

1986 February 28

{PJIS. J.}

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NICOS ROUSOS,

*Applicant,*

..

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTRY OF INTERIOR.

*Respondents.*

*(Case No. 538/84).*

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*Public Officers—Promotions—The Public Service Law, 33/67 s.44(3)—Recommendations of Head of Department—He must found his recommendations by reference to the statutory criteria, i.e. merit, qualifications, seniority and in that order—Seniority—If short, cannot be allowed to outweigh superiority in terms of merit—Failure to examine a recommendation in its proper perspective—Effect.*

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*Administrative Law—Promotions of Public Officers—Relying on subjective evaluation of candidates made in the past by the P.S.C. with a different composition—Abuse of power.*

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The applicant challenges the promotion of the interested party to the post of Lands Officer, 1st Grade. The Head of the Department, who had been invited to express an opinion before the respondent Commission, stated that in terms of merit the applicant was better, albeit slightly. He, nevertheless, recommended the interested party for promotion.

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The respondent's preference for the selection of the interested party was justified, inter alia, by reference to the fact that in 1982 when the parties were again candidates for pro-

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motion to the post of Lands Officer Second Grade, the interested party was preferred to the applicant.

The interested party was senior to the applicant by one year. In terms of qualifications the parties were equal.

*Held*, annulling the sub judice decision: (1) The fact that in 1982 the interested party was preferred to the applicant is irrelevant. It is an abuse of power for an administrative body to rest the exercise of a discretionary power on the subjective evaluation of candidates made by a body with a different composition with a different task (*Republic v. Safirides* (1985) 3 C.L.R. 163 applied). 5 10

(2) The respondents failed to weigh the recommendation of the Head of the Department in its proper perspective. Had they done so, they would have noticed the error inherent in the recommendation, that is, to recommend a candidate other than the one he regarded as best in terms of merit. The assertion that the applicant was best in terms of merit is compatible with the confidential reports. The Head of a Department in discharging his duty under s.44(3) of Law 33/67 must found his recommendation by reference to the statutory criteria, that is, merits, qualifications, seniority and in that order. Where seniority is short it cannot be allowed to outweigh superiority in terms of merit. 15 20

*Sub judice decision annulled.* 25  
*No order as to costs.*

Cases referred to:

*Republic v. Safirides* (1985) 3 C.L.R. 163;

*Gavriel v. Republic* (1971) 3 C.L.R. 186;

*Makrides v. Republic* (1983) 3 C.L.R. 622. 30

Recourse.

Recourse against the decision of the respondents to promote the interested party to the post of Lands Officer,

1st Grade, in the Department of Lands and Surveys in preference and instead of the applicants.

*A. S. Angelides*, for the applicant.

5 *R. Gavrielides*, Senior Counsel of the Republic,  
for the respondents.

*C. Loizou*, for the interested party.

*Cur. adv. vult*

10 ΠΙΚΙΣ J. read the following judgment. The applicant challenges the decision to appoint the interested party to the post of Lands Officer first grade (Survey Department) (1). He was one of the four candidates, interested party being one of them too, recommended by the Departmental Committee as eligible and suitable for promotion. It is the case for the applicant the decision to appoint the interested party was taken in disregard of his superior merits, reflected in his confidential reports and the evaluation of their services by the head of the department. Departure from the statutory norm making merit the first consideration for promotion is not cogently explained or if at all explained its reasoning is defective. Mr. Rois Nicolaidēs, the head of the department, invited to express his opinion on the suitability of the candidates for promotion, made an unqualified statement that in terms of merit, the applicant was better, albeit slightly. Nevertheless, he recommended the interested party; why he does not say, unless we presume his recommendation rested on the fact that interested party was senior to the applicant by one year (in point of fact by 11 months), a fact noted in the statement preceding his recommendation. In terms of qualifications the parties were in an equal position, both being holders of a university or equivalent title postulated as an additional qualification.

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The recommendation of Mr. Nicolaidēs was, as we may infer from the minutes of the P.S.C., accepted on its face value as an unqualified preference of the head of the

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(1) The decision was preceded by the deliberations and recommendations of a Departmental Committee set up to screen and evaluate the applications for promotion.

department for the interested party. The contradiction inherent in the recommendation of the head of the department is one of the grounds put forward that allegedly renders the decision abortive, especially in view of the failure of the respondents to ponder his recommendation in a proper legal perspective. 5

A similar complaint is levelled against the respondents themselves that they failed to attach the weight due to his superiority in terms of merit. Further that they failed to make their selection by reference to the statutory criteria for promotion, merit, qualifications and seniority. They played down the importance of the confidential reports of the parties as a prime indicator of their merit in view of the complaints of the interested party that the confidential reports on him were coloured by the bias of his superiors, namely, Mr. Pantazis and Mr. Christofis. 10 15

The decision of the respondents to attach to the confidential reports on the interested party less than the weight objectively due to them, conflicts with (a) the decision of the respondents of 10th July, 1984, to dismiss complaints of bias made by the interested party in a letter of 5th July, 1984, and (b) dismissal of a similar complaint made by the applicant in 1982. No doubt if the reports on the interested party were vitiated by bias, they should have been disregarded in their entirety and an inquiry ought to have been undertaken to fill the gap left thereby seeking information from other sources on the value of the services of the interested party. 20 25

The preference for the selection of the interested party was, as the minutes of the P.S.C. record, justified, inter alia, by reference to the fact that in 1982 when the parties were again candidates for promotion to the post of Lands Officer second grade, the interested party was preferred to the applicant. This was a wholly irrelevant matter to which no regard should be paid. In the *Republic v. Safirides*(1) the Full Bench of the Supreme Court affirmed it is an abuse of power for an administrative body to rest the exercise of a discretionary power wholly or in part on the 30 35

(1) (1985) 3 C.L.R. 163.

subjective evaluation of candidates made by a body with a different composition and charged with a different task. Such abdication or relinquishment of discretionary powers constitutes an abuse of power that may, depending on its impact, invalidate the decision taken. In this case it was, as can be readily inferred, a significant factor relied upon by the respondents as counterbalancing the apparent superiority in merit of the applicant.

Lastly, the respondents failed to weigh the recommendation of Mr. Nicolaides in its proper perspective. Had they done so they would have noticed the error inherent in the recommendation of Mr. Nicolaides, that is, to recommend a candidate other than the one he regarded as best in terms of merit. As in the case of any other body the recommendations of a head of a department must, where reasons are given, be compatible therewith. If no reasons are given, the recommendation can be reviewed by reference to the material in the records of the Administration. In this case the assertion of Mr. Nicolaides that applicant was best in terms of merit is fully compatible with the confidential reports on the competing parties. In much the same way as the P.S.C. must found its decision by reference to the statutory criteria, namely, merits, qualifications, seniority and in that order so must the head of the department found his own recommendation. The discharge of the duty of the head of the department under s.44(3) of the Public Service Law was discussed, inter alia, in *Gavriel v. Republic*(1) and *Makrides v. Republic*(2). The ultimate recommendation of the head of the department in this case was incompatible with his assessment of the suitability of the candidate for promotion considering that applicant was, as he noted, better in terms of merit. Merit is, as repeatedly acknowledged so often, as to require no support from specific authority, the foremost consideration for evaluation of the suitability of the candidates for promotion. Seniority can only be decisive if all other factors are equal. Where seniority, is short, as in this case, it could not possibly be allowed to outweigh superiority of applicant in terms of merit. The

(1) (1971) 3 C.L.R. 186, 189.

(2) (1983) 3 C.L.R. 622, 632 - 633.

failure of the respondents to treat the recommendation of Mr. Nicolaides in its proper perspective is an additional reason rendering the decision vulnerable to annulment.

For all the above reasons the sub judice decision is set aside and I order accordingly. There shall be no order as to costs. 5

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