

1985 April 6

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CONSTANTINOS SAVVA AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS AND/OR  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 154/83 and 164/83).

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- Administrative Law—Collective organ—Composition—Meetings  
—Principles applicable—Public Service Commission meet-  
ing on several occasions to decide on a promotion—Com-  
position thereof not the same at all meetings—Sub judice  
decision taken at last meeting and previous meetings dealt  
with preliminary issues—Whether whole process could be  
regarded as taken fully ab initio.* 5
- Public Officers—Promotions—Promotion post—Remuneration  
received by an officer does not constitute a consideration  
for promotion and an officer can be promoted even though  
he is not holding a post on the immediately lower scale—  
A public Officer no longer had to be a permanent officer  
in order to be preferred for promotion—Promotions of tem-  
porary officers to permanent posts can be made on proba-  
tion—“Five years Service at the post of Animal Hus-  
bandry Officer” in the relevant schemes of service—Does  
not mean actual service—Period of absence on study  
leave for a post graduate title, not constituting a necessary  
qualification for a post, considered as service or experience  
of up to two years, by virtue of decision 12.655 of the  
Council of Ministers.* 10 15 20
- General Orders—Superseded by the Public Service Law, 1967  
(Law 33/67).*

*Public Officers—Confidential reports—Reporting Officer—Countersigning officer—Though it might not be the same person such requirement dispensed with where the reporting officer is the Head of Department.*

5 *Administrative Law—Administrative acts or decisions—Reasoning—Supplemented from the files—Administrative organ not required to record in detail every particular aspect dealt by it in reaching sub judice decision.*

10 *Public Officers—Promotions—Public Service Commission not required to make particular reference to each candidate.*

15 *Public Officers—Promotions—Files of all candidates before the respondent Commission—Accepted, in the absence of evidence to the contrary and in view of the presumption of regularity that the whole career of the candidates was duly considered.*

*Administrative Law—Administrative acts or decisions—Presumption of regularity.*

20 These recourses were directed against the decision of the respondent Commission to promote the interested parties to the post of Animal Husbandry Officer A. in preference and instead of the applicants. Under the relevant scheme of service the said post is a promotion post and among the qualifications required were "at least five years service at the post of Animal Husbandry Officer/Assistant Animal Husbandry Officer". The respondent Commission received the report of the Departmental Board on the 19th June, 1984 and met to discuss the recommendations of the departmental board on the 28th July, 1982 when it decided to consider the said promotions at a later date.

25 On the 4th November, 1982, the Director of the Department of Agriculture appeared before the respondent Commission and gave his views as regard the candidates; and on the 6th November, 1982 the respondent Commission took the subject decision.

30

35 Counsel for the applicants contended:

- (a) That there was a change in the composition of the respondent Commission during the process of the promotions which extended to several meetings, in

that during its last three meetings, that is of the 28th July 1982, 4th November, 1982, and 6th November 1982, two new members were present who did not take part at the original meetings.

- (b) That interested parties Antoniou and Constantinou did not hold the immediately lower post, contrary to section 28 of the Public Service Law, 1967 as their salary was in scale A8, whereas the post of Animal Husbandry Officer A, was in salary scale A11—and they ought therefore to have passed from salary scales A9 and A10 before reaching scale A11. 5 10
- (c) That interested party Antoniou did not satisfy the requirements of the scheme of service in that he did not have “five years service at the post of Animal Husbandry Officer/Assistant Animal Husbandry Officer”. 15
- (d) That in view of General Order II/1.14 interested party Antoniou could not be eligible for promotion since he held a temporary post and not a permanent one as by virtue of s.28 of the Public Service Law 1967, he had to be the holder of a permanent post. 20
- (e) That the confidential reports of interested party Antoniou for the years 1980 and 1981 were irregular in that the reporting Officer and the countersigning officer were the same person that is the Director of the Department of Agriculture. 25
- (f) That the promotion of interested party Antoniou was wrong in Law as promotions cannot be made on probation as it was done in his case.
- (g) That since no particular reference was made to interested party Michaelides the sub judge decision lacks due reasoning. 30
- (h) That the respondent Commission wrongly took into consideration only the confidential reports of the last two years of the candidates and not their whole careers. 35

Regarding contention (c) above interested party Antoniou was absent on study leave abroad, for three years and

seven months, where he obtained the degree of doctor of philosophy in animal science. His service if continuous, would have been eight years and two months and if the above period of absence is deducted his service is reduced to four years and seven months. In accordance with Decision No. 12.655 of the Council of Ministers, as amended by its decisions of the 10th, 11th and 12th February, 1982, post-graduate titles, not constituting a necessary qualification for a post, can be considered as service or experience of up to two years.

*Held*, (1) that though the process, before any collective organ, regarding discussing about, and deciding on, any matter, has to take place from beginning to end while there are present the same members of such an organ, in order to ensure the knowledge and evaluation by each member of all factors which come to light during such process, before the meeting of the 28th July, 1982 all the meetings dealt with the preliminary issues in order to prepare the material required for the consideration of the promotions; that it is, also, clear from the minutes of the first meeting of the respondent Commission under its new composition that the minutes of all the preliminary meetings were before the respondent Commission and its new members and, therefore, it cannot be accepted that these new members were not fully informed of what transpired before; and that, also, since nothing appears from the minute that they were not in agreement, no other conclusion can be reached than that they adopted all previous decisions of the respondent Commission concerning the matter and in that the whole process could be regarded as taken fully ab initio.

(2) That though an increase of salary may constitute a promotion, nevertheless the remuneration received by a candidate does not constitute a consideration for promotion; that, also, though promotion should be to the immediately higher post when the promotion "carries with it the emplacement of the officer in a higher division of the public service", yet the expression appearing in section 28 of Law 33 of 1967 "on a salary scale with a higher maximum" when it refers to a promotion carrying an increase of the officer's remuneration does not mean to the immediately higher salary scale.

(3) As there is nothing in the relevant schemes of service that actual service is required it would be quite in order for this officer to be credited with up to two years' service in respect of his degree since it does not constitute a necessary qualification (see *Economides v. The Republic* (1973) 3 C.L.R. 410 at pp. 412-413); and that, thus, his service would become six years and seven months. 5

(4) That the word "permanent" appearing in the General Orders no longer appears in the Law and since the Law supersedes the General Orders, (see section 86(1) of Law 33/67) it is clear that a public servant no longer had to be a permanent officer in order to be preferred for promotion. 10

(5) That it may be that normally the reporting officer and countersigning officer might not be the same person but where, however, the reporting officer is the Head of Department, such requirement is dispensed with. 15

(6) That there is nothing in the Law which says that promotions of temporary officers to permanent posts cannot be made on probation. 20

(7) That the respondent Commission was not required to record in detail every particular aspect dealt by them in reaching the sub judge decision (see *Economou Judicial Control of Administrative Discretion* (1965) at p. 233); that the decision is duly reasoned in all respects and any reasoning that it may be found to be lacking may be fully supplemented from the files. 25

(8) That all the files were before the respondent Commission at all relevant times and since the presumption of regularity exists it must be accepted in the absence of evidence to the contrary that the whole career of the candidates and all that was before the Commission was duly considered. 30

*Recourses dismissed.*

Cases referred to: 35

*Panayiotou v. Republic* (1972) 3 C.L.R. 337 at pp. 339-340;

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

*Economides v. Republic* (1973) 3 C.L.R. 410 at pp. 412-413;

*Georghiades v. Republic* (1966) 3 C.L.R. 827 at pp. 846-847.

**Recourses.**

5 Recourses against the decision of the respondents where-  
by the interested parties were promoted to the post of  
Animal Husbandry Officer A in the Department of Agri-  
culture in preference and instead of the applicants.

10 *A. S. Angelides with M. Savva (Mrs.)*, for the  
applicants.

*E. Papadopoullou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

15 A. LOIZOU J. read the following judgment. By these two  
recourses which have been heard together the applicants  
seek:

20 (a) A declaration of the Court that the act and/or deci-  
sion of the respondent Commission, which was published in  
the official gazette of the Republic of the 11th August  
1983, to promote the interested parties (later to be named  
in this judgment) to the post of Animal Husbandry Officer  
A, in the Department of Agriculture, is null and void and  
of no legal effect whatsoever; and

25 (b) a declaration of the Court that the refusal and/or  
omission of the respondent Commission to promote the  
applicants to the post of Animal Husbandry Officer A in  
the Department of Agriculture is null and void and of no  
legal effect whatsoever.

30 The post of Animal Husbandry Officer A, according to  
the relevant Scheme of Service is a promotion post and  
among the qualifications required are:

“(1) At least five years service at the post of Animal  
Husbandry Officer/Assistant Animal Husbandry  
Officer.

(2) .. .. .

35 (3).. .. .

- (4) Postgraduate studies shall be considered as additional qualifications.”

The Director-General of the Ministry of Agriculture and Natural Resources wrote on the 8th February 1982 to the respondent Commission requesting the filling, inter alia, of eight permanent posts of Animal Husbandry Officer A. The respondent Commission considered this request at its meeting of the 22nd February 1982, and decided in accordance with section 36 of the Public Service Law, 1967, (Law No. 33 of 1967) to prepare lists of the candidates eligible for promotion and send them to the Departmental Board together with the candidates' personal files and confidential reports and the relevant Schemes of Service for consideration for promotion. Subsequently, on the 30th April 1982, the Director-General of the Ministry of Agriculture, wrote again to the respondent Commission requesting the filling of one further post of Animal Husbandry Officer A. The Departmental Board was accordingly notified and on the 5th June, 1982 was sent the lists of the candidates, their personal files and their confidential reports.

The respondent Commission received on the 19th June, 1982, the report of the Departmental Board,—which had met on the 16th June 1982,—in which thirteen out of the seventeen candidates for promotion, including the applicants, were recommended as satisfying the requirements of the Schemes of Service. On the 28th July 1982, the respondent Commission met to discuss the recommendations of the Departmental Board and decided to consider the said promotions at a later date. On the 4th November 1982, the Director of the Department of Agriculture appeared before the respondent Commission and gave his views as regards the candidates.

Finally on the 6th November, 1982, the respondent Commission took the subject decision in which it said:-

“... by taking into account all the facts before it, considered that the following are superior to the other candidates on the basis of the totality of the established criteria (merit, qualifications, seniority) and decided to promote them as the most suitable to the perma-

ment (Ordinary Budget) post of Animal Husbandry Assistant A, in the Department of Agriculture as from 15th November 1982.

- 5 1. Antoniou Takis
2. Constantinides Savvas
3. Constantinou Antonios
4. Michaelides Michael
5. Morfakis Cleanthis
6. Roussias Andreas
- 10 7. Fessas Iacovos
8. Charalambous Kyriakos
9. Hadjiyiorgis Kyriakos.”

Hence the present recourse which was filed as against all parties promoted.

- 15 The first ground of Law put forward on behalf of the applicants is that there was a change in the composition of the respondent Commission during the process of the promotions which extended to several meetings. In particular that during its last three meetings, that is of the 28th July
- 20 1982, 4th November 1982, and 6th November 1982, (when the sub judge decision was reached), two new members, Mr. Papaxenophontos and Mr. Christodoulides, were present who did not take part at the original meetings. Thus, it was argued the whole process had to be repeated
- 25 ab initio for the sub judge decision to be valid and referred to the case of *Panayiotou v. The Republic* (1972) 3 C.L.R. 337 where at pp. 339-340 I said:-

- 30 “In this respect he referred me to the Conclusions of the Jurisprudence of the Greek Council of State 1929-1959, p. 112. The relevant principles of administrative Law on the matter are stated to be in effect that the process, before any collective organ, regarding discussing about, and deciding on, any matter, has to take place from beginning to end while there are
- 35 present the same members of such an organ, in order to ensure the knowledge and evaluation by each member of all factors which come to light during such process. If this process extends to more than one meeting, then the composition of the collective organ
- 40 must remain unchanged at all its relevant meetings.



If there is any change in the composition of the collective organ at any meeting, through the presence of a member who did not take part at a past meeting on the matter, the organ cannot take a valid decision at its last relevant meeting, except if at such meeting the whole process is repeated fully ab initio, so that the consideration of the matter can be regarded as having commenced and been concluded at such last meeting. This exposition of the Law, taken from a number of decisions of the Greek Council of State, namely, Decisions 1753/56, 103/57, 1128/58, was adopted in the case of *Vivardi v. The Vine Products Council* (1969) 3 C.L.R. 486." 5 10

As it appears from the minutes of the meetings of the respondent Commission its composition did in fact change at the meeting of the 28th July, 1982 and thereafter, by the participation of the two new members. Before this meeting of the 28th July 1982, all the meetings dealt with the preliminary issues in order to prepare the material required for the consideration of the promotions as above set out. It is also clear from the minutes of this first meeting of the respondent Commission under its new composition (Appendix 6), that the minutes of all the preliminary meetings were before the respondent Commission and its new members and therefore I cannot accept that these new members were not fully informed of what transpired before. Also since nothing appears from the minute before me that they were not in agreement, I can reach no other conclusion than that they adopted all previous decisions of the respondent Commission concerning the matter and in that the whole process could be regarded as taken fully ab initio. 15 20 25 30

Furthermore the composition of the respondent Commission has remained unchanged after the meeting of the 28th July, 1982, as the Chairman and the same three members, Messrs. Papaxenophontos, Hadjiprodrinou and Christodoulides were present at all subsequent meetings, which were the material ones. 35

The said meetings were also in accordance to section 11 of Law 33 of 1967, which provides that the Chairman and two other members present at any meeting shall form a quorum. 40

The second ground of Law put forward by the applicants is that the sub judice decision which was for the filling of nine posts was wrong in Law, in that there was no decision for the filling of nine posts, the decision of the 22nd February 1982, being for the filling of eight posts only.

This argument must fail. It is clear that on the 22nd February 1982, (Appendix 1) the respondent Commission commenced the process at the request of the Minister of Agriculture for the filling of eight posts and subsequently it acted upon the request for the filling of one extra post contained in the letter of the Director-General of the Ministry of Agriculture of the 30th April 1982, (Appendix 2), in view of which instructions were given on the 5th June 1982, (Appendix 4), to the Departmental Board for the filling of nine posts. The Departmental Board therefore, when considering the candidates was doing so in respect of nine posts and so was the respondent Commission during all its meetings leading to the sub judice decision.

As regards interested parties Takis Antoniou and Antonis Constantinou the following arguments were also put forward:- that these interested parties did not hold the immediately lower post, contrary to section 28 of the Public Service Law, as their salary was in scale A8, whereas the post of Animal Husbandry Officer A, was in salary scale A11—they ought therefore to have passed from salary scales A9 and A10 before reaching scale A11. Also it was argued that the sub judice decision was reached in respect of these interested parties without due inquiry as the respondent Commission failed to inquire into their salaries before promoting them but instead it did so only after they were promoted.

Both arguments must fail. Though an increase of salary may constitute a promotion, nevertheless the remuneration received by a candidate does not constitute a consideration for promotion. Also, though promotion should be to the immediately higher post when the promotion “carries with it the emplacement of the officer in a higher division of the public service”, yet the expression appearing in section 28 of Law 33 of 1967 “on a salary scale with a higher maximum” when it refers to a promotion carrying an in-

crease of the officer's remuneration does not mean to the immediately higher salary scale.

As regards interested party Takis Antoniou it was further contended that he did not satisfy the requirements of the Schemes of Service in that he did not have "... five years service at the post of Animal Husbandry Officer/Assistant Animal Husbandry Officer". 5

The relevant date by which this interested party ought to have possessed the required qualifications is the date on which the request for the filling of the vacancy under s. 17 of the Law was received by the respondent Commission, that is the 8th February 1982 (for the eight posts) and the 30th April 1982 (for the 9th post) (see *Republic v. Katerina Pericleous and others* (1984) 3 C.L.R. p. 577. 10

From the perusal of the personal file and confidential reports of this interested party the following facts transpire. 15

He was employed as a daily paid Assistant Animal Husbandry Officer from 6th December 1971 to 28th February 1974.

On the 1st March 1974 he was first appointed in the public service to the temporary (Development) post of Assistant Animal Husbandry Officer in the Department of Agriculture on a month to month basis. 20

From September 1976 to March 1980, he was absent on study leave abroad on a scholarship granted to him for the purpose of studies at the University of Manitoba, Canada, as a result of which he obtained the degree of Doctor of Philosophy in Animal Science. He returned to work at the Department of Agriculture on the 27th March 1980. 25

So in effect his service, if continuous, from 1st March, 1974 to 30th April, 1982, would have been eight years and two months. He was away on study leave for three years and seven months which when deducted reduces his service to four years and seven months. 30

However, in accordance with Decision No. 12.655 of the Council of Ministers, as amended by its decisions of the 10th, 11th and 12th February 1982, post-graduate titles, not constituting a necessary qualification for a post, 35

can be considered as service or experience of up to two years. And as there is nothing in the relevant schemes of service that actual service is required, it would be quite in order for this officer to be credited with up to two years  
 5 service in respect of his degree since it does not constitute a necessary qualification. (See on this the case of *Economides v. The Republic* (1973) 3 C.L.R. 410 at pp. 412-413.)

Thus his service would become six years and seven months.

10 We must also not lose sight of the fact that his length of service was considered by the Departmental Board during the consideration of his eligibility for the post and ability to satisfy the requirements of the scheme of service and he was so regarded as eligible for the post. In fact they  
 15 ought to know about the length of his absence which is born out by the contents of the file—Exhibit 13—that was kept at their office and about which they must have been aware.

It was also argued in respect of this interested party  
 20 that since he held a temporary post and not a permanent one, he could not be eligible for promotion as by virtue of s. 28 of the Public Service Law, he had to be the holder of a permanent post.

The applicants based their argument on the expression  
 25 «μόνιμον καθόρισσιν» appearing on the Greek text of s.28 of the Law. It is obvious from the perusal of the section as a whole that the aforesaid expression cannot be considered as anything else but as referring to the substantive status of an officer and not to the type of post he holds.

30 Useful reference should also be made to the interpretation section of the Law, s. 2 where “public service” is defined as the holder whether substantive or temporary or acting of a public office.

In the case of *Menelaos Georghiades v. The Republic*  
 35 (1966) 3 C.L.R. 827 at pp. 846-847 it was stated:

”It has been argued that he could not have been taken into account as a candidate for promotion, to one of the vacancies, because being a temporary un-

established officer he was not a member of the 'public service'.

It is quite clear that the Public Service Commission exercises its relevant competence, under Article 125 of the Constitution in relation to public officers. 'Public officer' is defined, in Article 122 of the Constitution, to mean 'the holder, whether substantive or temporary or acting, of a 'public office'; and 'public office' is defined, in Article 122, as 'an office in the public service'.

I am, therefore, of the view that it was not improper for the Commission, in the exercise of its discretion, to decide to consider an unestablished officer, such as interested party Phocas together with established officers, such as the applicants, for purposes of promotion to a vacant public office.

It has been argued that such a course was contrary to General Order II/1.14. In the first place, as pointed out already earlier in this judgment, General Orders do not have the force of Law. Secondly, the context of the particular General Order is such that it does not exclude, under all circumstances, promoting a nonpermanent officer."

Of course this case must be read in the light of General Order II/1.14 where it is stated that:

"Promotion posts will usually be filled by the promotion of permanent civil servants."

and promotion is defined as:

- "(a) any change in a permanent officer's substantive status which carries with it an increase in the officer's remuneration; or
- (b) any change in a permanent officer's substantive status which carries with it the emplacement of the officer in a higher division of the public service, or on a salary scale with a higher maximum whether the officer's remuneration at the time is increased by such a change or not."

On the other hand, the Public Service Law, provides in section 86(1):

5 “... any regulation or public instruments and the General Orders and administrative instructions contained in circulars or otherwise and the existing practice relating to the public service and public officers shall continue to be applicable in so far as they are not inconsistent with the provisions of this Law.”

10 Also, section 28 defines promotion as “any change in an officer’s substantive status...” and section 30(1) (c) provides that “promotion offices which shall be filled by the promotion of officers serving in...”

“Service” is defined in section 2 of the Law as “public service” which is:

15 “public service” means any service under the Republic other than the judicial service of the Republic or service in the Armed or Security Forces of the Republic or service in the office of Attorney-General of the Republic or Auditor-General or Accountant-General  
20 or their Deputies or service in any office in respect of which other provision is made by Law or service by persons whose remuneration is calculated on a daily basis.”

25 The word “permanent” appearing in the General Orders no longer appears in the Law and since the Law supersedes the General Orders, it is clear that a public servant no longer had to be a permanent officer in order to be preferred for promotion. This ground therefore fails.

30 The next argument concerning this interested party is that his confidential reports for the years 1980 and 1981 are irregular in that the reporting officer and the countersigning officer are the same person, that is the Director of the Department of Agriculture. It may be that normally  
35 the reporting officer and countersigning officer might not be the same person, but where, however, the reporting officer is the Head of Department, such requirement is dispensed. Therefore this argument must also fail.

It was further argued, as regards this interested party

that his promotion is wrong in Law as promotions cannot be made on probation, as it was done in his case.

There is nothing in the Law which says that promotions of temporary officers to permanent posts cannot be made on probation. But even if they cannot, the sub judge decision not being to promote the interested party on probation, but merely to promote him, any irregularity in this would not be such as to affect the formal validity of the administrative act leading to the promotion, if at all, it may only affect the validity of the offer made under section 44 of the Law. As such therefore it cannot be challenged by the applicants in the present recourses as they have no legitimate interest in the matter. It might only be so challenged by the interested party who, however, in the present case, has unreservedly accepted the respondent's offer for promotion.

It should also be pointed out that where any possible invalidity of the offer were to lead to the annulment of the sub judge decision, in the event of the interested party's reappointment, it would lead to the absurd result of his being given better terms of office than those already offered and accepted.

As regards interested party Michael Michaelides, it was argued that since no particular reference was made to him, the sub judge decision lacks due reasoning.

This ground must fail too. The respondent Commission was not required to record in detail every particular aspect dealt by them in reaching the sub judge decision. See on this *Economou Judicial Control of Administrative Discretion* (1965) at p. 233. The decision is duly reasoned in all respects and any reasoning that it may be found to be lacking may be fully supplemented from the files.

Finally it was argued that the respondent Commission wrongly took into consideration only the confidential reports of the last two years of the candidates and not their whole careers. This is clearly not so. All the files were before the respondent Commission at all relevant times and since the presumption of regularity exists it must be accepted, in the absence of evidence to the contrary that

the whole career of the candidates and all that was before the Commission was duly considered.

5 In conclusion I need only say that on the totality of the material before the respondent Commission the sub judice decision was reasonably open to it and that it exercised its discretion properly in the circumstances.

In the result, these recourses fail and are hereby dismissed. There will be, however, no order as to costs.

10

*Recourses dismissed.*  
*No order as to costs.*