

1986 June 24

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS KASTELLANOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 400/84).

*Administrative Law—Promotions of Public Officers—Recourse
challenging the promotion of one of those selected for pro-
motion—Recourse successful—In reconsidering the matter
the administration is not bound to revoke the promotions
of the other originally successful candidates.*

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*Public Officers—Promotions—Scheme of Service—Failure to
carry out a sufficient inquiry as to the qualifications of
the interested party—And failure to interpret the Scheme
so that the Court is unable to exercise its control as to
the reasonableness or not of such interpretation—Grounds
of annulment.*

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*Administrative Law—Promotions of Public Officers—Addressing
to the Commission a complaint as to the process it fol-
lowed—Relevant letter written after the relevant decision
was taken—No justification for the Commission to re-
examine the case on the basis of such complaint—The only
course open to the complainant is a recourse to this
Court.*

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The respondent Commission promoted with effect as
from 15.10.81 the applicant and three of the interested
parties in this recourse, namely Neophytou, Pavlou and

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HjiChristou (hereinafter referred to as the three interested parties) to the post of Senior Welfare Officer. As a result of a recourse filed by the fourth interested party Papaonisiforou against the promotion of only the applicant, applicant's said promotion was annulled by this Court. In re-examining the matter the Commission decided to evaluate for this purpose and compare, as regards all relevant criteria existing on 10.10.81, i.e. on the day of its previous decision, all the candidates then before it, except the three interested parties, whose promotion had not been challenged in the said recourse by Papaonisiforou. Finally the Commission decided to promote interested party Papaonisiforou retrospectively as from 15.10.81. By letter dated 23.5.84 counsel for the applicant protested against the course followed by the Commission. By letter dated 26.9.84 the Commission replied that the process it followed was not legally defective.

On 2.8.84 applicant filed the present recourse. Counsel for the applicant submitted that the Commission, in re-considering the matter, ought to have revoked completely its previous decision and proceed to compare all candidates before it, including the three interested parties. He further submitted that interested party Papaonisiforou was not qualified for promotion under the relevant scheme of service and that the Commission failed to carry out a due inquiry in this respect.

As regards the qualifications of Papaonisiforou the relevant minutes of the Commission contain the following statement, namely "From the aspect of qualifications at the material time Papaonisiforou possessed a Diploma of the School Welfare Studies, Orlanda Child's Pierce College of Athens, namely special training which she acquired after three years' studies..."

Counsel for the applicant submitted that the above qualification could have been treated as satisfying either the requirement under paragraph 1(a) or the requirement under paragraph 1(b) of the scheme of service^{*}, but not both.

* These paragraphs of the scheme of service are quoted at pp. 1022-1023 post.

Held, annulling the promotion of Papaonisiforou, but dismissing the recourse against the promotion of the three interested parties and the omission to reply to applicant's letter dated 23.5.84:

(1) The promotions of the three interested parties were not affected by the decision in the recourse filed by Papaonisiforou. In case of a successful recourse filed by an applicant against only one of the appointees, the administration is not bound to revoke the remaining appointments, effected by the same administrative action, which were not challenged. It follows that the procedure followed by the respondent Commission was the correct one.

(2) The sub judice decision was taken on 8.5.84. After the completion of such process, there was no justification for the Commission to re-examine the matter on the basis of the complaints in the letter of counsel of the applicant dated 23.5.84. The process could only have been contested by means of a recourse to this Court, a course which applicant finally took. Nevertheless, an answer was given to the said letter after the filing of the recourse.

(3) In the circumstances of the case the Court has formed the view that the respondent Commission did not address its mind into the aspect of the qualifications of the interested party Papaonisiforou and did not carry out a sufficient inquiry as to the nature of the qualifications possessed by her. It also failed to interpret the relevant scheme of service regarding this question, and, thus, the Court is unable to exercise its control as to the reasonableness or not of such interpretation.

Sub judice decision annulled in so far only as the promotion of interested party Papaonisiforou is concerned. No Order as to costs.

Cases referred to:

- Papapetrou v. The Republic*, 2 R.S.C.C. 61;
Georghiades v. The Republic (1967) 3 C.L.R. 653;
Mikellidou v. The Republic (1981) 3 C.L.R. 461;

Mytides v. The Republic (1983) 3 C.L.R. 1096;

Decision No 2015/50 of the Greek Council of State.

Recourse.

5 Recourse against the decision of the respondents to promote the interested parties to the post of Senior Welfare Officer in preference and instead of the applicant.

A. S. Angelides, for the applicant.

A. Vassiliades, for the respondent.

A. Markides, for interested party M. Papaonisiforou.

10 *A. Panayiotou*, for interested party M. Neophytou.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By means of the present recourse the applicant seeks the following relief:

15 A. Declaration and/or judgment of the Court that the decision of the Public Service Commission published in the Official Gazette of the 20th July, 1984, by means of which Myrianthi Papaonisiforou was promoted retrospectively, instead of the applicant, to the post of Senior
20 Welfare Officer is null and/or void.

B. Declaration of the Court that the omission of the Public Service Commission to respond, examine and answer, to a letter of the applicant as from 23.5.84 is null and void.

25 C. Declaration and/or judgment of the Court that the promotion with effect as from 15.10.81 of Malamo Neophytou, Christakis Pavlou and Antonios HadjiChristou to the post of Senior Welfare Officer is null.

30 D. Declaration of the Court not to approve the decision of the Public Service Commission.

E. Costs.

The history of events which led the applicant to the filing of his present recourse is briefly as follows:

On the 10th October, 1981, after the completion of the relevant process in this respect the respondent Commission decided to promote to the post of Senior Welfare Officer, with effect as from the 15th October, 1981, the applicant and the three interested parties in the present proceedings, namely M. Neophytou, Chr. Pavlou and A. HadjiChristou.

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Among the candidates for promotion to this post there were included Demetra Papantoniou and Myrianthi Papaonisiforou who filed against the promotion of only the applicant, as an interested party in those proceedings, recourses Nos. 487/81 and 42/82, respectively. The recourse of applicant Papantoniou in Case No. 487/81 was dismissed, whereas the recourse of applicant Papaonisiforou in Case No. 42/82 succeeded and the sub judice decision in so far as it concerned the applicant in the present case, who was the interested party in that case, was annulled (see, in this respect, *Papantoniou and another v. The Republic*, (1983) 3 C.L.R. 64).

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Against the aforesaid first instance judgment of the Court, there was filed an appeal which was dismissed by the Full Bench of the Court (see *The Public Service Commission v. Papaonisiforou*, (1984) 3 C.L.R. 370).

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In consequence of the dismissal of that appeal, the respondent Commission re-examined the matter of the filling of that post which became vacant as a result of the annulment of the promotion of applicant G. Kastellanos to such post and decided to evaluate for this purpose and compare, as regards all relevant criteria existing on the 10th October, 1981, all the candidates then before it, except the three interested parties whose promotions were not challenged by means of recourse 42/82. The respondent Commission then, on the basis of all relevant material before it, concluded that the selection ought to have been made between candidates G. Kastellanos and M. Papaonisiforou, who were considered superior to all others and decided finally to promote retrospectively, as from the 15th October, 1981, interested party Papaonisiforou, instead of the applicant.

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On the 23rd May, 1984, counsel for the applicant ad-

5 dressed a letter to the Chairman of the Public Service Commission complaining against the process which was followed for the selection of the interested party and submitting, mainly, that the Public Service Commission ought to have revoked its decision as a whole and include in the comparison of the candidates the three interested parties who were excluded because their promotions were treated as not having been affected, and, also, that the interested party was not qualified for promotion.

10 On the basis of a legal advice from the Office of the respondent Commission, dated the 21st September, 1984 (see *exhibit 9*) there was sent to counsel for the applicant a reply to his aforesaid letter on the 26th September, 1984, stating that the process which was followed by the Commission during the re-examination of the matter of the
15 filling of the post concerned was not legally defective.

In the meantime, on the 2nd August, 1984, the applicant filed, through his counsel, the present recourse claiming the relief stated above.

20 I shall first examine the arguments advanced by counsel for the applicant in support of prayer 'C' in the motion for relief, namely his complaint against the promotions of interested parties M. Neophytou, Chr. Pavlou and A. HadjiChristou.

25 On this issue, counsel for the applicant submitted that the misconception of the Public Service Commission regarding the merits of Papaonisiforou, which was the main ground for the annulment of the promotion of the applicant in the previous proceedings before the Court, influenced the whole administrative action and that the
30 Commission, in reconsidering the matter, ought to have revoked completely its decision and proceed to compare all candidates then before it, including, also, the three above named interested parties. Therefore, he argued, the respondent wrongly considered that the vacancy to be filled
35 in so far as the applicant was concerned.

On the other hand, counsel for the respondent sub-

mitted that as the decision relating to the promotions of the three interested parties was published on the 13th November, 1981, and no recourse was then filed against their promotions, the present recourse, in so far as it purports to challenge such promotions, is out of time.

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In reply to this submission counsel for the applicant put forward the argument that the applicant had acquired a legitimate interest to challenge the promotions of those interested parties only during the reconsideration of the matter by the Public Service Commission, that is when he was excluded from the promotions and that consequently his recourse could not be treated as having been filed out of time.

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In the case of *Papantoniou*, supra, Pikiis J. had stated the following (at pp. 67, 74):-

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“The applicants confined their challenge to the appointment of one of those selected, namely Georghios Kastellanos, joined as an interested party in the proceedings in hand. Apparently, the applicants acknowledge, it was reasonably open to the respondents to choose the remaining appointees to the post of Senior Welfare Officer

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For all the above reasons, the recourse of the applicant in Case No. 42/82 succeeds and the subject decision, so far as it concerns the applicant and the interested party, is annulled.”

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It is thus clear that the promotions of the three other interested parties which were not challenged then by means of a recourse were not affected and have remained as decided then by the respondent Commission.

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Regarding the obligation of an administrative organ to revoke its decision as a whole in case it has been partially annulled after the filing of a successful recourse against such decision, I would like to refer, by way of useful guidance, to the Conclusions from the Case-Law

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of the Council of State in Greece, 1929-1959, p. 280. Kyriacopoulos on Greek Administrative Law, 4th ed., V.C., p. 151, footnote 29, and, particularly, to the Decision of the Council of State in Greece in Case 2015/50.

5 By means of such decision the Council of State in Greece held that in case of a successful recourse filed by an applicant against only one of the appointees and the annulment of such appointment as a result of the decision of the Council of State, the administration is not bound to
10 revoke the remaining appointments, effected by the same administrative action, which were not challenged.

In view of the above, I have reached the conclusion that the procedure followed by the respondent Commission, against which counsel for the applicant is complaining, was the correct one and that the Commission
15 was not bound to revoke the promotions of the three interested parties concerned because the recourse of M. Papaonisiforou succeeded and the sub judice decision was annulled only in so far as the applicant was concerned
20 and all other promotions, which have not been contested, have remained unaffected. For this reason, the present recourse of the applicant, which was filed on the 2nd August, 1984, and was challenging the promotions made as from the 15th October, 1981, is out of time and it is
25 dismissed in so far as the interested parties M. Neophytou, Chr. Pavlou and A. HadjiChristou are concerned.

I shall now deal briefly with the argument of counsel for the applicant that the failure of the respondent to
30 examine the complaints contained in his letter dated the 23rd May, 1984, and reply to it, is null and void and of no effect whatsoever.

The re-examination of the matter by the Commission of the filling of one post of Senior Welfare Officer after the judgment of the Full Bench of this Court in the case
35 *The Public Service Commission v. Papaonisiforou*, supra, took place on the 8th May, 1984, and the sub judice decision was reached on that date. After the completion of such process there was no justification for the Commission to reconsider its decision on the basis of the ar-

guments and complaints submitted to it by counsel for the applicant by means of his letter of the 23rd May, 1984, because, under the circumstances, counsel for the applicant could have only contested such process by way of a recourse before the administrative Court, a course which he finally took. Nevertheless, an answer was addressed to such letter on the 26th September, 1984, and despite the fact that such letter was sent to counsel for the applicant after the filing of the recourse, I do not think that later on such argument could be carried any further. Therefore, the relief claimed by the applicant by means of his prayer 'B' in the motion for relief cannot succeed.

What remains now to be considered are the arguments advanced by counsel for the applicant regarding the validity of the promotion of interested party Papaonisiforou instead of him. His argument in this respect was that the interested party was not qualified for promotion under the relevant scheme of service and that the respondent Commission has failed to carry out a due inquiry into the possession by her of the required, under the relevant scheme of service, qualifications.

Paragraphs 1(a) and 2 of the scheme of service for the post concerned, which set out the qualifications which candidates must possess, provide as follows:-

(1) (α) Δίπλωμα τριετούς Φοιτήσεως εις 'Ανωτέραν Σχολήν Κοινωνικής 'Εργασίας/Εύημερίας ή άλλο ισότιμον δίπλωμα επαγγελματικής κατάρτισεως εις την Κοινωνικήν 'Εργασίαν/Εύημερίαν και τριετής τουλάχιστον ύπηρεσία εις την θέσιν Λειτουργού Εύημερίας'

.....

(2) Ειδική εκπαίδευσις ή μετεκπαίδευσις εις την Κοινωνικήν 'Εργασίαν/Εύημερίαν ήτις να περιλαμβάνη φοίτησιν εις ανεγνωρισμένον εκπαιδευτικόν ίδρυμα και απόκτησιν σχετικού διπλώματος/πιστοποιητικού.

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(" (1) (a) A diploma of a three years course in a

School of Social Work/Welfare or other equivalent diploma of vocational training in the Social Work/Welfare and at least three years service in the post of Welfare Officer;

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.....
 (2) Special or post-graduate training in Social Work/Welfare which will include studies in a recognized educational institution and possession of a relevant diploma/certificate.

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As to the inquiry which was carried out by the Public Service Commission into the matter of the possession by the interested party of the qualifications required by the scheme of service it is to be found in the relevant minutes of the meeting of the respondent the following:

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«Από πλευράς προσόντων κατά τον ουσιώδη χρόνο η Παπαονησιφόρου διέθετε Diploma of the School of Social Welfare Studies, Orlinda Child's Pierce College of Athens, δηλαδή ειδική κατάρτιση που απόκτησε ύστερα από σπουδές τριών ετών... »

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(“From the aspect of qualifications at the material time Papaonisiforou possessed a Diploma of the School of Social Welfare Studies, Orlinda Child's Pierce College of Athens, namely special training which she acquired after three years studies,... ”)

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Counsel for the applicant submitted that the qualification possessed by the interested party could have been treated as satisfying either the requirements under paragraph 1(a) of the relevant scheme of service, or the requirements under paragraph (2) above, but not both.

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On the other hand, counsel for the respondent submitted that the nature of the studies carried out by the interested party at the Pierce College and the possession by her of the aforesaid Diploma could be treated as satisfying, at the same time, both the aforesaid requirements of paragraph 1(a) and (2) of the scheme of service.

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It has been judicially established that the interpreta-

tion and application of the schemes of service are matters falling within the powers of the Public Service Commission (see, in this respect, *Papapetrou v. The Republic*, 2 R.S.C.C. 61, *Georghiades v. The Republic*, (1967) 3 C.L.R. 653, *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461, and *Mytides v. The Republic*, (1983) 3 C.L.R. 1096), and that the Court may exercise its judicial control only as to whether such interpretation was reasonably open to the appointing authority. 5

In the circumstances of the present case and having in mind the arguments advanced by counsel on the issue under consideration, I have formed the view that the Commission did not address its mind into this aspect of the case and did not carry out a sufficient inquiry as to the nature of the qualifications possessed by the interested party. It further appears that it has failed to interpret the relevant scheme of service regarding this particular question and, thus, the Court is unable to exercise its control as to the reasonableness or not of such interpretation. 10
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I do not find the contents of the relevant minutes of the Commission in this respect as having been drafted in an adequately clear and sufficient manner, so as to leave the Court with no doubt as to the interpretation given by it to the scheme of service regarding the sub judice matter of the required under it qualifications. 25

As the failure to carry out a due inquiry is by itself a ground for the annulment of the decision concerned, I do not propose to deal with any other ground raised in the present proceedings. 30

In the result, the present recourse succeeds partly and the sub judice decision is annulled in so far only as the promotion of interested party Papaonisiforou is concerned, which has to be re-examined by the respondent Commission. 35

*Sub judice decision
partly annulled.*