

1985 November 21

[MALACHTOS. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANNA KARAMONTANI.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 345/82).

Public Officers—Appointments—Applicant strikingly superior to the interested party as regards merit and qualifications—Selection of interested party based on the opinion of the respondent Commission as to the performance of the parties at the interview—Respondents attached undue weight to this factor—Sub judice appointment annulled.

5
10
The applicant by means of this recourse challenges the appointment of the interested party Andreas Agapiou to the post of Town Planning Officer, 2nd Grade (a first entry post) in the Department of Town Planning and Housing as from 15.7.82 in preference and/or instead of the applicant.

15
It should be noted that both the applicant and the interested party were serving as casual Town Planning Officers as from March 1980 and 14.7.80, respectively. Furthermore the applicant had served in the post in question during the period 1.10.73 to 31.7.75. From 1.8.75 to 20.9.76 she was on scholarship. She resigned from the Public Service on 21.9.76.

20
Both the applicant and the interested party were among those recommended by the Departmental Board. On the question of merit, the applicant, according to the views

expressed at the relevant meeting of the respondent Commission by the Director of the Town Planning and Housing Department is much better than the interested party. The applicant has more and better qualifications for the post in question than the interested party. Further, and in accordance with the views expressed by the Director of the Department at the same meeting of the respondent Commission the performance of the applicant at the interview was better than the performance of the interested party. 5

The respondent Commission, however, rated differently the performance of the applicant and the interested party at the interview. As regards the applicant it is stated in the minutes that "... she appears to be clever, but in spite of that the Commission considered her that she did not satisfy to the degree she was rated by the Director of Department, neither from the point of view of expression nor from the point of substance of her answers. She also did not succeed to express her views and she did not expound her answers". As regards the interested party it is stated that the Commission selected him as more suitable for appointment... (b) Agapiou Andreas who was rated as very good at the interview, and who, according to the Director, has good performance in his work and the ability to perform much better. (What was said also by the Director that during the recent years he has shown some superficiality and delay on the subjects which he is handling, are not considered that they can neutralise his general picture). 10 15 20 25

Held, annulling the sub judice decision:

(1) It is clear that the only factor that tipped the scales in favour of the interested party was his performance at the interview before the Commission. It should be noted that even in this respect the opinion of the Commission differs from the opinion of the Director of the Department who was in a better position to evaluate the answers to questions relating to the duties of the post. 30 35

Even if it is accepted that the interested party made a better impression at the interview than the applicant, the

respondent Commission gave undue weight to this factor and disregarded all other relevant factors.

5 (2) From the material before the Court it is clear that the applicant is strikingly superior to the interested party as regards merit and qualifications.

Sub judice decision annulled.
£30.- costs in favour of applicant.

Cases referred to:

10 *Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 235.

Recourse.

15 Recourse against the decision of the respondent to appoint the interested party to the post of Town Planning Officer, 2nd Grade, in the Department of Town Planning and Housing in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

K. Michaelides, for the interested party.

20 *Cur. adv. vult.*

25 MALACHTOS J. read the following judgment. In this recourse the applicant claims, as stated therein, declaration of the Court that the act and/or decision of the respondent, which was published in the Official Gazette of the Republic dated 30th July, 1982, No. 1793, by which they appointed and/or posted and/or promoted Andreas Agapiou to the post of Town Planning Officer, 2nd Grade, in the Department of Town Planning and Housing, as from the 15th July, 1982, in preference and/or instead of the applicant, is null and void and of no legal effect whatsoever.

30

According to the relevant schemes of service, the post of Town Planning Officer 2nd Grade, is a first entry post and is combined with the post of Town Planning Officer 1st Grade.

By letter dated 8th October, 1981, the Director-General of the Ministry of Interior informed the Chairman of the Public Service Commission that the Ministry of Finance gave its consent for the filling of two vacant temporary posts of Town Planning Officer, 2nd Grade in the Department of Town Planning and Housing. The relevant notification in the Official Gazette of the Republic inviting applications was published on 6th November, 1981. 5

In response to the above publication 124 applications were received which, on 22nd December, 1981, were transmitted to the Director of the Department of Town Planning and Housing in his capacity as Chairman of the Departmental Board. In the meantime, the Director-General of the Ministry of Interior by letter dated 15th January, 1982, informed the Chairman of the Public Service Commission that the Ministry of Finance gave its consent for the filling of another vacant permanent post of Town Planning Officer, 2nd Grade. At its meeting of 25th January, 1982, the Public Service Commission decided the filling of this additional post and by letter dated 4th February, 1982, to the Chairman of the Departmental Board, requested that when considering the filling of the two temporary posts to consider also the filling of this post. 10 15 20

By letter dated 9th February, 1982, the report of the Departmental Board was despatched to the Public Service Commission. In this report are recommended four candidates for the permanent post and 12 candidates for the temporary posts, among whom were the applicant and the interested party. It should be noted here that both the applicant and the interested party were serving as casual Town Planning Officers as from March 1980 and 14th July, 1980, respectively. Furthermore, the applicant had served in the post of Town Planning Officer, 2nd Grade, from 1st October, 1973 to 31st July, 1975 and she was on scholarship from 1st August, 1975 to 20th September, 1976, on leave without pay. She resigned from the Public Service as from 21st September, 1976. 25 30 35

On 14th April, 1982, the Public Service Commission held a meeting on the subject and on the basis of the report of the Departmental Board and all the other relevant 40

elements before it, decided to interview the candidates who were recommended by the Board on a date to be fixed later on, on which the Director of Town Planning and Housing should be present.

- 5 The Commission, in the presence of the Director, interviewed the candidates on the 10th and 11th May, 1982. According to the relevant minutes of these meetings, "questions on subjects of general nature and mainly on subjects concerning the duties of the post, as they are prescribed
- 10 by the relevant scheme of service were put to the candidates, both by the Director of the Department as well as by the Chairman and the Members of the Commission". The meeting was then adjourned for the 12th May, 1982, in order to hear the views of the Director as regards the
- 15 performance of the candidates at the interview before the Commission as well as their performance in their work as regards those who were already serving in the Town Planning and Housing Department.

- 20 At the meeting of the 12th May, 1982, the Director made the following statements as regards the interested party and the applicant.

- 25 Agapiou Andreas N. "Good at the interview. In his work he is generally good and clever, but during the last two years has shown some superficiality and delay on the subjects he is dealing with. He is rather not slow but slightly lazy. He could do much better". Karamontani Anna.
- 30 "Very good at the interview. No doubt in her work is more than very good. She is very clever, very efficient, she writes good reports and handles the subjects without assistance. She has the advantage of being also a town planner and is one of those officers who belong to one more experienced class, and on the subjects with which she is dealing has acquired specialization."

- 35 After the withdrawal of the Director, the Commission proceeded and evaluated itself the performance of each one of the candidates at the interview before it, in the light of the views of the Director of the Department.

According to the relevant minutes, in selecting the best candidates for the filling of the said temporary posts, the

Public Service Commission gave due weight to the performance in their work of those serving casually in the Department of Town Planning and Housing, taking into account the elements given by the Director, the qualifications of all those recommended by the Departmental Board and the performance of each one of them at the interview before the Public Service Commission, in the light also of the views of the Director of the Department. 5

As regards the applicant, the Commission had this to say: "Out of the above candidates Mrs. Karamontani was holding in the past the temporary post of Town Planning Officer 2nd Grade, but she resigned from the public service. She appears to be clever, but in spite of that the Commission considered her that she did not satisfy to the degree she was rated by the Director of the Department, neither from the point of expression nor from the point of substance of her answers. She also did not succeed to express her views and she did not expound her answers." 10 15

The Commission selected as generally more suitable for appointment - 20

(a)

(b) Agapiou Andreas who was rated as very good at the interview and who, according to the Director, has good performance in his work and the ability to perform much better. (What was said also by the Director that during the recent years he has shown some superficiality and delay on the subjects which he is handling, are not considered that they can neutralise his general picture), and. 25

(c)

Hence, the Commission, on the basis of all the elements before it, decided that the following, generally, are superior to the rest of the candidates. found them suitable and selected them for appointment in the vacant temporary posts of Town Planning Officers 2nd Grade: 30

1. Agapiou Andreas.

2.

3.

5 Later on, the Commission at its meeting of the 25th
 June, 1982, fixed as the date of appointment of the inter-
 ested party the 15th July, 1982.

The grounds of law on which the application is based,
 as argued by counsel for applicant, may be summarised as
 follows:

10 1. The respondent Commission by appointing the inter-
 ested party instead of the applicant, failed to select the
 best candidate by completely disregarding the qualifica-
 tions of the applicant, her experience in town planning and
 the recommendations of the Director of the Department,
 15 and

2. The respondent Commission gave undue weight to the
 impression given to it at the interview as regards the in-
 terested party and the applicant.

20 As it appears from the comparative table before me,
 the applicant has more and much better qualifications for
 the post in question, than the interested party. Her quali-
 fications are the following:

| | |
|---|------------|
| (i) English School Nicosia | 1963-1969 |
| (ii) B. Sc. Engineering. London University | 1969-1972 |
| 25 (iii) Master of Philosophy in Town Planning London University | 1973-1975. |

The interested party has the following qualifications:

| | |
|---|------------|
| (i) Kykko Gymnasium | 1965-1971 |
| 30 (ii) Diploma in Architecture. Metsovion Polytechnic, Athens | 1974-1979. |

On the question of merit, the applicant, according to

the views of the Director of the Department, is much better than the interested party.

No question of seniority arises in the present case.

It is, therefore, clear that the decisive factor, in fact the only factor, that tipped the scales in favour of the interested party, was his performance at the interview before the respondent Commission. It should, however, be noted here that even at the interview the Director of the Department was of the view that the performance of the applicant was much better than that of the interested party. The respondent Commission, however, contrary to the views of the Director of the Department, who was in a much better position to adjudicate on the answers of the candidates on the questions put to them, since the said questions were based mainly on subjects connected with the duties of the post, as provided by the scheme of service, selected the interested party instead of the applicant.

Even if we accept that the interested party made a better impression at the interview than the applicant, the respondent Commission gave undue weight to this factor by selecting the interested party and disregarded all the other relevant factors. In the case of *Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 235 at page 245, the following is stated:

"It should be observed that it was not right to treat the performance at the interviews as something apart from the merits, qualifications and experience of the candidates; it was only a way of forming an opinion about the possession by the candidates of the said basic criteria; and not the most safe way because, inter alia, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit."

It is clear from the material before me that the applicant is strikingly superior to the interested party as regards merit and qualifications and the respondent Commission in

5 selecting the interested party for appointment to the post of Temporary Town Planning Officer, 2nd Grade, disregarded this striking superiority of the applicant and gave undue weight to the performance of the interested party at the interview.

For the reasons stated above, the decision of the respondent Commission complained of, is hereby annulled.

The respondent to pay £30.- against the costs of the applicant.

10

*Sub judice decision annulled.
Respondent to pay £30.-
against costs.*