

1986 November 17

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHARALAMBOS AVRAAM AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

*(Consolidated Cases Nos. 546/84
and 559/84).*

5 *Public Officers—Appointments —First entry post—Temporary
government employees applying for appointment—Such
applications not equated procedurally or otherwise with can-
didature for promotions—Such employees are not “public
servants” in the sense of section 2 of the Public Service
Law 33/67—Quality of their work may be imparted to
the P.S.C. as an element of their ability—Otherwise the ave-
nues of appointment should be kept as open as possible.*

10 *Public Officers—Appointments—First entry post—Interview,
performance at—Carries greater weight than it does in
cases of promotion.*

15 *The applicants, who had been employed for a long time
on a temporary basis as foremen in the Nicosia District
Administration, challenge the appointment of the interested
parties to the post of foreman, which is a first entry post,
on the following grounds, namely failure to follow the
procedure ordained by s. 44 of the Public Service Law
and make the appointments within the legal framework
applicable to promotions and inadequacy of reasoning.*

20 *Held, dismissing the recourse: (1) The applicants were
not “public servants” in the sense of section 2 of Law*

33/67, notwithstanding their link with government administration. Aside from this fact, the post was a first entry post and the test of appointment is suitability for joining the service at the particular post. Nothing said in *Smyrniot v. The Republic* (1983) 3 C.L.R. 124, cited by counsel for the applicant's, supports the view that either temporary officers applying for appointment should be treated as public servants or that applications from such persons for appointment should be equated procedurally or otherwise with candidature for promotion. Of course, knowledge gained about the quality of their work may be imparted to the P.S.C. as an element of their ability, but otherwise the avenues of appointment to such posts must be kept as open as possible.

(2) The sub judice decision does not lack due reasoning. Every relevant consideration was taken into account. The performance at the interview carries in case of appointment to a first entry post greater weight than it carries in a case of promotion.

Recourse dismissed.
No order as to costs.

Cases referred to:

'Smyrniot v. The Republic (1983) 3 C.L.R. 124;

Maratheytou and Others v. The Republic (1982) 3 C.L.R. 1088;

'Papantoniou and Others v. The Republic (1968) 3 C.L.R. 233;

'Christoudias v. The Republic (1984) 3 C.L.R. 657.

Recourses.

Recourses against the decision of the respondent to appoint the interested parties as foremen in the District Administration in preference and instead of the applicants.

'E. Efsthliou with M. Tsangarides, for the applicants.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

5 PİKIS J. read the following judgment. The applicants were employed on a temporary basis as foremen in the Nicosia District Administration. They were remunerated on an hourly basis. They served in that capacity for long, applicant Tsangarides since 1964 and applicant Avraam since 1970.

10 In 1982 17 posts of foremen were opened and applications were invited from interested parties. Being a first entry post, entry was not confined to those in the service, though a good number of persons served, like the applicants, on a temporary basis as foremen. 104 candidates
15 applied for appointment. The Departmental Committee recommended 68 of them as eligible and suitable for appointment, including the applicants and interested parties. The recommended candidates were interviewed by the respondents in the presence of a representative of the Ministry
20 of Interior, namely, Mr. Kontozis.

At the end of the interviews, Mr. Kontozis passed to the respondents his views on the performance of the candidates at the interviews and further apprised them of the assessment of the Ministry respecting the value of the services of
25 those who had served in their department on a temporary basis.

After due evaluation of the application of each candidate, the assessment made by Mr. Kontozis and lastly their performance at the interview respondents found that the
30 interested parties and 13 other candidates were the most suitable candidates and proceeded to appoint them to the corresponding number of vacant posts. Two separate grounds were advanced by the applicants allegedly invalidating the decision—(a) Failure to follow the procedure
35 ordained by s. 44 of the Public Service Law and make the appointments within the legal frame work applicable to promotions, and (b) Inadequacy of reasoning.

In the address of counsel no suggestion was made that

the applicants were, on the basis of the material before the respondents, in any way superior to the six interested parties. The performance of all six of them at work and at the interviews was rated by Mr. Kontozis as better than that of applicant Tsangarides; and the same is true with regard to applicant Avraam as compared to interested parties C. Georghiou, A. Damianos and G. Demetriou. The rating of the other three interested parties was equal to that of Avraam. 5

Notwithstanding the link applicants had with government Administration, they were not public servants within the meaning of the law (See definition of "public servant" in s. 2 of Law 33/67). Aside from this fact, the post was a first entry post and the test of appointment is suitability for joining the service at the particular post. The case of *Smyrniot v. The Republic*(1) relied upon by the applicants, carries their case no further. The relevance of that case lies on the importance of seniority as a factor for promotion. Nothing said in that judgment supports the view that either temporary officers applying for appointment should be treated as public servants or that applications from temporary employees of government for appointment should be equated procedurally or otherwise with candidature for promotion. Of course, knowledge gained by the appropriate department of government about the quality of work of applicants gained through their temporary service may legitimately be imparted to the P.S.C. as an element reflecting on their ability, otherwise the avenues for appointment to first entry posts, as often stressed, should be kept as open as possible in the interest of effective equality among the candidates(2). The procedure followed was, in my judgment, the one envisaged by the law and cannot be faulted for the reasons suggested by counsel or for any other reason. 10 15 20 25 30

Equally unsustainable is the contention that the decision is defective for lack of due reasoning. Considering the nature of the post, the applicants did have, as minuted in the 35

(1) (1983) 3 OLR 124

(2) *Marathevtou and Others v Republic* (1982) 3 CLR 1088
Papantoniou and Others v Republic (1968) 3 CLR 233

decision, regard to every relevant consideration bearing on the suitability of candidates for appointment. Being a first entry post, the performance at the interview carried greater weight compared to the significance of the same factor for promotion⁽¹⁾. This ground fails too.

I cannot end this judgment without expressing concern about the fate of the applicants who linger on, for years it seems, on a temporary appointment. Hopefully opportunities will arise in future to make possible the establishment of a permanent tie with the public service. Security of employment is an all important consideration for the entrenchment of the right to work.

In the result both recourses are dismissed. The decision of the respondents with regard to the interested parties is affirmed in exercise of the powers vested in the Court by Article 146 4(a) of the Constitution. No order as to costs.

Recourses dismissed
No order as to costs.

⁽¹⁾ Christoudias v Republic (1984) 3 C.L.R. 657