

1986 March 22

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NIKI STYLIANOU.

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 260/83).

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*Public Officers—Promotions—Striking superiority—Meaning of  
—Confidential Reports—Alterations in, not initialled  
and made by the reporting, not the countersigning of-  
ficer—No requirement of there being initialled—Scheme  
5 of service—Requirement of three years “service in the  
post of Labour Officer, 2nd Grade”—Reasonably open  
to the P.S.C. to construe such phrase as including service  
on secondment to a temporary post of Labour Officer,  
2nd Grade in circumstances like those of the present case.*

10 *The Public Service Law 33/67 s. 32(2).*

On the 21.2.83 the respondent Commission, having  
heard the views of the Chief Labour Officer, Mr. Proto-  
papas, who represented the Director-General of the Mini-  
stry of Labour and Social Insurance, and having examined  
15 all the facts before it, promoted to the post of Labour  
Officer, 1st Grade, as from 1.3.1983 13 out of the 18  
candidates recommended by the Departmental Board. The  
applicant was not among those promoted.

As, however, it transpired that one of the candidates,  
20 a certain Y. Demosthenous, who was eligible for promo-  
tion, had wrongly not been considered for promotion, the

respondent Commission revoked its said decision and on 28.2.83 reconsidered the matter. Once again the applicant was not recommended for promotion by Mr. Protopapas and was not included among those finally promoted by the Commission.

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It should be noted that, when reconsidering the matter as aforesaid, the Commission took into consideration the confidential reports for the year 1982 which had, in the meantime, been submitted and which confirmed all that had been stated on 21.2.83 by Mr. Protopapas.

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By means of this recourse the applicant challenges the promotions of 11 of the 13 candidates finally promoted. The applicant complained, inter alia, that the confidential reports were altered between the first meeting of the Commission on 21.2.83 and its second meeting on 28.2.83 to the detriment of the applicant and in order that the statements made on behalf of the Head of the Department on 21.2.83 be substantiated, that such alterations were not made in accordance with the prescribed manner in that they had not been initialled and that interested parties 2, 3, 8 and 9 lacked the necessary qualifications under the relevant scheme of service, namely the requirement of a 3-year service in the post of Labour Officer, 2nd Grade. As a matter of fact these interested parties were promoted to post of Labour Officer, 2nd Grade as from 15.3.82, but they had been seconded to the post of Labour Officer, second Grade, such post being a temporary post on the Development Budget, as from 1.11.78

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*Held, dismissing the recourse:* (1) The alterations in the confidential reports in question were made by the reporting officer and not by the countersigning officer and thus there was no requirement of being initialled. It follows that there was nothing improper or irregular in the said reports.

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(2) Section 32(2) of Law 33/67 provides that officers holding permanent posts, as interested parties 2, 3, 8 and 9, can only fill a temporary office by secondment. In the

circumstances of this case it was reasonably open to the Commission to construe the phrase "service in the post of Labour Officer, 2nd Grade" as including service on secondment to a temporary post (*Republic v Psaras* (1985) 3 C.L.R. 1939 applied).

(3) The applicant is senior to the interested parties but the latter are either superior in merit or have better qualifications. In conclusion the applicant has failed to establish the striking superiority which is necessary to justify this Court to interfere with the sub-judice decision. As regards the question of how "striking" such superiority must be in order to justify interference without doubt such superiority must be so self evident and apparent that to disregard it would render such a decision as having been taken in abuse of power. Mere superiority is not sufficient.

*Recourse dismissed*  
*No order as to costs*

Cases referred to:

*Republic v Psaras* (1985) 3 C.L.R. 1939;

*Skapoullis and Another v The Republic* (1984) 3 C.L.R. 554.

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Labour Officer 1st Grade, in the Ministry of Labour and Social Insurance in preference and instead of the applicant

K Talarides, for the applicant

G. Erotokritou (Mrs.) Senior Counsel of the Republic, for the respondent.

*Cur ad iudicium*

MALACHTOS J read the following judgment: The applicant in this recourse claims a declaration of the Court that the decision of the Public Service Commission published in the Official Gazette of the Republic on 17.3.83

to promote to the post of Labour Officer, 1st Grade, the interested parties is null and void and of no legal effect whatsoever.

The post of Labour Officer 1st Grade according to the relevant schemes of service is a promotion post and the required qualifications are:

(1) At least 3 years service in the post of Labour Officer, 2nd Grade, in the service of the Labour section, and/or Assistant Examiner of Trade Unions:

(2) Organising and administrative ability, responsibility, initiative and soundness of judgment.

The Director-General of the Ministry of Labour and Social Insurance by letters dated 22.7.82 and 4.12.82 to the Public service Commission requested the filling of 14 vacant posts of Labour Officer, 1st Grade.

The said post being a promotion post, a list of candidates eligible for promotion was prepared and sent to the Chairman of the Departmental Board together with the confidential report files and the relevant schemes of service. The Departmental Board recommended in alphabetical order 18 candidates for promotion, including the applicant.

The respondent Commission met on the 21.2.83 to consider the said promotions when it transpired that the vacant posts were in fact only 13 and not 14. Thereafter, having heard the views and recommendations of the Director-General of the Ministry of Labour and Social Insurance, who was represented at the meeting by the Chief Labour Officer, Mr. Protopapas, and having examined all the facts before it, the respondent decided to promote 13 out of the 18 candidates recommended, to the post of Labour Officer, 1st Grade, as from 1.3.83. The applicant was not among those promoted.

However, on 24.2.83 the Director-General of the Ministry of Labour informed the respondent Commission by letter that one candidate, a certain Yiannakis Demosthenous, who was eligible for promotion to the post in ques-

tion had wrongly not been considered by the Departmental Board. In view of this, the respondent Commission revoked its decision of 21.2.83 and decided to re-examine the matter of the filling of the said posts afresh, taking  
5 into consideration this time the said Y. Demosthenous.

The matter was reconsidered on 28.2.83. The respondent Commission informed Mr. Protopapas who was representing the Director-General, of its decision and its reasons to reconsider and asked for his recommendations  
10 considering this time as a candidate for promotion and the said Y. Demosthenous. As regards two candidates, T. Demetriou and A. Nicolaou, who were among the candidates originally recommended by the Departmental Board, he was asked not to consider them this time, as they had  
15 been promoted to the post of Senior Labour Officer.

Mr. Protopapas repeated his views as regards 11 of the original candidates that is C. Kyriakides, P. Epaminondas, R. Soteriades, A. Kokkinos, S. Economou, S. Pastos, A. Argyrou, Ph. Panayides, M. Gregoriou, A. Mitsides and  
20 A. Vassiliou, all of whom he recommended for promotion. Y. Demosthenous was also recommended as suitable for the post. Finally, as between D. Mytides and A. Morfitis, who had both been recommended the previous time, Morfitis was preferred. The applicant was again not recom-  
25 mended.

The Commission examined the material before it from the personal files and the confidential reports of the candidates and took into consideration the conclusions of the Departmental Board and the opinion and recommenda-  
30 tions of the Director-General of the Ministry of Labour. It also considered the confidential reports for the year 1982 which had, in the meantime, been submitted and which confirmed all that had been stated on the 21.2.1983 by Mr. Protopapas on behalf of the Director-General as  
35 regards the performance of the candidates in 1982, and selected the following 13 candidates: 1. A. Argyrou, 2. M. Gregoriou, 3. Y. Demosthenous, 4. P. Epaminonda, 5. A. Kokkinos, 6. C. Kyriakides, 7. A. Mitsides, 8. A. Morfitis, 9. D. Mytides, 10. S. Economou, 11. Ph. Panayides,  
40 12. S. Pastos, 13. R. Soteriades.

From those promoted the previous time and also recommended this time, were Kyriakides, Epaminondas, Soteriades, Kokkinos, Economou, Pastos, Argyrou, Panayides, Gregoriou, Mitsides and Morfitis. Demosthenous, who was recommended this time was also promoted. 5

For the 13th post the Commission made a special comparison between Vassiliou, who was recommended and Mytides, who was not recommended this time and decided to select and promote Mytides as better qualified and of higher merit. 10

Applicant filed the present recourse challenging the promotions of 11 of the 13 candidates promoted, that is against all except No. 4, P, Epaminondas and No. 6 C. Kyriakides.

The grounds of law on which the recourse is based, as argued by counsel for applicant may be summarised as follows: 15

1. The respondent failed to conduct a due inquiry but based its decision on the evaluation made by the Departmental Board and the Director-General of the Ministry of Labour and the various reporting officers. 20

2. The applicant's seniority was ignored in favour of merit and qualifications.

3. The promotion of four interested parties, namely, M. Gregoriou, Y. Demosthenous, A. Morfitis and D. Mytides, was effected contrary to section 30(1)(c) of the Public Service Law, Law 33/67, in that they were not serving at the time in the immediately lower grade. 25

Counsel for applicant has put forward the following arguments: 30

He argued that the respondent Commission, in its evaluation of the candidates failed to take into consideration the important duties of the applicant. It confined itself only to the contents of the confidential reports to which undue importance was given and which are a most inaccurate way of evaluation because they are dependant on the particular judgment of each individual reporting officer. 35

Moreover, on the matter of the confidential reports, he argued that these were irregularly made in that there were alterations which were not effected in the proper and prescribed manner, the alterations had not been initialled, nor any reasons were given as to why they were made in order that the respondent Commission might be able to consider their correctness.

Furthermore, it was submitted that the statements of the Head of Department were not substantiated by the contents of the confidential reports, which, however, were altered between the first meeting of the respondent of the 21st February and the last of the 28th February, and they were altered to the detriment of the applicant in order that the statements of the Head of Department that the applicant was inferior to the other candidates be substantiated. But, in any case, it was claimed, that Mr. Protopapas does not seem to appear on behalf of the Director-General as alleged but more so for himself and, therefore, it was his views that were before the Public Service Commission and not those of the Director-General.

Finally, it was generally argued that the applicant is strikingly superior to the interested parties 1. A. Argyrou. 2. M. Gregoriou. 5. A. Kokkinos. 7. A. Mitsides. 10. S. Economou and 13. R. Soteriades. Striking superiority, it was submitted, does not have to be substantial or great but it suffices if it is obvious, however small.

Moreover, the promotion of the above six interested parties, as well as interested parties 11. Ph. Panayides and 12. S. Pastos, must also be annulled because no reasoning was given why they were preferred instead of the applicant, whose seniority was thus wrongly disregarded in favour of merit which is a not so independent factor as that of seniority.

Lastly, as regards interested parties 2. M. Gregoriou. 3. Y. Demosthenous, 8. A. Morfitis and 9. D. Mytides, it was contended that they lacked the requirement of 3 years service in the post of Labour Officer, 2nd Grade. Until 15.3.82 they held the post of Labour Officer, 3rd Grade,

which was renamed as such from Assistant Labour Officer, as from 1.1.1981. They were promoted to Labour Officers 2nd Grade, retrospectively as from 15.3.1982.

Counsel for the respondent has argued on the other hand, that the alterations to the confidential reports complained of were made by the reporting officer, T. Demetriou and not by the countersigning officer Protopapas and that thus there was no requirement for them to be initialled, etc. This is also substantiated by the evidence given by T. Demetriou, to the effect that it was he who did the alterations and also by the evidence of Mr. Protopapas. I thus find nothing improper or irregular in the confidential reports in question.

The applicant was first appointed in the Government Service in May 1955 and had on the relevant date of the sub judice promotions a total service of 28 years. She was appointed as Assistant Labour Officer on the 15.11.56 and to the permanent post on 1.1.57. On 1.6.68 she was promoted to the post of Labour Officer, 2nd Grade, which post she held until her last promotion. It should be noted here that the applicant was finally promoted to the post of Labour Officer, 1st Grade.

As regards merit, the applicant was graded for the years 1981 and 1982 as 'very good', but she has no reports for the years 1979-1980, as she was abroad on leave without pay.

The interested parties have been graded for the years 1981 and 1982 as either very good or excellent. No. 1, 1981 very good, 1982 very good, No. 2, 1981 very good, 1982 very good, No. 3, 1981 very good, 1982 very good. No. 5, 1981, very good, 1982 very good, No. 7, 1981 very good, 1982 very good, No. 8, 1981 excellent, 1982 very good. No. 9, 1981 very good, 1982 very good, No. 10, 1981 good, 1982 very good, No. 11, 1981 very good, 1982 excellent, No. 12, 1981 very good, 1982 very good, No. 13, 1981 very good, 1982 very good.

It is obvious, therefore, that the interested parties, as regards merit, are either at least equal or better than the applicant.



On the question of qualifications, as regards interested parties Nos. 2, 3, 8, 9, that they lack the 3 years service in the post of Labour Officer, 2nd Grade, as correctly explained by counsel for the respondent, they were seconded to the post of Labour Officer 2nd Grade, on the 1.11.78, the post being a temporary post on the Development Budget and in accordance with section 32(2) of the Public Service Law, 1967, Law 33 of 1967, officers holding permanent posts can only fill a temporary office by secondment.

Relevant is what was stated in the case of the *Republic v. Psaras* (1985) 3 C.L.R. 1939 by majority of the Full Bench at p. 1944:

"It is clear from the foregoing that the two interested parties had, actually, been serving in the post of Labour Officer, 2nd Grade, since the 1st of May 1973, even though until the 15th October 1978, while being permanent public officers, they were serving in such post, not in a permanent capacity, but on secondment, apparently under section 32(2) of the Public Service Law, 1967 (Law 33/67), as amended by the Public Service (Amendment) Law, 1983 (Law 10/83), as the available posts of Labour Officer, 2nd Grade, were temporary posts, to which, of course, the interested parties could not have been promoted in a permanent capacity, because of the temporary nature of such posts."

And also at p. 1945:

"We are of the view that it was reasonably open to the appellant Commission to construe the phrase 'service in the post of Insurance Officer 2nd Grade and/or Labour Officer 2nd Grade' as including service in such post not only in a permanent capacity but also on secondment to a temporary post in circumstances such as those of the present case".

This ground must, therefore, fail.

As regards the academic qualifications of the interested parties, interested parties Nos. 3, 7, 8, 9, 13, possess

higher qualifications, having a University degree; as regards the remainder of the interested parties, they all possess the qualifications required by the scheme of service which are either better or at least equal to those of the applicant.

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Finally, it must be stressed that all the interested parties were recommended for promotion, except Vassiliou, in respect of whom special reasoning has been given, whereas the applicant was not so recommended by the Head of the Department.

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The applicant is senior as claimed but as already explained above, the interested parties are either superior in merit or have better qualifications.

In conclusion, the applicant has failed to establish the striking superiority which is necessary in order to justify this Court to interfere with the sub judice decision. As stated in the case of *Skapoullis and Another v. The Republic*, (1984) 3 C.L.R. 554, at p. 565:

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“When the Public Service Commission selects a candidate on the basis of comparison with others, it is not necessary to show in order to justify his selection, that he was strikingly superior to the others. The administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers. The onus of establishing his striking superiority lies always on the applicant in a recourse. (*Evangelou v. The Republic*, (1965) 3 C.L.R. 292, at 299 - 300; *Georghiades and Another v. The Republic*, (1970) 3 C.L.R. 257, at 269; *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, at 82. 83).”

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As regards the question of how “striking” superiority must be in order to justify the setting aside of a decision,

without doubt such superiority must be so self evident and apparent that to disregard it would render such a decision as having been taken in abuse of power. Mere superiority, however, as it has been stated by this Court on numerous occasions, is not sufficient to justify an annulment of a decision.

In conclusion, I find that in the circumstances it was reasonably open to the respondent Commission, to take **the decision complained of, as the applicant has failed to** establish the necessary striking superiority over the interested parties.

Finally, as it appears from the minutes of the Commission and the relevant files before it, the sub judice decision was duly reasoned.

For these reasons, the recourse must fail and is hereby dismissed with no Order as to costs.

*Recourse dismissed.*

*No order as to costs.*