and Social Insurance
—For a number of years, i.e. 1.5.73 up to 15.10.78 in-
terested parties served on secondment to the said post—
Not because of the temporariness of the assignment to
them of the duties of Labour Officer 2nd Grade—But be-
10 cause of the temporary nature of the available posts—In
the circumstances it was reasonably open to the P.S.C. to
interpret the scheme of service as including service on se-
condment apparently under section 32(2) of Law 33/67
as amended by Law 10/83, to a temporary post—This
15 Court cannot, therefore, interfere with such interpretation.

*Scheme of Service—Interpretation of—If the interpretation given
by the appropriate authority was reasonably open to it,
this Court will not interfere.*

20 *The Public Service Law 33/67 s. 32(2) as amended by Law
10/63.*

This is an appeal against the first instance judgment of
a Judge of this Court whereby the promotions of interested
parties Savva and Efstathiou to the post of Insurance Of-
ficer, 1st Grade in the Department of Social Insurance of

the Ministry of Labour and Social Insurance, were annulled on the ground that they had not completed "at least three years service" in the post of Labour Officer 2nd Grade, as required by the relevant scheme of service.

The interested parties had been promoted to the post of Labour Officer, 2nd Grade, in a permanent capacity as from 15.10.1978 and, consequently, by the 10.7.1981, when the Public Service Commission received the request for the filling of the vacancies in question, they had not completed three years service in such post in a permanent capacity. 5
10

As it appears from minutes of the appellant Commission which had not been produced before the trial Judge the appellant, on 5.4.1973, filled eight vacancies in the post of Labour Officer, 2nd Grade as from 1.5.1973 as follows, namely four by promotions on a permanent basis one by secondment to a permanent post, two by secondment to temporary development posts and one by appointment to a temporary development post. Interested party Savva was found to be one of the best candidates and was one of the persons so seconded to the temporary development post, Labour Officer, 2nd Grade. 15
20

Then, on 16.4.1973, interested party Efstathiou was, also, found to be one of the best candidates and he was seconded, too, to a temporary Development post, Labour Officer, 2nd Grade, as from 1.5.1973. 25

At that time both interested parties were holding in a permanent capacity the post of Assistant Labour Officer.

Held, allowing the appeal, Pikis, J. dissenting:

(1) The interested parties had, actually, been serving in the post of Labour Officer 2nd Grade, since 1.5.1973, even though until the 15.10.1978 while being permanent public officers, they were serving in such post on secondment, apparently under section 32(2) of the Public Service Law, 33/67 as amended by Law 10/83, as the available posts were temporary posts to which the interested parties could not have been promoted in a permanent capacity, because of the temporary nature of such posts. 30
35

(2) This Court will not interfere with the interpretation of a Scheme of Service by the appropriate authority, if such interpretation was reasonably open in the circumstances of the particular case.

- 5 (3) In this case it was reasonably open to the appellants
Commission to interpret the phrase "service in the post
of... Labour Officer 2nd Grade" in the scheme of service
as including service on secondment to a temporary post
10 in circumstances as those of the present case. *Neophytou v. The Public Service Commission* (1984)
3 C.L.R. 1466 distinguished on the ground that in this case
the reason why the interested parties had not been promoted
earlier in a permanent capacity was the temporary
nature of their posts and not the temporariness of the
15 assignment to them of duties of Labour Officer, 2nd Grade.

Appeal allowed by majority.

Cases referred to:

- Frangoulides v. The Public Service Commission* (1985)
3 C.L.R. 1680;
- 20 *Neophytou v. The Public Service Commission* (1984) 3
C.L.R. 1466;
- Savva and another v. The Republic* (1985) 3 C.L.R. 694;
- Shener v. The Republic*, 3 R.S.C.C. 138;
- Partellides v. The Republic* (1969) 3 C.L.R. 291;
- 25 *Tourpekki v. The Republic* (1973) 3 C.L.R. 592;
- Mylonas v. The Republic* (1984) 3 C.L.R. 1094 and on
appeal (1985) 3 C.L.R. 1608.

Appeal.

- 30 Appeal against the judgment of a Judge of the Supreme
Court of Cyprus (Loris, J.) given on the 25th January,
1985 (Revisional Jurisdiction Case No. 454/82)* where-
by the promotions of interested parties 4, 9 and 12 to the

* Reported in (1985) 3 C.L.R. 229.

post of Insurance Officer 1st Grade in the Department of Social Insurance in the Ministry of Labour and Social Insurance were annulled.

G. Erotocritou (Mrs.), Counsel of the Republic, with P. Hji Demetriou, for the appellant. 5

A. Markides, for the respondent.

Cur. adv. vult.

The following judgments were read.

TRIANTAFYLLIDES P.. The judgment which will be delivered just now embodies the views regarding the outcome of the present appeal of the majority of the Court which consists of A. Loizou J., Stylianides J., Kourris J. and myself. Pikiis J. will deliver a dissenting judgment. 10

This is an appeal against the first instance judgment of a Judge of this Court by means of which there were annulled, as a result of a recourse under Article 146 of the Constitution (No. 454/82), the promotions of three public officers to the post of Insurance Officer, 1st Grade, in the Department of Social Insurance of the Ministry of Labour and Social Insurance. 15 20

The appellant Public Service Commission has appealed only in respect of the annulment of two of such promotions namely those of P. Savva and A. Efstathiou (to be referred to hereinafter as "interested parties"). Therefore, the annulment of the third promotion, that of M. Christou, who was an interested party in the proceedings before the trial Judge, has to be considered as final since it has not been challenged by means of the present appeal. 25

The learned trial Judge has held that interested parties Savva and Efstathiou (who were interested parties Nos. 9 and 12, respectively, in the proceedings before him) were not eligible for promotion to the post in question as they had not completed "at least three years service" in the post of Labour Officer, 2nd Grade, as required by the scheme of service for the post of Insurance Officer, 1st Grade. 30 35

The relevant part of the said scheme of service reads as follows:

• «Απαιτούμενα προσόντα:

5 (1) Τριετής τουλάχιστον υπηρεσία εις την θέσιν Ασφαλιστικού Λειτουργού 2ας Τάξεως ή/και Εργατικού Λειτουργού 2ας Τάξεως εις τας Υπηρεσίας Κοινωνικών Ασφαλίσεων».

(Required qualifications:

10 At least three years' service in the post of Insurance Officer 2nd Grade and/or Labour Officer 2nd Grade in the Services of Social Insurance)."

15 It was found by the trial Judge that the date by which the candidates concerned ought to have completed three years' service in the post of Insurance Officer, 2nd Grade, or Labour Officer, 2nd Grade, was the 10th of July 1981, when the request for the filling of the vacancies in question was received by the Public Service Commission.

20 Both the aforementioned interested parties, Savva and Efstathiou, were promoted to the post of Labour Officer, 2nd Grade, in a permanent capacity, as from the 15th October 1978. Consequently, by the 10th July 1981 they did not have three years' service in such post in a permanent capacity; and the trial Judge held for this reason that they did not possess the required, under the scheme of service, qualification of three years' service in the post of Labour Officer 2nd Grade. Prior to the 15th October 1978 they were serving on secondment to the temporary post of Labour Officer, 2nd Grade.

30 As it appears from minutes of the appellant Commission, which were produced during the hearing of this case before us but which were not placed by counsel for the appellant Commission before the trial Judge, who was thus deprived of the opportunity of considering them when preparing his judgment, the appellant Commission, on the 5th April 1973, filled as follows eight vacancies in the post of Labour Officer, 2nd Grade, as from the 1st May 1983: Four by promotions on a permanent basis, one by secondment to a permanent post, two by secondments to temporary Deve-

lopment posts and one by appointment to a temporary Development post. Interested party Savva was at that time one of the candidates who, having been interviewed by the Commission, were found by it to be on the whole the best and he was seconded to a temporary Development post of Labour Officer, 2nd Grade, as from the 1st May 1973. 5

Then, on the 16th April 1973, interested party Efsthathiou, who had also been found on the 5th April 1973 to be one of the best candidates, was seconded, too, to a temporary Development post of Labour Officer, 2nd Grade, with effect from the 1st May 1973. 10

At that time both interested parties, Savva and Efsthathiou, were holding in a permanent capacity the post of Assistant Labour Officer.

Later on, on the 22nd June 1978, the appellant Commission had to fill, in a permanent capacity, posts of Labour Officer, 2nd Grade, and, after having found that interested parties Savva and Efsthathiou were among those who were on the whole the best, decided to promote them to the permanent post of Labour Officer, 2nd Grade, with effect from the 15th October 1978. 15 20

It is clear from the foregoing that the two interested parties had, actually, been serving in the post of Labour Officer, 2nd Grade, since the 1st of May 1973, even though until the 15th October 1978, while being permanent public officers, they were serving in such post, not in a permanent capacity, but on secondment, apparently under section 32(2) of the Public Service Law, 1967 (Law 33/67), as amended by the Public Service (Amendment) Law, 1983 (Law 10/83), as the available posts of Labour Officer, 2nd Grade, were temporary posts to which, of course, the interested parties could not have been promoted in a permanent capacity, because of the temporary nature of such posts. 25 30

The crucial question that has to be answered for the purpose of determining this appeal is whether or not it was reasonably open to the appellant Commission to find that the two interested parties were, under the relevant scheme of service, qualified for promotion to the post of Insurance Officer, 1st Grade. 35

This Court will not interfere with the interpretation and application of a scheme of service by the appropriate authority if such interpretation and application was reasonably open in the circumstances of the particular case (see, inter alia, *Frangoullides v. The Public Service Commission* (R. As. 286, 287, in which judgment was given on the 26th March 1985 and has not yet been reported.”*

We are of the view that it was reasonably open to the appellant Commission to construe the phrase “service in the post of Insurance Officer 2nd Grade and/or Labour Officer 2nd Grade” as including service in such post not only in a permanent capacity but also on secondment to a temporary post in circumstances such as those of the present case.

We are of the view that the case of *Neophytou v. The Public Service Commission*, (1984) 3 C.L.R. 1466, is distinguishable from the present case: In the *Neophytou* case it was held that service on special assignment to the Veterinary Department* for a period of two years by someone who was holding, at the time, the substantive post of Clerical Assistant and who discharged on secondment the duties of an Assistant Veterinary Officer was not service in the post of Assistant Veterinary Officer required by the scheme of service for the post of Veterinary Officer A. But in the present instance the two interested parties concerned were serving in the post of Labour Officer, 2nd Grade, on secondment merely because, as has been explained by counsel for the appellant Commission, there were not available permanent posts to which they could have been promoted, in a permanent capacity, after having been found suitable for the post of Labour Officer, 2nd Grade. Thus, the reason for their not having been promoted in a permanent capacity was the temporary nature of their posts and not the temporariness of the assignment to them of duties of Labour Officer, 2nd Grade.

Before concluding we would like to observe that the view taken by this Court in the present case that it was reasonably open to be appellant Public Service Commission to find that the two interested parties were qualified for promotion under the relevant scheme of service is con-

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

sistent, by analogy, with the approach adopted very recently in *Savva and another v. The Republic* (Cases Nos. 154/83 and 164/83,⁽¹⁾ in which judgment was delivered on 6th April 1985, and is not yet reported) where it was held, in effect, that a public officer may be preferred for promotion even if he is not a permanent public officer.

5

For all the foregoing reasons we have decided to allow this appeal and set aside the first instance judgment of the trial Judge to the extent that it has annulled the promotions of the interested parties Savva and Efstathiou.

10

We have decided to make no order as to costs of this appeal.

PIKIS J.: Two closely related issues must be decided in this appeal: The implications of secondment (απόσπαση) on the position and status of an officer in the public service, define the first question and, the interpretation of the scheme of service for promotion to the post of Insurance Officer, 1st Grade the second.

15

After exhaustive examination of Cyprus caselaw the learned trial Judge decided that secondment has no noticeable effects on the position of an officer whose status remains unaltered (2). Professor Kyriacopoulos makes an accurate assessment of the inconsequence of secondment on the status of an officer in his treatise on the law applicable to public officers—"secondment does not constitute an organic change because the officer seconded continues to belong to the service wherefrom he is detached"⁽³⁾.

20

25

The position emerging from precedent is reflected in the Public Service Law (4) itself providing that only permanent changes in the position of an officer in the service constitute promotion (5).

30

Guided by the above principles the learned trial Judge decided that: (a) Service of the two of the interested par-

⁽¹⁾ (1985) 3 C.L.R. 694.

⁽²⁾ See, inter alia, *Shener v. The Republic*, 3 R.S.C.C. 138; *Partellides v. The Republic* (1969) 3 C.L.R. 291; *Tourpekkis v. The Republic* (1973) 3 C.L.R. 592.

⁽³⁾ Δίκαιον των Πολιτικών Διοικητικών Υπαλλήλων, 1954, σ. 301.

⁽⁴⁾ Law 33/67.

⁽⁵⁾ Section 28-33/67.

ties on secondment at the post of Labour Officer, 2nd Grade, did not make the parties holders of the post of Labour Officer, 2nd Grade whereas (b) the scheme of service for promotion to Labour Officer, 1st Grade, required three years service at the organic position of Labour Officer, 2nd Grade. Hence the interested parties were, contrary to the finding of the Public Service Commission, ineligible for promotion to Labour Officer, 1st Grade. The facts relevant to the position of the interested parties clearly indicate, they held, the organic position of Labour Officer, 2nd Grade, for less than the three year period envisaged by the scheme of service.

In *Neophytou v. The Republic*(¹) it was decided, as a matter of construction of a scheme of service virtually identical in its wording to the one presently under consideration, that a requirement as to service at a specified post connoted service at an organic post as opposed to service in any other capacity. The trial court adopted the approach to the construction of a scheme of service in *Neophytou* for much the same reasons and placed a similar construction on the scheme under consideration. Not only the wording of the scheme of service in *Neophytou*, similar to the one presently under review, warranted the interpretation adopted but the provisions of the Public Service Law(²) as well make inevitable such construction; s. 30(1)(c) in particular prohibiting promotion except from among holders of a post immediately below in rank to the vacancy to be filled. Counsel for the Republic while accepting the ratio in *Neophytou* upholding the interpretation of the scheme of service by the P.S.C. in that case, submitted it has no application to the facts of the present case because of factual differences in the position of the officers promoted. In the present case the interested parties served on secondment to the temporary post of Labour Officer, 2nd Grade, whereas in *Neophytou* the interested party was seconded to the higher post of Assistant Veterinary Officer. I fail to see any material difference in the factual background to the two cases. In the present case the interested parties served on secondment and had no organic link

(1) (1984) 3 C.L.R. 1466

(2) Law 33/67.

with the post in which they served as the applicant had none in the case of *Neophytou*.

The principle underlying *Neophytou* is that a scheme of service requiring as a prerequisite for promotion service at the post below that to be filled, for any length of time, is only satisfied by service at the organic post for the specified period. Service on secondment at that post is not a springboard for promotion to a higher organic post. Like counsel for the respondent I find it difficult to follow the process by which counsel for the appellants reconciles adoption of the principle in *Neophytou* with the position put forward in this appeal. Counsel for the Republic argued the provisions of s. 32(2), Public Service Law, must be distinguished from those of s. 47 and sought on that account to differentiate the present case from *Neophytou*. For my part I fail to see any differences in the juristic effects of secondment whether made under s. 32(2) and s. 47. The theme of both sections of the law is secondment making possible the positioning of public officers to a post other than the one they hold. The only difference between the two provisions relates to the post to which public officers may be seconded. In the case of s. 32(2) a permanent public officer may be seconded to a temporary position, whereas in the case of s. 47 secondment is permitted to a permanent post as well, albeit on a temporary basis. One can argue that the claims to promotion of an officer seconded under s. 47 should be better considering that his secondment is to a permanent post. To my comprehension secondment in either case leaves the position of the officer unaltered; it has no noticeable effect on his status; a fact duly appreciated by the Public Service Commission itself. When a vacancy occurred in 1978 in the organic position of Labour Officer, 2nd Grade, the respondents did not merely confirm the interested parties in that position, but went through a fresh process of selection as in every other case of promotion. That secondment to a temporary post was made through a process of selection did not in any way alter the status of the officer seconded. A selection was necessary in that case as well for the reasons explained in the case of *Mylonas v. The Republic*(¹).

(¹) (1984) 3 C.L.R. 1094.—See also judgment of full bench in *Mylonas* case, (1985) 3 C.L.R. 1608.

- 5 Acceptance of the submission of the appellants would necessarily entail that secondment would in every case confer eligibility on the officer seconded to promotion to a higher organic position in the public service; a proposition that would neutralize the whole scheme of the Public Service Law for gradual promotion from one organic post to another. For secondment to a temporary post is not in accordance with s. 28 a promotion and therefore could be made from among officers many steps below the position to which he is seconded in the hierarchical ladder.
- 10 If the interpretation favoured by the appellants was upheld, a secondment would become an avenue of bypassing the plain intention of the legislature respecting promotions, as manifested in the Public Service Law.
- 15 In conclusion I find the logic of the reasoning of the learned trial Judge declaring the interested parties ineligible to promotion unanswerable. I confirm the order made and dismiss the appeal.

Appeal allowed by majority.