

1985 January 25

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

STELIOS PSARAS,

*Applicant,*

v.

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 454/82).

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5 *Public Officers—Promotions—Secondment to a post is not promotion to such post—Relevant scheme of service requiring “at least three years service in the post of Labour Officer 2nd Grade”—Service to such post on secondment does not make its holder eligible for promotion under the said scheme of service—His promotion annulled.*

10 *Public Officers—Promotions—Head of Department—Recommendable—Court cannot interfere with a promotion unless established that person not selected had striking superiority over those selected—Seniority not the decisive factor—It only prevails when all other factors are more or less equal—Merit should carry the most weight—Interested parties superior in merit—Applicant failed to establish striking superiority.*

15 *Public Officers—Promotions—Head of Department—Recommendations—No reference to the applicant—Inference to be drawn from absence of such reference is that there was nothing to be said in applicant’s favour and it was not the intention of the Head of Department to recommend him for promotion—Non-adoption by the Commission of the recommendations of Head of Department in respect of two candidates—Clear and extensive reasons given for doing so—Perfectly legitimate for Commission to follow this course—Whether absence of specific reference to*

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*applicant in the sub judice decision amounts to absence of reasoning.*

The applicant, a Labour Officer 2nd Grade, was a candidate for promotion to the post of Insurance Officer 1st Grade, a promotion post. The respondent promoted the 12 interested parties to the above post and hence this recourse. Under the relevant scheme of service there was required, inter alia "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". Interested party No. 4 was not possessed with the required qualification of 3 years service as above; and interested parties Nos. 9 and 12 were promoted to the post of Permanent Labour Officer on 15.10.78 and at the material time they had not completed at least 3 years service in such post. Prior to 15.10.1978 and ever since 1.5.73 they were on secondment to the Temporary post of Labour Officer 2nd Grade.

All the remaining interested parties—with the exception of interested party No. 6 who had more or less similar merit with the applicant—were superior in merit to the applicant; and all interested parties—with the exception of interested party No. 2 whose qualifications were either the same or equal to those of the applicant—had either superior qualifications or more qualifications than the applicant. Applicant had seniority over interested parties 2, 3, 5, 7, 8 and 11 whilst interested parties No. 1, 6 and 10 were senior to the applicant. The Head of Department, who was present at the meeting of the Commission, recommended for promotion 12 candidates and did not make any reference to another 6 candidates, amongst whom was the applicant. The respondent Commission did not follow the recommendations of the Head of Department in respect of 2 out of 12 candidates he recommended and gave reasons for so doing.

Counsel for the applicant mainly contended.

- (a) That the striking superiority of the applicant over the interested parties in merit, qualifications and seniority has been ignored by the sub judice decision.

5 (b) That inspite of the fact that the Head of Department did not make any reference to the applicant before the respondent yet as early as 1975 or even 1976, as countersigning officer of the confidential reports of the applicant recommended the applicant for promotion

10 (c) That as the Head of Department did not say anything justifying the non-inclusion of the applicant in those not recommended and the respondent adopted the views of the Head of the Department, the decision of the respondent is without reasoning.

15 *Held*, (1) that, the secondment to a post does not create a vested right to the holder concerned; and that when an officer is seconded to a post he cannot be held to be promoted to that post as his substantive status is not changed; that as interested parties Nos. 4, 9 and 12 had not completed "at least three years service" in the post of Labour Officer 2nd Grade— part of the service of interested parties Nos. 9 and 12 to such post being a service on secondment—as required by the relevant scheme of service, they were not eligible for promotion at the material time; accordingly the sub judice decision in respect of these interested parties must be annulled.

25 (2) That an administrative Court cannot interfere with a promotion unless it has been established that the persons not selected did have "striking superiority" over those selected; that seniority is not the decisive factor which regulates promotions; that it should be duly taken into consideration and ought to prevail "all other things being more or less equal"; that in cases of promotions merit should carry the most weight; that the complaint of the applicant that his striking superiority over the interested parties was ignored is not supported by the facts emerging from the confidential reports of the candidates and their personal files which voice to the contrary; and that, therefore, the applicant failed to establish striking superiority; accordingly contention (a) must fail.

35 (3) That the inference to be drawn from the absence of any reference to the applicant by the Head of Department before the Commission is that there was nothing to be said  
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in his favour and it was not his intention to recommend him for promotion; accordingly contention (b) must fail.

(4) That since the Commission states in its minutes that it considered the personal files and confidential reports of the candidates and took into consideration the finding of the Departmental Board and the opinion and recommendations of the Head of Department and decided that the interested parties “were superior to the remaining candidates,” this Court holds the view that the respondent examined the personal files and the confidential reports of all candidates and went through the files of those selected as well as of all the remaining candidates—amongst whom was the applicant—and thus made its selection and found that those selected were superior; and that, therefore, the respondent Commission carried out a proper inquiry before reaching its decision and its reasoning however laconic in connection with the applicant is supplemented by the administrative files; accordingly contention (c) must, also, fail.

(5) That the respondent Commission clearly and quite extensively recorded the reasons for not adopting the recommendations of the Head of Department in respect of two out of the twelve candidates recommended; that it was perfectly legitimate for the P.S.C. to follow this course and this Court does not agree with the submission of counsel for applicant that they should go further and ignore the totality of his recommendations in respect of the remaining candidates “once they held that he was mistaken” as maintained by counsel.

*Recourse succeeded in respect of interested parties 4, 9, 12; and dismissed in respect of the remaining interested parties.*

*Cases referred to:*

*Arsalides v. Republic* (1965) 3 C.L.R. 706 at p. 711; 35

*Republic v. Pericleous* (1984) 3 C.L.R. 577;

*Shener v. Republic*, 3 R.S.C.C. 138 at p. 142;

- Partellides v. Republic* (1969) 3 C.L.R. 291; (1969) 3 C.L.R. 480;
- Tourpekki v. Republic* (1973) 3 C.L.R. 592 at p. 599;
- Neophytou v. Republic* (1984) 3 C.L.R. 1466;
- 5 *Theodossiou v. Republic*, 2 R.S.C.C. 44 at p. 47;
- Menelaou v. Republic* (1969) 3 C.L.R. 36 at p. 41;
- Theocharous v. Republic* (1969) 3 C.L.R. 318 at p. 323;
- Michanicos and Another v. Republic* (1976) 3 C.L.R. 237;
- 10 *Michaelides v. Republic* (1976) 3 C.L.R. 115;
- Christou v. Republic* (1977) 3 C.L.R. 11;
- Duncan v. Republic* (1977) 3 C.L.R. 153;
- HjiSavva v. Republic* (1982) 3 C.L.R. 76 at p. 78;
- Constantinou v. Republic* (1980) 3 C.L.R. 551 at p. 561;
- 15 *Petrides v. Republic* (1983) 3 C.L.R. 216;
- Demosthenous v. Republic* (1973) 3 C.L.R. 354.

### Recourse.

- 20 Recourse against the decision of the respondent to promote the interested parties to the post of Insurance Officer 1st Grade in the Department of Social Insurance in the Ministry of Labour and Social Insurance in preference and instead of the applicant.

A. *Markides*, for the applicant.

- 25 G. *Erotokritou (Mrs.)*, Counsel of the Republic, for the respondent.

A. S. *Angelides*, for interested party No. 4 M. *Christou*:

*Cur. adv. vult.*

LORIS J. read the following judgment. By means of the

present recourse, the applicant, a Labour Officer 2nd Grade (P.), impugns the decision of the respondent Public Service Commission, published in the official Gazette of the Republic on 13.8.82, whereby the 12 interested parties referred to in the list attached to this recourse, were promoted to the post of Insurance Officer 1st Grade, (Department of Social Insurance in the Ministry of Labour and Social Insurance) in preference and instead of the applicant. 5

Before proceeding with the examination of the above intitled recourse, it should be stated here, that another recourse under No. 455/82 was filed by a certain Athos Georghiades against the respondent Commission; on the application of all concerned it was directed by this Court that both cases be tried together as presenting common questions of law. Nevertheless before the completion of the filing of all written addresses as directed, recourse No. 455/82 was withdrawn and dismissed on 7.2.84. 10 15

The undisputed facts of the case under consideration are very briefly as follows:

The applicant is holding the post of Labour Officer 2nd Grade (Permanent) since 1.10.70 (Labour Officer 2nd grade-Temporary-on recongment since 1.2.1969). 20

Twelve vacancies existed at the material time in the post of Insurance Officer 1st Grade (Department of Social Insurance in the Ministry of Labour and Social Insurance) and the Director-General of the Ministry had by letter dated 10.7.81 requested the P.S.C. to take steps for the filling of said vacancies, the Minister of Finance having given his consent for the purpose (vide Appendix 1 attached to the opposition). 25 30

The applicant was a candidate for the promotion to the said post having been included in the list of 25 candidates prepared in alphabetical order and submitted by the Departmental Board established pursuant to the provisions of s. 36 of the Public Service Law 1967—Law 33/67—and the relevant regulations (vide Appendix 4 attached to the opposition.) 35

The respondent P.S.C. at its meeting of 17.5.82 bearing in mind the conclusions of the Departmental Board and

after hearing the Head of the Department in which the vacancies existed and having given due regard to the personal files and the annual confidential reports of the candidates, which were before it, decided that the most suitable  
 5 for promotion were the twelve interested parties mentioned in the present recourse and accordingly promoted them to the post of Insurance Officer 1st grade as from 1.6.82 (vide Appendix 6 attached to the opposition).

The applicant feeling aggrieved from the aforesaid  
 10 decision of the P.S.C. attacks same by means of the present recourse praying for the annulment of the aforesaid decision on the following grounds of law:

“(A) The decision taken was in excess and/or abuse of power and/or contrary to the general principles of  
 15 Administrative Law, as the applicant was and is strikingly superior to the interested parties, in merit, qualifications and seniority.

(B) The decision taken was in excess and/or abuse of power and/or contrary to the General Principles of  
 20 Administrative Law as in particular.

1. It is not duly reasoned.
2. The respondent did not carry out due inquiry before issuing the sub-judice decision and/or act.
- 25 3. The respondent took into consideration facts which ought not to have been taken into consideration.
4. The respondent misconceived facts.”

I shall proceed to examine the complaints of the applicant in the light of his written address; in so doing I shall  
 30 not follow the order in which the applicant listed his grounds of Law, as facts alleged in his written address in respect of a specific ground are interwoven with other grounds as well.

I must further make it clear that reference of interested  
 35 parties by number will denote the serial number inserted against each interested party in the list attached to the present recourse.

In spite of the fact that the present recourse impugns the decision of the respondent in appointing all twelve interested parties to the post of Insurance Officer 1st Grade, on the grounds of Law above referred to, specific reference is made in the written address of the applicant, to interested party No. 4 namely Michalakis Christou in connection with his eligibility to be so promoted, in view of the qualifications required by clause (1) of the Scheme of Service (vide appendix 'E' attached to the opposition) which reads as follows:

«Απαιτούμενα προσόντα:

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

(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).

The allegation that interested party No. 4 was not possessed with the required qualification of 3 years service as above, at the material date, coupled with the general allegation of misconception by the respondent Commission as to material facts, renders necessary the examination as to the eligibility of all twelve interested parties for appointment to the Post of Insurance Officer 1st grade, "because the appointing organ has to take into consideration, in deciding on the filling of vacancies in such posts, only the persons in the service who are entitled to promotion thereto." (vide *Arsalides v. Republic* (1965) 3 C.L.R. 706 at p. 711).

Before such examination on the facts it is pertinent to examine the position in Law as to how the period of time, which is 3 years in this particular case, should be computed. After many years of uncertainty the matter was finally settled by the Full Bench of this Court in the case of *Republic v. Pericleous and Others* (1984) 3 C.L.R. 577 as follows:

"...in respect of Promotion Posts only, where no applications are made, inevitably is the date on which the request for the filling of a vacancy under section 17



of the Law (Law 33/67) is received by the Commission."

So in the present case, where the Post involved is a promotion post (where no application was either required by Law or in fact submitted), the candidates for promotion should have had at least 3 years service in the post of Insurance Officer 2nd Grade and/or Labour Officer 2nd Grade, on the date on which the request for the filling of the vacancies under section 17 of Law 33/67 was received by the respondent Commission.

Unfortunately I could not trace in this file any information as to the exact date the request in question was received by the P.S.C; it is apparent though from Appendix 1 attached to the opposition that the request of the filling of the 12 vacancies in question was forwarded by the Director-General of the Ministry of Labour and Social Insurance to the P.S.C. on 10.7.81. It may be assumed that the said letter was received by the P.S.C. on the same day or perhaps 2-3 days later at the most. Anyway it was in the hands of the respondent P.S.C. on 29.8.81 when the P.S.C. decided to take further action on it. (vide Appendix 2 attached to the opposition).

Turning now to the factual position in respect of all 12 interested parties: A thorough examination of the personal files and the lists attached to Appendix 3 of the opposition reveals that 3 of the interested parties were not possessed with the qualification referred to in para. (1) of the scheme of service above stated. They are:

(a) Interested party No. 4, namely Michalakis Chustou; he was appointed on secondment to the permanent post of Labour Officer 2nd Grade on 1.11.78; prior to that date he was holding the substantive post of Assistant Labour Officer.

Although I hold the view that this interested party was not eligible for promotion at all, for the reasons I am going to explain later on in the present judgment, as his substantive post is still Assistant Labour Officer (he is only on secondment Labour Officer 2nd Grade from 1.11.78) yet it is abundantly clear that

he did not have at least 3 years service as Labour Officer 2nd Grade even on secondment either on 10.7.81 or even on 29.8.81.

(b) Interested party No. 9, namely Panayiotis Savva.

(c) Interested party No. 12, Andreas Efstathiou.

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Both these latter interested parties were promoted to the post of Permanent Labour Officer 2nd Grade on 15.10.78. So, on 10.7.81 or even on 29.8.81 they had not completed at least 3 years service in the post of Labour Officer 2nd Grade.

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I have looked into the case of these latter interested parties with great anxiety and concern because it is true that both, prior to 15.10.78 (ever since the 1.5.73) they were on secondment to the Temporary (Dev.) post of Labour Officer 2nd Grade; but secondment to a post is not a promotion and does not change the substantive status of a civil servant.

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It was held as early as 1962 by the then Supreme Constitutional Court in the case of *Shener v. Republic*, 3 R.S.C.C. 138 at p. 142 that "An acting appointment of a person, or his appointment on secondment, does not automatically become a substantive and permanent appointment by virtue of paragraph 1 of Article 192."

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In the case of *Partellides v. Republic* (1969) 3 C.L.R. 291 at p. 296 it was repeated "I consider it appropriate time to repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned."

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In *Tourpekki v. The Republic* (1973) 3 C.L.R. 592 it was stressed that secondment is not a promotion; "... when an Officer is seconded to another post, he cannot be held to be promoted to that post as his substantive status is not changed .." (vide p. 599).

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It is crystal clear from the cases I have cited above that in spite of the fact, that interested parties 9 and 12 might have discharged on secondment prior to the 15.10.78, for considerable number of years, the duties of Labour

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Officer 2nd grade, does not alter the situation as their substantive post up to 15.10.78 was that of Assistant Labour Officer; and the relevant scheme of service requires at least 3 years service in the post of Labour Officer 2nd Grade, which undoubtedly is service in the permanent post of Labour Officer 2nd Grade. As it was held in the case of *Constantinos Neofytou v. The P.S.C.* in case No. 235/84 on 17.12.84 (still unreported)\* which dealt with a similar scheme of service in another Department "what was postulated, was service in a particular post and not experience of any kind... The pertinent provision of the scheme, here under consideration was designed to fashion the qualifications for promotion to the above reality, coupled with a stipulation that only service of a certain duration—would give rise to promotion."

I repeat: as interested parties Panayiotis Savva (No. 9) and Andreas Efstathiou (No. 12) were promoted to the post of permanent Labour Officer 2nd Grade on 15.10.78 they had not completed "at least three years service" in that post as required by the relevant scheme of service and they were, therefore, not eligible for promotion on 10.7.81 or even on 29.8.81.

For this reason the sub judge decision of the respondent P.S.C. in respect of interested parties No. 4 Michalakis Christou, No. 9 Panayiotis Savva and No 12 Andreas Efstathiou is hereby annulled.

Having annulled the sub judge decision in respect of interested parties 4, 9 and 12 on the ground above stated, I do not intend considering the remaining grounds submitted for annulment in respect of these three interested persons.

My task will be confined in examining all other grounds submitted by applicant, in respect of the remaining nine interested parties who were eligible for promotion, being possessed, at the material time, of the qualifications required by the Scheme of Service.

In this connection, I feel that I should repeat, in order

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\* Now reported in (1984) 3 C.L.R 1486

to avoid confusion, what I have stated earlier on in the present judgment; when reference is made to a particular interested party by the serial number thereof only, that serial number is the one referred to in the list of interested parties attached to the recourse.

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Before so proceeding, I consider it pertinent at this stage, to deal very briefly with the legal aspect pertaining these grounds:

Section 44 of the Public Service Law, 1967 (Law No. 33 of 1967) provides as follows:

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“44.(1) No Officer shall be promoted to another office, unless-

(a) a vacancy exists in that office:

Provided....

(b) he possesses the qualifications laid down in schemes of service for that office;

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(c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion.

(d)

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(2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority.

(3) In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists.

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(4). . . . . (5).. . . . . (6).. . . . . (7) . . . . . ”

It was held as early as 1961 by the then Supreme Constitutional Court in the case of *Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 47 that “The paramount duty of the Public Service Commission in effecting appointments or promotions is to select the candidate most suitable, in all the circumstances of each particular case, for the post in

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question. In doing so, the Public Service Commission should decide who is the most suitable among the qualified candidates on the totality of the circumstances pertaining to each one of them and should not adopt any ready-made  
5 rigid rule of thumb divorced from the circumstances and necessities of each particular case”.

It was further decided in this case that the recommendation of a Head of Department is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and  
10 “such recommendation should not be lightly disregarded.” If, nevertheless the Public Service Commission comes to the conclusion not to follow the aforesaid recommendation “the reasons for taking such an exceptional course  
15 would be clearly recorded in the relevant minutes of the Public Service Commission.”

As regards “seniority” it is well settled that seniority is not the decisive factor which regulates promotions; it should be duly taken into consideration and according to  
20 the Full-Bench case of *Partellides v. The Republic* (1969) 3 C.L.R. 480 seniority ought to prevail “all other things being more or less equal”. If therefore merit and qualifications are superior, seniority alone could not tip the scales for promotion in favour of a candidate.

25 Further the proposition that in cases of promotion “merit should carry the most weight” even vis-a-vis superior qualifications is not devoid of authority (vide *Menelaou v. The Republic* (1969) 3 C.L.R. 36 at p. 41, *Theocharous v. The Republic* (1969) 3 C.L.R. 318 at p. 323).

30 Concluding this brief summary of the legal aspect of the case I feel that I should mention what has been repeatedly emphasized, that an administrative Court cannot interfere with a promotion unless it has been established that the persons not selected did have “striking superiority” over those selected (*Michanicos and another v. Republic*  
35 (1976) 3 C.L.R. 237, *Michaelides v. Republic* (1976) 3 C.L.R. 115, *Christou v. Republic* (1977) 3 C.L.R. 11, *Duncan v. Republic* (1977) 3 C.L.R. 153).

Striking superiority has been thus defined in the case of

*Georghios HajiSavva v. The Republic* (1982) 3 C.L.R. 76 at p. 78.

“As the expression ‘striking superiority’ suggests, a party’s superiority, to validate an allegation of this kind, must be self-evident and apparent from a perusal of the files of the candidates. Superiority must be of such a nature as to emerge on any view of the combined effect of the merits, qualifications and seniority of the parties competing for promotion; in other words, it must emerge as an unquestionable fact; so telling, as to strike one at first sight. Disregard of such superiority, where extant, constitutes in itself evidence of abuse of power by the appointing authority...”

The applicant complains that his striking superiority over the interested parties in merit, qualifications and seniority has been ignored by the decision impugned.

This complaint of the applicant is not supported by the facts emerging from their confidential reports and their personal files which voice to the contrary.

At least seven out of the remaining interested parties have superior merit than the applicant. They are interested parties Nos. 1, 3, 5, 7, 8, 10 and 11 who were better rated in their confidential reports of the last two years (1980-1981) than the applicant, who was only rated 11 ‘very good’ 1 ‘good’ for the year 1980 and 2 ‘excellent’ and 10 ‘very good’ for 1981.

The remaining 2, i.e. interested party No. 2 and interested party No. 6 were more or less rated equally with the applicant in their confidential reports.

Another weighty consideration in favour of interested parties Nos. 1, 2, 3, 5, 8, 10 and 11 is that they were recommended by the Head of Department as most suitable for promotion, a recommendation which alongside with the annual confidential reports must be given due regard by the Commission (vide s. 44(3) of Law 33/67) as they are the main factors which speak of the merit of the candidate for promotion. In this respect it must be noted that the

Head of the Department did not recommend the applicant by non-expressing about him any view. In this connection learned counsel for applicant submitted in his written address that inspite of the fact that the Head of Department did not make any reference to the applicant before the P.S.C. on 17.5.82, yet as early as 1975 or even 1976, as countersigning officer of the confidential reports of the applicant, recommended the applicant for promotion. As regards this submission I shall confine myself in observing that whatever the recommendations of the Head of Department as countersigning Officer, were expressed as early as 1975 or 1976; the fact remains that in 1982 the Head of Department who had every opportunity to recommend the applicant before the P.S.C., if he so wished, did not say anything at all in respect of the applicant; I am afraid that the only inference that can be drawn from the silence of the Head of Department is the one referred to in the case of *Constantinou v. The Republic* (1980) 3 C.L.R. 551 where it was said (page 561 lines 21-25)

“The inference to be drawn, especially when there is a big number of candidates, as in the present case, is that for those not commended upon there was nothing to be said in favour and it was not his intention to recommend them for promotion..”.

So, interested party No. 2 who was more or less equally rated in merit with the applicant in the respective confidential reports must be considered as better rated in this respect than the applicant in view of his recommendation by the Head of Department before the P.S.C. on 17.5.82.

Recapitulating on the issue of merit it may be stated that having regard to their confidential reports and the relevant recommendations of the Head of Department eight out of the 9 remaining interested parties were better rated in merit than the applicant whilst only one namely interested party No. 6 Georghios Ioannou was more or less equal in merit with applicant.

The picture with regard to qualifications as it transpires from the personal files and the relevant lists attached to Appendix 3 of the opposition, indicates that with the

exception of interested party No. 2 Fivos Ioannides, who may be said to have the same qualifications with the applicant, all the remaining interested parties have either superior qualifications or at least more qualifications than the applicant.

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The applicant was appointed in the permanent post of Labour Officer 2nd Grade on 1.10.70 and the 9 remaining interested parties were likewise appointed on the dates indicated herein below:

|             |                       |    |         |    |
|-------------|-----------------------|----|---------|----|
| I.P. No. 1  | Doloros Kapartis      | on | 1.2.63  | 10 |
| I.P. No. 2  | Fivos Ioannides       | "  | 1.5.72  |    |
| I.P. No. 3  | Panayiotis Evaghorou  | "  | 1.5.73  |    |
| I.P. No. 4  | (ANNULLED)            |    |         |    |
| I.P. No. 5  | Antonios Loucaides    | "  | 1.5.73  | 15 |
| I.P. No. 6  | Georghios Ioannou     | "  | 1.6.68  |    |
| I.P. No. 7  | Andreas Evmides       | "  | 15.4.72 |    |
| I.P. No. 8  | Pantelis Papapantelis | "  | 1.1.73  |    |
| I.P. No. 9  | (ANNULLED)            |    |         |    |
| I.P. No. 10 | Nicos Ioannou         | "  | 1.6.68  | 20 |
| I.P. No. 11 | Kypros Kyprianou      | "  | 15.4.73 |    |
| I.P. No. 12 | (ANNULLED)            |    |         |    |

From the above list it is apparent that the applicant has seniority over interested parties 2, 3, 5, 7, 8 and 11 ranging from 1 year and 6½ months (I.P. No. 8) to 2 years and 6½ months (I.P. No. 11), and that I.P. 1 has seniority over the applicant of seven years and 8 months whilst interested parties Nos. 6 and 10 have a seniority of 2 years and 4 months over the applicant.

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. Thus, the overall picture may be thus summarised taking the most favourable view for the applicant:

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Taking into consideration the confidential reports of the last 2 years (1980-1981) and the recommendations of the Head of Department all the interested parties with the exception of I.P. No. 6 namely Georghios Ioannou are superior in merit to the applicant whilst I.P. No. 6 has more or less similar merit with the applicant.

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As regards qualifications all interested parties with the exception of I.P. No. 2 (whose qualifications may be termed either the same or equal to those of the applicant)

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have either superior qualifications or more qualifications than the applicant has.

I have already referred to the question of seniority extensively above.

5 Interested party No. 2 who has the same or equal qualifications with the applicant, is superior in merit, and such merit outweighs the seniority of 1 year and 7 months of the applicant over him. On the otherhand I.P. No. 6  
10 namely Georghios Ioannou has more or less similar merit with the applicant, more qualifications than the applicant and above all he has 2 years and 4 months seniority over the applicant having been promoted to the permanent post of Labour Officer 2nd Grade on 1.6.68 (applicant on 1.10.70). Even if the qualifications of I.P. No. 6 are  
15 considered more or less the same with the applicant—which is not the case—seniority ought to prevail following *Partellides* case (supra).

From the above it is apparent that the applicant has failed to establish striking superiority. Therefore, this ground  
20 of Law on which he relies is doomed to failure and it is accordingly dismissed.

I shall now proceed to examine the remaining grounds of law in the light of the written address of the applicant, but before so proceeding I feel that I must repeat here what  
25 I have stated earlier on in the present judgment: some of the remaining grounds are interwoven with matters I have already dealt with above and in particular with the eligibility of the candidates to be promoted; I am not going therefore to repeat what I have already explained earlier.

30 The question of reasoning of the sub judge decision was raised, I must say with respect, in a somewhat confused way and I shall attempt to answer it hoping that I have correctly perceived it.

35 It is an undisputed fact that on 17.5.82 the respondent P.S.C. was examining at its meeting the cases of 25 candidates for promotion to the post of Insurance Officer 1st Grade, (Department of Social Insurance in the Ministry of Labour and Social Insurance); amongst these candidates

were the applicant and the 12 interested parties in the present recourse as well.

It is clearly stated in the aforesaid minutes of the P.S.C. (appendix 6 attached to the opposition) that the Head of the Department was also present at the said meeting and it is clear from the minutes that the Head of the Department recommended for promotion 12 persons and expressly did not recommend for promotion another seven persons. It is a fact that the Head of Department did not make any reference whatsoever to another 6 candidates amongst whom was the applicant.

The submission of the learned counsel for applicant is to the effect that as the Head of Department did not say anything justifying the non-inclusion of the applicant in those not recommended and the P.S.C. adopted the views of the Head of the Department, the decision of the respondent P.S.C. is without reasoning as well.

It is obvious, learned counsel maintained, that the P.S.C. after the Head of the Department left, concerned itself with candidates which the Director expressly recommended or did not recommend but did not concern itself with those candidates for which the Head of the Department did not mention anything at all.

I have carefully considered the submission of the learned counsel of the applicant but I feel unable to agree with him for the following reasons:

If one looks at page 4 of the minutes of the P.S.C. will note that in paragraph 6 thereof the following are stated verbatim:

*«Η Επιτροπή εξήτασε τα ουσιώδη στοιχεία από τους Προσωπικούς Φακέλους και τας Εμπιστευτικές Εκθέσεις των υποψηφίων και έλαβεν υπόψιν Πορίσματα της Τμηματικής Επιτροπής και τας κρίσεις και συστάσεις του Διευθυντού Υπηρεσιών Κοινωνικών Ασφαλίσεων».*

(“The Commission studied the essential elements from the personal files and the confidential reports of the candidates and took into consideration the findings of the Departmental Committee and the opinion and

recommendations of the Director of Social Insurance Services”).

5 And further down in the said minutes at pages 6 it concludes that P.S.C. “... decided that the following are superior to the remaining candidates...”

10 I hold the view that these two paragraphs alone indicate (a) that the respondent P.S.C. examined the Personal Files and the Confidential Reports of all candidates—and we must not lose sight of the fact that the applicant was a candidate at all times, whether the Head of the Department made specific reference to him or not.

15 (b) that the P.S.C. in deciding that the “following” are superior to the “remaining candidates” went through the administrative files of those selected as well as of all the remaining candidates—amongst whom was the applicant—and thus made its comparison and found that those selected were superior.

20 I am satisfied that the respondent Commission carried out a proper inquiry before reaching its decision and its reasoning however laconic in connection with the applicant is supplemented by the administrative files (vide *Petrides v. The Republic* (1983) 3 C.L.R. 216).

25 Having considered the sub judge decision set out in appendix 6 attached to the opposition, I am satisfied that it is sufficiently and duly reasoned; it contains all the elements necessary for the ascertainment of the legality of the decision concerned (*Demosthenous v. The Republic* (1973) 3 C.L.R. 354).

30 The ground for lack of reasoning therefore, also fails and is dismissed accordingly.

Before concluding I feel that I should refer to the non-adoption by the P.S.C. of the recommendations of the Head of Department in respect of 2 out of the 12 candidates recommended.

35 The recommendations of the Head of the Department must be given due regard according to s. 44(3) of Law 33/67.

Nevertheless if the P.S.C. comes to the conclusion that it should not follow the recommendations the reasons for taking such an exceptional course should be clearly recorded in the relevant minutes according to the case of *Theodossiou* (supra). 5

In this case the respondent P.S.C. decided not to adopt the recommendations of the Head of the Department in respect of two out of the twelve candidates recommended. The respondent Commission clearly and quite extensively recorded the reasons in their minutes which are before me. 10

It was perfectly legitimate for the P.S.C. to follow this course and I do not agree with the submission of learned counsel for applicant that they should go further and ignore the totality of his recommendations in respect of the remaining candidates "once they held that he was mistaken" as maintained by counsel. The reasoning of the P.S.C. on this matter, indicates that the Commission was put at pains to examine thoroughly the actual situation of all concerned arriving thus at its decision after due inquiry. 15

In the result the present recourse succeeds only in respect of the following three interested parties: 20

- (a) Interested party No. 4 Michalakis Christou
- (b) Interested party No. 9 Panayiotis Savva
- (c) Interested party No. 12 Andreas Efstathiou

The sub judice decision in respect of the aforesaid interested parties is hereby annulled on the ground that all 3 of them were not eligible for promotion to the post of Insurance Officer 1st Grade as they had not completed "at least three years service" in the post of Labour Officer 2nd Grade (P.) (as required by the relevant scheme of service) on 10.7.81 when the request of the filling of the vacant posts was received by the P.S.C. 25 30

The recourse in respect of the remaining part of the sub judice decision is hereby dismissed for the reasons stated above. 35

In the circumstances of the present case I have decided to make no order as to the costs hereof.

*Sub judice decision  
annulled.*

*No order as to costs.*

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