

1986 November 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PHOEDIAS EKTORIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 604/85).

Public Officers —Appointments/Promotions —First entry and promotion post—Post of Director-General of Ministries —Candidate serving in Ministry where vacancy occurs—An inconsequential factor—Seniority—Of very limited importance. 5

Public Officers —Appointments/Promotions —Interviews, performance at—Commission are the arbiters of such performance—Questions asked and answers given need not be recorded—But if questions irrelevant to duties of post or outside discretionary powers of Commission, the interview will be invalidated. 10

By means of this recourse the applicant challenges the appointment of the interested party to the post of Director-General, a first entry and promotion post. Though the applicant entered the service before the interested party, the latter was senior to the applicant, as he held a higher post in the hierarchy. In terms of merit the comparison was in favour of the interested party. Moreover, the interested party was rated at the interview as “very good”, whilst the interested party as “nearly very good”. 15 20

Counsel for the applicant complained, inter alia, of failure to keep proper records of the proceedings at the

interviews—in fact no record was kept of the questions asked other than one indicating the general nature of the questionnaire revolving round the ability of the candidates to perform the duties of the post in question. He, also, argued that the drop in applicant's ratings in his confidential reports for 1981, 1982 and 1983 coincided with a disciplinary investigation against him.

*Held, dismissing the recourse:* (1) Though the vacancy occurred in the Ministry of Agriculture that was an inconsequential consideration as the post of Director-General is interchangeable. The fact, therefore, that the interested party was serving in the said Ministry as Director of Agriculture gave him no advantage.

(2) Given the nature of the post in question, especially the ability and aptitude to head a department of government, seniority was a factor of very limited importance.

(3) There is nothing on record to show that the applicant was penalised in connection with the disciplinary investigation against him.

(4) The respondent Commission are the arbiters of the performance of the candidates in the live atmosphere in which the interviews are conducted. The Court is unable to sustain the submission that the questions asked and the answers given should be recorded. Only where questions wholly irrelevant to the duties of the post and the discretionary powers of the respondents are asked could the content of the question invalidate the interview. The performance at the interviews, though by no means a decisive factor, was also conducive to the selection of the interested party.

(5) Faced with the material before it, the selection of the interested party was fairly obvious, if not inevitable.

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027;

*Soteriadou v. The Republic* (1985) 3 C.L.R. 300;

*Ioannides v. The Republic* (1985) 3 C.L.R. 2450.

**Recourse.**

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Recourse against the decision of the respondent to promote the interested party to the post of Director-General, Ministry of Agriculture and Natural Resources, in preference and instead of the applicant.

*L. Papaphilippou with Ph. Valiantis*, for the applicant. 10

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

PIKIS J. read the following judgment. Phoedias Ektorides, the applicant, and Avraam Louca, the interested party, were candidates for appointment (promotion) to the post of Director-General, a first entry and promotion post. The vacancy occurred on the resignation of the Director-General of the Ministry of Agriculture, Mr. Papasolomontos, to assume Ministerial duties in that department of government. Soon afterwards the post was advertised on the directions of the Council of Ministers and applications were invited from interested parties. Though the vacancy occurred at the Ministry of Agriculture this was an inconsequential consideration for the posts of Directors-General are interchangeable and selection is made from the perspective of ability to head the administrative side of a Ministry. Consequently, the fact that the interested party was serving as Director of the Department of Agriculture gave him no advantage. Following the interview of the nineteen candidates who applied for appointment (another six withdrew their candidature), and examination of the material bearing on the applicants, they selected Avraam Louca as the most suitable candidate and, on that account, appointed him to the post. 15  
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Applicant complains that the decision is founded on an inadequate inquiry into the data relevant to the suitability of the candidates and rests on a defective reasoning or, more appropriately, on an inadequate reasoning. Also  
5 the allegation is made that respondents misconceived the facts relevant to the merits and qualifications of the candidates while they attached inordinate importance to their performance at the interview. The failure of the respondents to minute details of the interviews exposed the decision  
10 to yet another drawback, viz. failure to keep a proper record of the proceedings, making the decision vulnerable to be set aside on that score as well.

As a matter of fact, no record was kept of the questions asked other than indicate the general nature of the questionnaire revolving round the ability of the candidates to  
15 perform the duties carried by the post of Director-General. The performance of the interested party was rated as "Very Good" and that of the applicant as "Nearly Very Good". Overall, the interested party performed, as it emerges  
20 from the minutes of the Public Service Commission, better than any other candidate at the interview; while applicant ranked fourth in line of success from the top.

The respondents had before them the personal files and confidential reports on the applicant and interested  
25 party, material that enabled them to form a comprehensive view of the ability of the candidates, experience and devotion to duty. It is specifically noted in the minutes of the respondents that they consulted these files before making their selection.

Both candidates satisfied the qualifications envisaged by the schemes of service and were eligible for appointment. Though applicant joined the public service long  
30 before the interested party, on 20.9.54 as compared to 1.9.59 in the case of the interested party, the latter was senior for the purpose of the law<sup>1</sup> because he held the position of Director of the Department of Agriculture, a post  
35 higher in the civil service hierarchy than that of Director

<sup>1</sup> (s. 46(3)—Law 33/67, as amended by s. 5(c) of Law 10/83).

Electromechanological Services held by the applicant. Given the nature of the post, especially the ability and aptitude required to head a department of government, seniority was a factor of very limited importance.

In terms of merit, as reflected in the confidential reports, the comparison was again favourable for the interested party. During the years immediately preceding the sub judice decision the overall performance of the interested party was "Excellent" while that of the applicant was "Good" for the year 1984 and "Very Good" for the years 1983, 1982 and 1981.

Counsel for the applicant drew attention to the fact that the drop in the rating of the applicant in his confidential reports coincided with a disciplinary investigation against him. Prior to that investigation his rating was on the whole excellent.

There is nothing on record to suggest that applicant was improperly penalised in connection with the investigation against him, or that the assessment of his performance was in any way vitiated by bias on the part of those reporting upon him<sup>1</sup>.

Faced with the material before them the choice of Mr. Avraam Louca was fairly obvious if not inevitable. The impressions of the respondents about the performance of the candidates at the interview, though by no means a decisive factor in the case of candidates with long service in the civil service, was also conducive to the selection of the interested party. I am unable to sustain the submission that the questions put and the answers given by the interviewees ought to have been recorded. We may remind that the Public Service Commission are the arbiters of the performance of the candidates in the live atmosphere in which they are conducted. Only where questions wholly irrelevant to the duties of the post and the discretionary powers of the respondents are asked could the content of the questions invalidate the interview. Making their selection the respondents did have.

<sup>1</sup> See, inter alia, Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1027; Soteriadou v. Republic (1985) 3 C.L.R. 300; and Ioannides v. Republic (1985) 3 C.L.R. 2450.

as minuted in their decision, regard to the statutory criteria and had, as earlier mentioned, a fairly complete record of the value of the services of the two parties. It is, of course, desirable, in making a selection for such an important post as that of the Director-General, for the respondents to note the effect of a comparison of the merits and other qualifications of the candidates and not merely content themselves with recording the results of such comparison. Nevertheless this is no ground for interfering with their decision as the results of such comparison between the two candidates were obvious. As a general rule detailed records make for sounder administration, as well as safeguard effective judicial control. Nonetheless, in this case, I find no room for interfering with the decision.

In consequence, the recourse fails. The decision of the respondents is confirmed pursuant to the provisions of Article 146.4(a) of the Constitution. There shall be no order as to costs.

*Recourse dismissed.  
No order as to costs.*