

1985 December 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

OURANIA CHARALAMBIDOU KOMODROMOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS. THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 571/83).

Legitimate interest—Public Officers—Appointment of—Applicant impugns the appointment of sixteen interested persons to the post of Press and Information Officer in the Press and Information Office—Applicant does not possess the qualifications required by the scheme of service for the post—Therefore applicant does not possess a legitimate interest to pursue this recourse. 5

Scheme of service—Its interpretation and application as well as the evaluation of the qualifications of candidates are matters within the discretion of the appointing organ—This Court does not interfere if the relevant to the said matters decision of such organ was reasonably open to it. 10

The Public Service Law 33/67—S. 36—Regulation 7 of the Regulations made by the Council of Ministers under said section—Departmental Committees—S. 36 does not limit, restrict or take away any of the functions of the Public Service Commission—The latter has power to question the finding of Departmental Committees. 15

The applicant by the present recourse impugns the respondent's decision published in the Official Gazette on 16.12.83 whereby the sixteen interested parties were ap- 20

pointed to the post of Press and Information Office. The said post is a first entry post.

5 The Departmental Committee set up under the provisions of s. 36(1) of the Public Service Law 33/67 included the applicant and the interested parties both in the list of those found to possess the qualifications required by the scheme of service for the post and in the list of those recommended for appointment.

10 The respondent Commission, however, found at its meeting of the 23.4.83 that the applicant did not seem to possess the required qualifications as the "Diploma in English Studies of the University of Cambridge" which the applicant possessed cannot be considered as "a university one within the meaning of the scheme of service". As a result the
15 Commission requested the British Council of advise whether the said diploma is considered "equivalent to University Degrees awarded in the United Kingdom".

Having received a negative reply the respondent Commission decided that the applicant was not qualified for
20 appointment to the said post. The respondent protested, but the Commission, having reconsidered the matter decided that "in accordance with the established interpretation adopted by the Commission as to the term 'University title'.... a change of the original decision.... is not justified".
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Hence the present recourse. Counsel for the respondent raised the issue that the applicant does not possess a legitimate interest to pursue the recourse. Counsel for the
30 applicant argued that the Commission in forming its said decision acted under a misconception and did not conduct a due inquiry into the matter inasmuch as the question put to the British Council was wrongly formulated. Counsel submitted that the correct question should have been whether applicant's diploma "amounted to a University
35 Degree or title or an equivalent qualification".

Held, dismissing the recourse:

(1) The interpretation and application of a scheme of

service is within the discretionary power of the appointing organ; this Court will not interfere with such discretion if the decision was reasonably open to such an organ. The evaluation of the qualifications of candidates is also within the discretion of the appointing organ.

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(2) In this case it is obvious that the Commission interpreted the words in the scheme of service “Πανεπιστημιακόν Δίπλωμα ή τίτλος” as meaning a University Degree. Such interpretation was reasonably open to the Commission.

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(3) Having thus interpreted the said words the Commission proceeded and made the said inquiry through the British Council and arrived at its final decision on the basis of the reply it received. In the circumstances it cannot be held that the Commission failed to carry out a due inquiry.

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(4) It is a well settled principle that an applicant does not possess a legitimate interest to pursue a recourse if he does not possess the qualifications required by the scheme of service for the particular post.

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Held, further, (1) Regulation 7 of the Regulations made by the Council of Ministers under s. 36 of Law 33/67, defining the functions and procedure of Departmental Committees, does not prevent, as applicant’s counsel submitted, the Public Service Commission from questioning the findings of a Departmental Committee with regard to the qualifications of the candidates for a post. The purpose of s. 36 is to provide for the functions and procedure of Departmental Committees solely for the purpose of assisting the Public Service Commission and not in any way to limit, restrict or take away any of the functions vested in it under the law. (*Michael and Another v. The Public Service Commission* (1982) 3 C.L.R. 726 and *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096 approved).

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(2) The sub judge decision is duly reasoned.

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*Recourse dismissed.
£50 costs in favour of
respondent.*

Cases referred to:

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

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

Soteriou v. The Republic, (1980) 3 C.L.R. 237;

5 *Kolokotronis v. The Republic*, (1980) 3 C.L.R. 418;

Paraskevopoullou v. The Republic, (1971) 3 C.L.R. 426;

Michael and Another v. The Public Service Commission
(1982) 3 C.L.R. 726;

10 *Frangoulides and Another v. The Public Service Commission* (1985) 3 C.L.R. 1680;

Mytides and Another v. Republic (1983) 3 C.L.R. 1096.

Recourse.

15 Recourse against the decision of the respondent whereby the interested parties were appointed to the post of Press and Information Officer in the Press and Information Office in preference and instead of the applicant.

A. S. Angelides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic,
for the respondent.

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Cur. adv. vult.

25 SAVVIDES J. read the following judgment. The applicant, by the present recourse, challenges the decision of the respondent, published in the official Gazette of the Republic on 16.12.1983, by which the sixteen interested parties, were appointed to the post of Press and Information Officer, in the Press and Information Office, in preference and instead of the applicant.

30 The applicant, as well as certain of the interested parties, were serving, at the material time, in the Press and Information Office on contract.

The post of Press and Information Officer is a first entry post and on the 21st May, 1982, a number of va-

cancies in such post were advertised in the official Gazette of the Republic. In response to such advertisement 208 applications were submitted, amongst which those of the applicant and the interested parties.

The applications were referred by the secretary of the Public Service Commission (P.S.C.) to the Departmental Committee set up under the provisions of section 36(1) of the Public Service Law, 1967 (Law 33/67) together with the personal and confidential reports of two candidates who were already in the permanent service of the Republic. The Departmental Committee met on 25.10.1982, 27.10.1982 and 1.11.1982 and examined the matter of possession, by the candidates, of the required qualifications under the scheme of service and prepared a list of such candidates as well as a list of those who did not satisfy such requirements. The Departmental Committee met subsequently on five occasions and after having interviewed all candidates on the list of those qualified under the scheme of service, with the exception of four, who, at the material time were abroad, prepared a list in alphabetical order of 77 candidates whom the Departmental Committee selected for recommendation on the basis of their qualifications and their performance at the interviews. The lists of candidates possessing the necessary qualifications under the scheme of service, those not satisfying such qualifications and those who were recommended, were submitted to the respondent together with the report of the Departmental Committee which gives a brief summary of the procedure before it.

The names of the applicant and the interested parties were included both in the list of those found to possess the required qualifications and in the list of those recommended for appointment.

The P.S.C. at its meeting of the 23rd April, 1983, after considering the report of the Departmental Committee and all other material before it, found, amongst others, that certain of the candidates recommended did not seem to possess the necessary qualifications and decided to make a further inquiry into the matter. The relevant minute, as far as the applicant is concerned, reads as follows (Appendix 7 to the Opposition, page 6(c) (1)):-

“At first sight the Diploma in English Studies of the University of Cambridge which they possess cannot be considered as a University one within the meaning of the scheme of service. It should be asked of the British Council to advise accordingly.”

A letter was then addressed, on the 11th May, 1983, to the British Council, which reads as follows:

“I have been directed to attach herewith photocopies of the following diplomas/certificates:

(a) Diplomas of English Studies, awarded by the University of Cambridge to Mrs. Froso Yennari and Mrs. Ourania Charalambidou,

and to request you to advise us at your earliest convenience whether the said qualifications are considered equivalent to University Degrees awarded in the United Kingdom.”

The reply of the British Council, dated the 24th May, 1983, was to the effect that the above Diploma could not be considered as equivalent to British University Degrees.

At its next meeting, dated the 31st May, 1983, the P.S.C. decided that, in the light of the above letter of the British Council the applicant did not possess the qualifications required under the scheme of service because her Diploma was not equivalent to university degrees or titles awarded by British Universities (Appendix 10, page 6(1)).

The applicant addressed, on the 13th June, 1983, a letter to the P.S.C., through her counsel, protesting about the above decision and requesting a reconsideration of the matter, on the grounds set in her aforesaid letter (Appendix 11).

The respondent, at its meeting of 14.6.1983, decided as follows:

“On the basis, amongst others, of the material contained in the letter of the British Council No. CYP./0631/2 dated 2.5.83, and in accordance with the established interpretation adopted by the Commission

as to the term 'university degree or title' (subject 5 of the minutes of the meeting of the Commission dated 11.6.83), it has decided that a change of its original decision with regard to Ourania Charalambidou and Froso Demetriou-Yennari is not justified." 5

The respondent communicated its aforesaid decision to applicant's counsel, by letter dated the 20th June, 1983.

The P.S.C. then proceeded with the selection of the best candidates out of those considered by it as possessing the qualifications required and after having interviewed such candidates decided at its meeting of 2.9.83, to appoint to the post of Press and Information Officer 38 out of those candidates amongst whom the 16 interested parties, who are the following: 10

1. Ioulia Athanassiou 15
2. Kyriacos Vrahimis
3. Eleonora Gavrielidou
4. Elengo A. Constantinou
5. Christos K. Lambria
6. Andreas Lyritsas 20
7. Marianna Mammidou
8. Chloe Chr. Savvidou
9. Andreas D. Christodoulou
10. Galatia Christodoulou
11. Kyriaki Englezaki 25
12. Eleni Theodossiadou
13. Maria Symeou
14. Pavlos Takoussi
15. Patrissia HadjiSoteriou
16. Andreas M. Miltiades. 30

The appointments in question were published in the official Gazette of the Republic, dated the 16th December, 1983, hence the present recourse.

5 The recourse is based on several grounds, to the effect that the sub judice decision was taken without a due inquiry into the matter, the procedure followed was not the prescribed one, it was taken under a misconception of fact and law, it is not duly reasoned and was taken in excess or abuse of powers.

10 Counsel for the respondent raised the preliminary point of absence of a legitimate interest on the part of the applicant in that she did not satisfy the prerequisites of the scheme of service.

15 Counsel for applicant argued, in his written address, that the P.S.C. in forming its opinion that the applicant did not satisfy the requirements of the scheme of service acted under a misconception and did not conduct a due inquiry into the matter. In expounding this ground, counsel maintained that the question put by the P.S.C. to the British
20 Council was wrongly formulated which eventually leads to the conclusion that there was lack of proper inquiry.

It is a well settled principle that an applicant does not possess a legitimate interest to pursue a recourse if he does not possess the qualifications required by the scheme of
25 service for the particular post.

The question to be decided is whether the respondent in deciding that the applicant did not possess the required qualifications, acted properly and after a due inquiry into the matter.

30 It is the position of counsel for applicant that the correct inquiry from the British Council should have been whether the diploma awarded to the applicant amounted to a University degree or title or an equivalent qualification as stated in the schemes of service.

35 It has been held in a line of cases by this Court that the interpretation and application of the schemes of service is within the discretionary power of the appointing organ

and this Court will not interfere with such discretion so long as the decision was reasonably open to the appointing organ. (See, *Papapetrou v. The Republic*, 2 R.S.C.C. 61; *Aivaliotis v. The Republic* (1970) 3 C.L.R. 149; *Soteriou v. The Republic* (1980) 3 C.L.R. 237).

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The evaluation of the qualifications of candidates for appointment or promotion is also a matter within the discretion of the appointing organ. (See *Kolokotronis v. The Republic* (1980) 3 C.L.R. 418).

The respondent in the present case obviously interpreted the words "Πανεπιστημιακόν Δίπλωμα ἢ τίτλος" appearing in the schemes of service as meaning a university degree. I consider this interpretation a reasonable one, taking into consideration the contents and wording of the scheme of service as a whole (vide *Paraskevopoulou v. The Republic* (1971) 3 C.L.R. 426) and I find no reason to interfere with the discretion of the P.S.C. in this respect.

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The respondent then, having treated the words "Πανεπιστημιακόν Δίπλωμα ἢ τίτλος" as meaning a university degree, proceeded to make an inquiry through the British Council, as to whether the Diploma in English Studies possessed by the applicant was a qualification equivalent to a university degree. Having received a reply that it was not equivalent to a degree, the respondent decided, taking into consideration such reply, that the applicant did not possess the required qualifications. Again, this was reasonably open to the Commission and I cannot hold, under the circumstances, that the respondent did not carry out a proper inquiry.

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The contention of counsel that the respondent should have mentioned in its letter to the British Council, the qualifications required by the scheme of service as set out therein is unfounded having regard to the fact that it is the task of the respondent to interpret and apply the scheme of service and not that of any other person or body.

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In the light of the above I find that the preliminary objection raised by counsel for respondent that in view of the fact that applicant did not possess the qualifications required by the scheme of service she has no legitimate

interest to pursue this recourse is a sound one and should be sustained. The recourse, therefore, fails on this ground.

Although this disposes of the matter, I have decided to deal briefly with certain other points raised by counsel for applicant.

The first point to be considered is whether the procedure followed by the P.S.C. in reaching its sub judice decision was the proper one.

Counsel argued, in this respect, that the P.S.C. should not have questioned the findings of the Departmental Committee with regard to the qualifications of the candidates but should have selected those to be appointed from the list of those recommended by it. Counsel made reference, in this respect, to Regulation 7 of the Regulations made by the Council of Ministers under section 36, defining the functions and procedure of Departmental Committees.

Section 36 of the Public Service Law (Law 33/67), provides as follows:

“36. (1). The Council of Ministers may establish Departmental Committees to advise the Commission in respect of appointments or promotions to any post which is not a specialized post.

(2). The composition, functions and procedure of a Departmental Committee are determined by the Council of Ministers.”

Regulation 7 reads as follows:

“The Public Service Commission, taking duly into consideration the findings of the relevant Departmental Committee with regard to the candidates, proceeds to select the appointees or promotees amongst those candidates recommended by the Departmental Committee, giving full reasons for its final selection:

Provided that the Public Service Commission may invite the candidates recommended by the Departmental Committee to an interview before proceeding to its final selection.

Provided further that if the Public Service Commission does not consider the candidates recommended by the Departmental Committee as suitable for appointment or promotion it may invite for an interview any candidate not recommended, whom it considers suitable, or re-advertise the vacant post, if it is one of First Entry or First Entry and Promotion, for the purpose of finding a suitable candidate.” 5

The effect of Regulation 7 has been considered in the case of *Michael and Another v. The Public Service Commission* (1982) 3 C.L.R. 726. The judgment in that case has been appealed from. The Full Bench of this Court by its judgment on appeal in *Frangoullides and Another v. The Public Service Commission*, delivered on the 26th March, 1985 (not yet reported)* dismissed the appeals in both cases and did not disturb the findings of the trial Judge on this point. The judgment of A. Loizou, J. in the case of *Michael v. P.S.C.* (supra) reads, at pp. 740-741, as follows: 10 15

“It has been the case for the applicants that once they were placed on the list of candidates under regulation 4, which provides that the Departmental Board examines all the applications received for the published vacant post or depending on the circumstances, the list of the candidates for promotion, and prepares a list of those candidates who possess the qualifications specified in the relevant scheme of service, the respondent Commission could not itself inquire further into the question whether the candidates so placed on the list possessed the required qualifications or not. In support thereof reference was made to the provisions of regulations 5 and 6 whereby the Departmental Board considers the merit of the candidates and then submits a report to the Public Service Commission containing in alphabetical order the names of those recommended for selection, for appointment or promotion, together with the conclusions of the Departmental Board regarding the merit of all the candidates and that not less than two not more than four 20 25 30 35

* Reported in (1985) 3 C.L.R. 1680.

may be recommended for every vacant post so long as there exist suitable candidates for such recommendation.

5 Moreover, regulation 7 was invoked as setting down the powers and duties of the Public Service Commission as being that after taking into consideration the conclusions of the Departmental Board regarding the candidates, the Commission proceeds to select those to be appointed or to be promoted out of those re-
10 commended by the Departmental Board, giving reasons for such final selection. I do not subscribe to this view. The functions of the Public Service Commission are set out in section 5 of the law. It reads:

15 'Save where other express provision is made in this or any other law with respect to any matter set out in this section and subject to the provisions of this or any other law in force for the time being, it shall be the duty of the Commission to appoint,
20 confirm, emplace on the permanent establishment, promote, transfer, second, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers.'

 Therefore, whatever the provisions of the aforementioned regulations are, they could not take away
25 the competence of the respondent Commission as provided by the law and they have to be interpreted in such a way as to be *intra vires* and not *ultra vires* of the empowering law. In my view, they cannot but be considered as regulating the functions of the Departmental Boards and as setting out the procedure to be
30 followed by them for the purpose of assisting the Public Service Commission to exercise its competence under the law, which in the case of promotions is regulated further by section 44 of the Law, whereby
35 under para. (b) of subsection 1 thereof, one of the matters to be examined by the Commission is whether a candidate for promotion to another office possesses the qualifications laid down in the scheme of service for that office."

The same view was taken by Stylianides, J. in the case of *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096, where the following are stated at pp. 1110-1111:-

“The Departmental Board is not a body that takes decisions neither is it vested with power other than the one envisaged in s. 36 of the Law that provides for its establishment. The Regulations governing the functions of the Departmental Boards cannot take away the competence of the respondent Commission as provided by Law and they have to be interpreted in such a way as to be *intra vires* and not *ultra vires* the empowering law.

The competence of the Commission in cases of promotion is regulated by s. 44 of the Law whereby under paragraph (b) of subsection (1) thereof, one of the matters to be examined by the Commission is whether a candidate for promotion to another office possesses the qualifications laid down in the scheme of service for that office. Therefore, the conclusion of the Departmental Board regarding the qualifications of the interested party is not binding on the Commission. The Commission has a statutory obligation to inquire and decide for itself this very serious matter which is a *sine quo non* to any further steps in the process of the exercise of its discretion—(*Michael and Another v. P.S.C.* (supra).”

I am in agreement with the opinion expressed in the above-quoted judgments. The purpose of section 36 is to provide for the functions and procedure of Departmental Committees solely for the purpose of assisting the P.S.C. and not in any way to limit, restrict or take away any of the functions vested in it under the law. As a result, I find that this ground also fails.

I also find that the contention of counsel for applicant that the sub judge decision lacks due reasoning, is unfounded as sufficient reasoning appears in the minutes of the respondent Commission.

In the result, this recourse fails and is, therefore, dismissed with £50.- costs in favour of the respondent.

Recourse dismissed with £50.- costs in favour of respondent.