

1986 August 27

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTOS PANTELIDES.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 105/84).

*Educational Officers—Promotions—Judicial Control— Principles
applicable.*

By means of this recourse the applicant challenges the promotion of the interested party to the post of Inspector "A" in elementary education. The applicant was senior to the interested party by one year as an Inspector "B". The most recent confidential reports showed the two parties as equal in merit, but earlier reports present the interested party as being better than the applicant. Both parties had Master of Science degrees. Furthermore, the applicant obtained a Ph. D. in Development of Teacher Education in Cyprus, whereas the interested party obtained a Diploma for Primary School Inspector.

Held, dismissing the recourse: (1) This Court, as an administrative Court, does not interfere with an appointment or promotion, if the relevant decision was reasonably open to the respondent Commission.

(2) In the light of all the material placed before this Court and notwithstanding applicant's slight seniority, this Court cannot interfere in this case, especially as applicant failed to establish striking superiority.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Saruhan v. The Republic, 2 R.S.C.C. 133;

Georghiou v. The Republic (1976) 3 C.L.R. 74;

Savva v. The Republic (1983) 3 C.L.R. 230;

5 *Kalisperas v. The Republic* (1984) 3 C.L.R. 1494.

Recourse.

10 Recourse against the decision of the respondent to promote the interested party to the post of Inspector A in the Department of Elementary Education in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

A. S. Angelides, for the interested party.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant, who at the material time was an Inspector B in elementary education, challenges the decision of the Educational Service Commission to promote to the post of Inspector A, as
20 from 1st January 1984, another Inspector B, Fr. Constantinides (who will be referred to hereinafter as the "interested party").

25 The aforementioned post of Inspector A was a promotion post and the approval for the filling of three vacancies in such post was forwarded to the Commission on the 14th March 1983.

30 The Educational Service Commission considered the matter of the filling of the said vacancies on the 29th December 1983 and decided to promote to the post of Inspector A three Inspectors B one of whom was the interested party.

Counsel for the applicant had submitted that on the basis of merit, qualifications and seniority the applicant

was strikingly superior to the interested party and, therefore, the applicant should have been promoted. instead of the interested party, to the post concerned.

An examination of the careers of the applicant and of the interested party shows that the applicant was first appointed as a school-teacher on the 1st September 1952 and, eventually, he reached the post of Inspector B on the 1st September 1967. The interested party was first appointed as a school-teacher on the 1st September 1951 and he became an Inspector B on the 1st September 1968. The applicant was, therefore, senior to the interested party by one year as an Inspector B.

Both the applicant and the interested party possessed the qualifications required under the relevant scheme of service. After having been trained as teachers in Cyprus they pursued post-graduate studies in Greece and elsewhere abroad. As a result both of them obtained Master of Science degrees. Furthermore, the applicant received from the University of Wales a Doctor of Philosophy degree in relation to the Development of Teacher Education in Cyprus and the interested party a Diploma after a year's course of studies in England for Primary School Inspectors.

The most recent confidential reports for the applicant and the interested party present both of them as "excellent" in respect of ten items and "very good" in respect of two items, but earlier confidential reports present the interested party as being better than the applicant.

As it appears from the contents of the relevant minutes of the respondent Educational Service Commission all relevant factors, namely merit, qualifications, seniority, as well as the recommendations of the Head of the Department of Elementary Education, were considered by the Commission in reaching its sub judice decision.

It is well settled that this Court, as an administrative Court, will not interfere with a decision to appoint or promote taken by an organ such as the respondent Com-

mission if such decision was reasonably open to it within the limits of the proper exercise of its discretionary powers (see, inter alia, in this respect, *Saruhan v. The Republic*, 2 R.S.C.C. 133, 136, *Georghiou v. The Republic*, 5 (1976) 3 C.L.R. 74, 82, *Savva v. The Republic*, (1983) 3 C.L.R. 230, 236 and *Kalisperas v. The Republic*, (1984) 3 C.L.R. 1494, 1496).

10 In the present case having considered all the arguments advanced by counsel for the parties, as well as the material placed before me, I have reached the conclusion that it was reasonably open to the respondent Commission to promote the interested party notwithstanding the slight seniority of the applicant and that, therefore, I cannot interfere with the exercise of the discretionary powers of 15 the Commission, especially as it has not been established to my satisfaction that the applicant was on the whole strikingly superior to the interested party.

20 In the result the present recourse fails and is dismissed accordingly; but I shall not make any order as to its costs.

Recourse dismissed.

No order as to costs.