

1984 May 30

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. ROLIS LEWIS,
2. PANAYIOTIS PAKOUTAS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 280/80, 288/80).

Recourse for annulment—Practice—Directions for the production of a thesis which was one of the factors taken into consideration in effecting the sub judice promotion—Such production necessary in order to enable the Court to determine whether the respondent acted under any misconception—Further directions as to the production of documents and the filing of affidavits. 5

The applicants in the present two recourses challenge the appointment of the interested party to the post of Director of Merchant Shipping which is a first entry and promotion post. 10

The relevant scheme of service, as a qualification for appointment to the above post, requires wide experience in matters relating to merchant shipping but a proviso in the scheme provides that for the filling of the post for the first time after the adoption of the scheme (as was done by the appointment challenged by these proceedings) there may be considered candidates who have experience and/or knowledge of matters relating to merchant shipping. 15

The Director-General of the Ministry in recommending 20

the promotion of interested party stated inter alia that the interested party had written a thesis which had some relationship to a ship in active service. This thesis, however, has neither been produced before the Court nor made available to the respondent Commission at the material time.

The Commission also recorded in its minutes that from his answers, when interviewed, the interested party had knowledge of matters relating to merchant shipping that he had studied the Cyprus Merchant Shipping legislation and that it also took into account that he had been awarded a Prize by the Massachusetts Institute of Technology in respect of his thesis on "Transportation Costs and Oil Prices."

Held, by way of interim decision, (1) such thesis was one of the factor taken into account by the respondent Commission, it is necessary for this Court to examine whether or not reliance on it has resulted in the Commission acting under any misconception. Directions, therefore, are given that the thesis be produced before the Court.

(2) Further directions are given to the effect that the parties be at liberty to produce further evidence by way of documents or affidavits with regard generally to the issue of whether or not the applicant was qualified for appointment to the post in question.

Order accordingly.

Recourses.

Recourses against the decision of the respondent to appoint the interested party to the post of Director of Merchant Shipping in preference and instead of the applicants.

P. Sarris with M. Christodoulou, for applicant in Case No. 280/80.

D. Zavallis with D. Demetriou, for applicant in Case No. 288/80.

M. Photiou, for respondent in Case No. 280/80.

M. Kyprianou, Senior Counsel of the Republic, for respondent in Case No. 288/80.

K. Michaelides with P. Papageorghiou, for the interested party.

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Cur. adv. vult.

TRIANTAFYLIDIS P. read the following decision. By means of these two recourses, under Article 146 of the Constitution, which were heard together in view of their correlated nature, the two applicants have challenged the appointment to the post of Director of Merchant Shipping of Serghios Serghiou, who is, therefore, an interested party in the present proceedings.

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The said post is a first entry and promotion post and the applicants and the interested party were among those who applied for appointment to it.

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At the material time applicant Lewis was in the service of the Cyprus Ports Authority and was posted as Maritime Attaché at the Cyprus High Commission in London, applicant Pakoutas was holding the post of Maritime Surveyor in the public service and interested party Serghiou was also in the public service holding the post of Productivity Officer at the Cyprus Productivity Centre.

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The relevant scheme of service requires, as a qualification for appointment, wide experience in matters relating to merchant shipping, but there is in such scheme a proviso to the effect that for the filling of the post in question for the first time after the adoption of the scheme of service—as was done by the appointment challenged in the present proceedings—there may be considered candidates who do not possess the aforementioned qualification, but who have experience and/or knowledge of matters relating to merchant shipping and who satisfy all other requirements of the scheme of service regarding qualifications.

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The interested party was appointed for the first time in

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the public service on the 1st May 1976 as Assistant Productivity Officer at the Cyprus Productivity Centre and, having been later promoted to Productivity Officer, he was serving at the Productivity Centre when he was appointed to the post concerned.

After studies in England and in the United States of America he became the holder of a Bachelor of Science (Engineering) Degree in Aeronautical Engineering, a Master of Science Degree in Operational Research and Management Studies and a Master of Science Degree in Management.

The respondent Commission in finding the interested party to be qualified for appointment under the relevant scheme of service recorded in its minutes that his answers when interviewed showed that he had knowledge of matters relating to merchant shipping («᾽ὄσασϋτως ἔχει τὴν ἀπαιτουμένην ὑπὸ τοῦ οικείου Σχεδίου Ὑψηρεσίας ἄγνώσιν θεμάτων σχετιζομένων μετὰ τὴν ἐμπορικὴν ναυτιλίαν» ὡς κατεδείχθη διὰ τῶν ἀπαντήσεων τὰς ὁποίας οὔτος ἔδωκε κατὰ τὴν συνέντευξιν»). It is, also, stated in the minutes of the Commission that it took into account the fact that the interested party had been awarded by the Massachusetts Institute of Technology in the U.S.A. the "Brooks Prize for the Best Master's thesis" in respect of his thesis on "Transportation Costs and Oil Prices".

It is recorded, further, in the relevant minutes of the respondent Commission that the Director-General of the Ministry of Communications and Works stated, in recommending the interested party for appointment to the post in question, that though the interested party did not have practical experience on merchant shipping matters he had, however, studied the Cyprus Merchant Shipping Legislation and, also, that he had written a thesis which had some relationship to a ship in active service («Ἄδεν ἔχει μὲν πρακτικὴν πείραν ἐπὶ ναυτιλιακῶν θεμάτων, ἔχει μελετήσει ὁμως τὴν Κυπριακὴν Ναυτιλιακὴν Νομοθεσίαν. Ἔχει ἐπίσης συγγράψει διατριβὴν ἢ ὁποία ἔχει σχέσιν τινὰ μετὰ πλοῖον ἐν ἐνεργῶ ὑψηρεσίᾳ»). The Director-General proceeded to add that he was satisfied that the interested party had knowledge in relation to matters of merchant shipping and that

he had the educational background which would help him evolve. («Συνεχίζων ὁ Γενικός Διευθυντής ανέφερεν ὅτι εἶναι ἱκανοποιημένος ὅτι ὁ κ. Σεργίου ἔχει γνώσεις ἐπι θεμάτων Ἐμπορικῆς Ναυτιλίας καὶ διαθέτει τὸ μορφωτικὸν ὑπόβαθρον τὸ ὁποῖον δύναται νὰ τὸν βοηθήσῃ εἰς μίαν ἐξέλιξιν»).

The aforementioned thesis of the interested party has not been produced before me nor was it made available to the respondent Commission at the material time.

As such thesis was one of the factors taken into account by the respondent Commission in finding that the interested party was qualified for appointment to the post concerned it is necessary for this Court to examine whether or not reliance on it has resulted in the Commission acting under any misconception. I, therefore, direct that the said thesis should be produced before the Court by counsel for the respondent, to whom it should, if necessary, be made available by counsel for the interested party, and moreover, as regards generally the issue of whether or not the interested party could have been found by the Commission to be qualified for appointment under the relevant scheme of service, I direct that the parties will be at liberty to produce before this Court any further evidence by way of documents or affidavits as they may deem expedient.

Order accordingly.