

1986 June 26

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS ALEXANDROU AND OTHERS,

Applicants,

v.

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

Respondent.

(Case No. 391/83).

Public Officers—Promotions—Scheme of Service—Qualifications of candidates—Failure to conduct a due inquiry as to the matter of qualifications—Ground of annulment.

5 *Administrative Law—Collective Organs—Public Service Commission—Change in its composition during the preparatory stage of the procedure of filling vacant posts by promotion—In the circumstances of this case such change did not affect the validity of the sub judice promotions.*

10 The applicants impugn by means of the present recourse the promotion of the interested parties to the post of Inspector in the Department of Prisons.

15 The first report of the Departmental Committee to the P.S.C. dated 19.2.82 was withdrawn and replaced by another report dated 14.4.82. As the relevant approval of the Ministry of Finance was for the filling of one vacant and one supernumerary post of Inspector in the Department of Prisons and as at its meeting of 22.5.82 the P.S.C. found it impossible to fill the supernumerary post, the P.S.C. referred the matter back to the Departmental
20 Committee for considering the filling of only one post.

As, however, on the 1.2.83 the filling of another vacancy in the post in question was approved, the Departmental Committee was invited to submit recommendations for two vacant posts.

As a result the said Committee submitted to the P.S.C. a new report dated 24.5.83 and withdrew its previous report dated 14.4.82. 5

It should be noted that as it appears from its first report dated 19.2.82 the Departmental Committee found that seven of the candidates did not possess the required standard of education. In its second report, however, dated 14.4.82, it recommended the same 8 candidates as before, stating that the remaining nine were inferior to them, but there is no mention of educational qualifications. The P.S.C. at its meeting of 22.5.82 stated at its minutes that ".... The Departmental Committee.... found that all 17 candidates possess the qualifications required....". In its last report dated 24.5.83 the Departmental Committee once again makes no reference to educational qualifications and recommends the same eight candidates. At its meeting of 27.7.83 the P.S.C. stated that ".... the remaining eight candidates were not recommended because they were found.... inferior to those recommended". At the same meeting the P.S.C. decided to include candidate Christou in the final consideration because of his confidential reports. 10
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The Head of the Department recommended for promotion the two interested parties. He stated also that they possess the standard of general education required by the scheme of service. 30

Finally the P.S.C. having ascertained that candidate Christou did not possess the required educational qualifications, promoted the two interested parties to the said post.

The educational qualifications of interested party Pontikides consist of a certificate that he attended tutorial lessons at KTE for a period of three years, in Greek, Mathematics, English and General Knowledge. 35

The relevant scheme of service provides as a qualification for the post in question "A good general education of a leaving certificate of a five year secondary school....".

5 Certain candidates did possess a secondary school leaving certificate, but certain others, amongst whom interested party Pontikides and applicants Alexandrou and Antoniou did not but had either attended for a number of years certain other schools or courses or
10 possessed certain other certificates.

Held, annulling the sub judice decision: (1) Whether a candidate possesses or not the required qualifications is a matter within the discretionary powers of the Public Service Commission and this Court will not interfere unless such
15 discretion was not exercised reasonably. The Public Service Commission, however, must conduct an inquiry into the possession by the candidates of the required qualifications. Failure to conduct such an inquiry renders the promotions
20 invalid.

(2) In this case no inquiry was made or any evaluation of the qualifications of those candidates, who did not possess a secondary school leaving certificate. Furthermore in this case the first Departmental Committee failed to make a list of those candidates possessing the required qualifications, as is required by reg. 4 of the Regulations concerning the functions of Departmental Committees and the respondent Commission relied on the report of the Departmental Committee and the statements of the Head of the Department regarding the standard of education of certain candidates and refrained from conducting any
25 further inquiry. Its failure to evaluate the qualifications of candidates results in the absence of due inquiry into the matter, which is a ground of annulment.

(3) The contention of counsel that the powers of the respondent Commission are restricted by the findings of the Departmental Committee cannot be accepted. The relevant Regulations must be interpreted in such a way as to be
30 intra vires the Law.

(4) As regards the contention of counsel for the applicants that the respondent Commission was improperly composed as its composition was changing all the time, it should be observed that, though this is true as regards the preparatory stage of whether or not the supernumerary post should be filled, from the time it met to consider the last report of the Departmental Committee until its final decision, it was properly composed. 5

Sub judice decision annulled.
No order as to costs. 10

Cases referred to:

- Zinieris (No. 1) v. The Republic* (1975) 3 C.L.R. 13;
Aristotelous v. The Republic (1969) 3 C.L.R. 232;
Constantinou v. The Republic (1976) 3 C.L.R. 86;
Michael and Another v. Public Service Commission (1982) 15
3 C.L.R. 726;
Mytides and Another v. The Republic (1983) 3 C.L.R.
1096;
Komodromou v. The Republic (1985) 3 C.L.R. 2250;
Frangoullides and Another v. Public Service Commission 20
(1985) 3 C.L.R. 1680.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Inspector in the Department of Prisons in preference and instead of the applicants. 25

A. S. Angelides, for the applicants.

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

Cur. adv. vult. 30

SAVVIDES J. read the following judgment. The five applicants in this case challenge the validity of the decision

of the respondent dated 27.8.83, to promote Andreas Pontikides and Antonis Papadopoulos to the post of Inspector in the Department of Prisons instead of them.

5 Originally, another applicant, namely, Nicos Stratis had joined in this recourse as a sixth applicant, but in the course of the proceedings, on his application, he was struck out as a party.

10 All applicants and the interested parties were at the material time, holding the post of Senior Warden in the Department of Prisons. After the approval of the Ministry of Finance was given for the filling of one vacant and one supernumerary post of Inspector in the Department of Prisons, a Departmental Committee was set up in order to consider the matter. Accordingly the P.S.C. sent a list of
15 the names of the candidates for promotion to the said post (17 in number) to the Departmental Committee, together with the confidential reports of 12 of them, stating at the same time that the confidential reports of the remaining
20 five candidates were at the Attorney-General's office in relation to certain recourses and could be made available to the Committee when needed.

The Departmental Committee submitted a report to the P.S.C. by letter dated 19.2.1982, which it later withdrew and replaced by another report, dated 14.4.1982. By this
25 report the Departmental Committee recommended for promotion 8 candidates amongst whom the interested parties and two of the applicants, namely, Georghios Kamenos and Andreas Tilemachou (Appendix 8 to the opposition).

30 The P.S.C. at its meeting of 22.5.1982, considered the report of the Departmental Committee and found that the filling of the supernumerary post was not possible. As a result, it decided to refer the matter back to the Departmental Committee for considering the filling of only one post. The P.S.C. by its letter of the 7th July, 1982,
35 informed the Departmental Committee of its decision and sent to it the files containing the confidential reports of the 17 candidates (Appendix 10 to the opposition).

On the 1st February, 1983 the approval of the Ministry

of Finance was given for the filling of another vacancy in the post in question and the P.S.C. was informed accordingly by letter dated 3.3.1983. The P.S.C. decided as a result, at its meeting of 10.3.1983, to invite the Departmental Committee to take the new vacancy into consideration and submit recommendations for two vacant posts. 5

The Departmental Committee submitted its new report on the 24th May, 1983, withdrawing its previous one dated 14.4.1982. This new report reads as follows (Appendix 18). 10

"With reference to your letter

The Committee having taken into consideration the established criteria, decided to recommend the following eight out of the 17 Senior Wardens serving today in the Department of Prisons. 15

The names of the candidates are submitted in alphabetical order.

1. Zachariades Georghios
2. Kamenos Georghios
3. Kashieris Loizos 20
4. Papadopoulos Antonios
5. Stratis Nicos
6. Tilemachou Andreas
7. HadjiPanayiotou Mikis.

The following nine Senior Wardens are not recommended because they are inferior compared to those recommended. 25

1. Alexandrou Nicos
2. Antoniou Petros
3. Yiannouri Petros 30

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(The names of the remaining non-recommended candidates follow).

- 5 The P.S.C. read the report of the Departmental Committee at its meeting of 27.7.1983 and decided to consider the filling of the vacancies on another date and to include, in the final consideration, together with those candidates recommended by the Departmental Committee, Mr. Stylianos Christou, who was not so recommended, but had been
10 rated as "very good" in his last three confidential reports. It also decided that the Senior Superintendent of Prisons was to be invited to attend the meeting (Appendix 19).

- 15 The said meeting was convened on the 23rd August, 1983, and the Head of the Department, who was present, said, according to the minutes, the following (Appendix 20):

- 20 "Christou cannot be considered as possessing the standard of general education required by the scheme of service of the post of Inspector. The same officer made a statement to the Senior Superintendent of Prisons, which shows that the standard of his education is that of elementary education.

- 25 Andreas Pontikides and Georghios Zachariades possess the standard of general education required by the Scheme of Service.

- 30 Andreas Pontikides and Antonis Papadopoulos, who during 1983 presented excellent performance in their work and can impose law, order and discipline and at the same time possess versatility in their approach of convicts, are recommended for promotion. Both in their present post as well as in the post for which they are destined they are the best and are distinguished from the other candidates.

- 35 The remaining candidates have not indicated any

special change and remain on the level of the previous years which is reflected in their confidential reports."

Finally the P.S.C., at its meeting of 27.8.1983, after interviewing candidate Christou as to the standard of his education, found that such candidate did not possess the necessary standard of education required by the scheme of service. It then proceeded to consider the filling of the posts. The minutes, in this respect, read as follows (Appendix 21):

"The Commission considered the material elements from the file for the filling of the post, as well as the personal files and confidential reports of the candidates and took into consideration the conclusions of the Departmental Committee and the views and recommendations of the Senior Superintendent of Prisons.

The Commission noted that those recommended by the Senior Superintendent had very good confidential reports during the last years and that this year they were considered as excellent, whilst the rest remained on the same levels of the previous year.

Taking also into consideration the qualifications and seniority of the candidates the Commission adopted the recommendation of the Senior Superintendent for Pontikides and Papadopoulos.

In conclusion the Commission, taking into account all the material before it found, on the basis of the established criteria as a whole (merits, qualifications, seniority) that the following are superior to the other candidates and decided to promote them as the most suitable to the permanent (Ord. Dev.) post of Inspector in the Department of Prisons as from 15.9.1983:

1. Papadopoulos Antonis

2. Pontikides Andreas."

The applicants filed the present recourse challenging the above decision.

Counsel for applicants based his address on the following grounds:

- 5 1. The procedure followed by the Departmental Committee was bad in law, as well as its findings in as far as it excluded from its recommendation three of the applicants.
- 10 2. The sub judge promotions were made contrary to section 44(1)(c) of the Law in that the interested parties did not have at least two years service in their previous post, as it is inferred by that section.
- 15 3. Bad composition of the P.S.C. in that it was not always the same from the time it started considering the matter of promotions until the sub judge decision was reached.
4. Lack of due inquiry.
5. Misconception of fact.
6. Lack of due reasoning.
- 20 7. The respondent failed in its paramount duty to select the best candidates.

25 Counsel also argued by way of supplementary address that the fact that one of the interested parties had been convicted of a criminal offence was not put before the P.S.C.

30 At the stage of his reply to the address of counsel for the respondent, counsel for applicants argued that no due inquiry was made by the P.S.C. as to the possession by the candidates of the qualifications required by the scheme of service. Counsel argued in this respect that the statement of the Head of the Department to the P.S.C. that interested party Pontikides possessed the standard of general education required by the scheme of service, mis-

led the P.S.C. which relied on such statement and refrained from conducting an inquiry into the matter. It is counsel's contention that this interested party does not possess the standard of education required by the scheme of service in that the certificate which appears in his file to the effect that he attended tutorial lessons at KTE for a period of three years, in Greek, Mathematics, English and General knowledge is not of the same standard as a secondary school leaving certificate.

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It has been repeatedly stressed by this Court that the interpretation and application of the schemes of service is the task of the appointing organ, in this case the P.S.C. Whether a candidate possesses the relevant qualifications is a matter within the discretionary powers of the P.S.C. and the Court will not interfere unless such discretion was not exercised reasonably. (See *Zinieris (No. 1) v. The Republic* (1975) 3 C.L.R. 13). The P.S.C., however, must conduct an inquiry into the possession by the candidates of the required qualifications and failure to conduct such an inquiry renders the promotions invalid. (see *Aristotelous v. Republic* (1969) 3 C.L.R. 232; *Constantinidou v. The Republic* (1976) 3 C.L.R. 86). The scheme of service reads, in this respect, as follows:

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“Qualifications Required:

A good general education not below the standard of a leaving certificate of a five year secondary school; should have passed the examination in Prisons legislation and regulations; a knowledge of English would be an advantage. A high moral character, strong personality and stability of temperament; ability to impose and maintain discipline and experience in handling men.”

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As rightly pointed out by counsel for the respondent, the educational qualification required by the said scheme of service is not a secondary school leaving certificate, but a general education not below the standard of a five year secondary school. From what appears from the tables attached to appendix 3 (which was sent by the P.S.C. to the Departmental Committee) containing the service re-

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cord and qualifications of the 17 candidates, certain of them did possess a secondary school leaving certificate satisfying thus the educational standard required by the scheme of service. There are, however, certain others, amongst whom interested party Pontikides and applicants Alexandrou and Antoniou, who did not possess a secondary school leaving certificate, but had either attended for a number of years certain other schools or courses or possessed certain other certificates. In the cases of those officers, an inquiry should have been conducted as to whether they were possessed of the standard of education required by the scheme of service.

As it appears from the material before me, no inquiry was made, or any evaluation of the qualifications of those candidates.

At its first report (19.2.82, Appendix 7) which was later withdrawn, the Departmental Committee found that seven of the candidates did not possess the required standard of education. At its later report (Appendix 8) no mention of educational qualifications is made but the Departmental Committee recommended the same 8 candidates as before, stating that the remaining 9 were inferior to them. The P.S.C. at its meeting dated 22.5.82 (Appendix 9) stated the following:

“In accordance with its later report the Departmental Committee, after considering the list of candidates, found that all 17 candidates possess the qualifications required by the relevant scheme of service.”

Also, in its last report (dated 24.5.1983) which was considered by the P.S.C. in reaching the sub judice decision the Departmental Committee again makes no reference to educational qualifications, but recommends the same 8 candidates. And at its meeting of 27.7.83, the P.S.C. stated the following:

“In its new report the Departmental Committee further stated that after taking into consideration the

established criteria selected eight out of the 17 candidates and recommended them for selection for promotion to the post of Inspector.

.....

The remaining nine candidates were not recommended because they were found, on the basis of the established criteria as a whole, inferior compared to those recommended. 5

The Commission, taking into account also Stylianos Christou who in the confidential reports submitted about him in the last three years was rated as very good to be included in the final consideration together with those recommended by the Departmental Committee." 10

Further, at the meeting of the P.S.C. of 23.8.1983 the Head of the Department stated that the standard of education of St. Christou is that of elementary education, whilst Andreas Pondikides possesses the standard of general education required by the scheme of service 15

Finally, the P.S.C. at its meeting of 27.8.1983, after interviewing candidate Christou and finding that he did not possess the required standard of education, proceeded without any further inquiry, to adopt the recommendations of the Head of the Department and appoint the two interested parties. 20 25

My conclusion from all the material before me, is that first the Departmental Committee failed to make a list of those candidates possessing the qualifications stated in the scheme of service, as is required by Regulation 4 of the Regulations concerning the functions of Departmental Committees (Appendix 22) and secondly, the P.S.C. relied on the report of the Departmental Committee and the statement of the Head of the Department regarding the standard of education of certain candidates and refrained from conducting any further inquiry. The fact that the P.S.C. called another candidate, Mr. Christou, for an interview, does not mean, by itself, that the P.S.C. conducted 30 35

a due inquiry into the matter of qualifications, since as it seems from the minutes, such candidate was called because he had very good confidential reports. The fact also that Pontikides possesses a certificate of attendance of certain tutorial lessons for a period of three years does not exonerate the P.S.C. from its duty to inquire into the matter and evaluate this certificate. The failure of the P.S.C. to evaluate the qualifications of the candidates results in the absence of a due inquiry into the matter, which is a ground for annulment (see *Aristotelous v. Republic* and *Constantinidou v. Republic* (supra)). The recourse, therefore, succeeds on this ground.

I will now deal very briefly with certain of the other points raised by counsel for applicants.

Counsel argued that the procedure before the Departmental Committee is bad in that the files of all applicants were not before it when the report was prepared. I find such argument untenable. As it emanates from the facts already narrated before the last report of the Departmental Committee dated 24.5.1983 was submitted (on which the P.S.C. based the sub judice decision), the P.S.C. had forwarded on the 7th July, 1982, the files of all 17 candidates to the Departmental Committee.

As to the contention of counsel that the powers of the P.S.C. are restricted by the Departmental Committee, again I cannot agree with this contention. It is obvious that the P.S.C. did not feel bound by the report of the Departmental Committee. It has also been found by this Court that the P.S.C. is not restricted by the findings of Departmental Committees and the Regulations must be interpreted in such a way as to be intra vires and not ultra vires the Law. (See *Michael and Another v. Public Service Commission* (1982) 3 C.L.R. 726; at pp. 740, 741; *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096 at pp. 1110, 1111; *Komodromou v. The Republic* (1985) 3 C.L.R. 2250. An appeal against the judgment in the case of *Michael* (supra) has been dismissed. (See *Frangoullides and Another v. P.S.C.* (1985) 3 C.L.R. 1680).

Another allegation of counsel is that the P.S.C. was

improperly composed as its composition was changing all the time. This is true regarding the preparatory stage, whether or not a supernumerary post should have been filled. As it can be seen from the minutes of the P.S.C. from the time it met to consider the last report of the Departmental Committee until its final decision was reached, it was properly composed. 5

In view of my findings as above and the fact that the sub judge decision has to be annulled for the reasons already explained, I find it unnecessary to deal with the contention of counsel for applicant that interested party Pontikides had been convicted by a Criminal Court for gambling and that this fact did not appear in the file of this interested party and was not placed before the Public Service Commission. This is a matter which may be considered by the Public Service Commission when reconsidering the case, in view of the fact that counsel for applicants by letter dated 15.11.1984 brought this matter to the knowledge of the P.S.C. 10 15

In the result, this recourse succeeds and the sub judge decision is annulled. 20

In the circumstances, I make no order for costs.

*Sub judge decision annulled.
No order as to costs.*