

1986 February 11

[TRIANTAFYLLOIDES, P., SAVVIDES, LORIS, STYLIANIDES,
KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

CHRISTOS CHRISTOUDIAS,

Respondent.

(Revisional Jurisdiction Appeal No. 453).

*Public Officers—Foreign Service—Appointment to post of
Attaché—The Foreign Service of the Republic (Qualifica-
tions Required for Appointment or Promotion, Duties and
Functions of Each Post) (Amendment) Regulations, 1980
—Reg. 7—Scheme of Service—The only valid wording is 5
that which was published by means of reg. 7—Interpreta-
tion of the words: “Success in a special written examina-
tion, to be held by the Ministry of Foreign Affairs”—
Success in previous examination not sufficient—The Fo-
reign Service (Examination) Regulations, 1970, reg. 3. 10*

This is an appeal from a judgment of a Judge of this Court, whereby the appointment of the interest party by the appellant Commission to the post of Attaché in the Foreign Service was annulled.

Paragraph 3(e) of the qualifications required by the 15
relevant scheme of service, published under reg. 7 of the

Foreign Service of the Republic (Qualifications Required for Appointment or Promotion, Duties and Functions of Each Post) (Amendment) Regulations, 1980, reads as follows: "Success in a special written examination, to be held by the Ministry of Foreign Affairs." When, however, the vacancies in question were advertised the said paragraph read as follows: "Success in a special written examination, which will be held by the Ministry of Foreign Affairs". The difference in the language style gave rise to a lot of speculation during the proceedings before the trial Judge.

Held, dismissing the appeal: (1) The only validly in force wording of the scheme has all along been that which was published by means of reg. 7 of the aforesaid Regulations, which has the force of delegated legislation and has to be applied by the Commission.

(2) The only correct interpretation of paragraph 3(e) of the scheme, on the basis of its clear and unequivocal wording and in the context of the scheme as a whole, is that each time vacancies in the post of Attaché are advertised, the candidates will have to sit for, and succeed in, a special written examination to be held by the Ministry of Foreign Affairs, even though such examination is not a competitive, but a qualifying one. Success in an earlier examination is not sufficient. It is worthwhile to note that in accordance with the prevailing practice a candidate is not informed of his success in any such examination and, therefore, when new vacancies occur, he has no legitimate means of knowing that he has succeeded in such past examination.

(3) Paragraph 3(e) of the scheme must be read together with reg. 3 of the Foreign Service of the Republic (Examinations) Regulations, 1970. The provision of reg. 3 strengthens the view as to the above interpretation of the scheme.

(4) It follows that the interested party, who succeeded

in a past examination, but did not participate in the examination held for the vacancies in question, could not be treated as a candidate for appointment. (*The Republic v. Pericleous* (1984) 3 C.L.R. 577, distinguished).

Appeal dismissed. 5
No order as to costs.

Cases referred to:

The Republic v. Pericleous (1984) 3 C.L.R. 577.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 10th April, 1985 (Revisional Jurisdiction Case No. 159/84)* whereby the promotion of the interested party to the post of Attaché in the Foreign Service of the Republic was annulled. 10

A. Papasavvas, Senior Counsel of the Republic, for the appellant. 15

C. Loizou, for the respondent.

L. Papaphilippou, for the interested party.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. The appellant Public Service Commission has appealed against the first instance judgment of a Judge of this Court by means of which there was annulled, as a result of a recourse by the respondent under Article 146 of the Constitution, the decision of the Commission to appoint interested party St. Loizides to the post of Attaché in the Foreign Service of the Republic. 20
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* Reported in (1985) 3 C.L.R. 513.

The primary ground for the annulment of such decision was the conclusion of the learned trial Judge that the appellant Commission applied the relevant scheme of service in an erroneous manner.

5 The said scheme was published in the Official Gazette of the Republic by virtue of regulation 7 of the Foreign Service of the Republic (Qualifications Required for Appointment or Promotion, Duties and Functions of Each Post) (Amendment) Regulations, 1980 (No. 151 in the
10 Third Supplement, Part 1, to the Official Gazette of 20th June 1980); and the part of such scheme with which we are particularly concerned is paragraph 3(e) of the qualifications required by it, which reads as follows: "(e) Ἐπιτυχία εἰς εἰδικὸν γραπτὸν διαγωνισμόν, διεξαχθησόμενον ὑπὸ τοῦ Ὑπουργείου Ἐξωτερικῶν". ("(e) Success in a special written examination, to be held by the Ministry of Foreign Affairs").
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When vacancies in the post concerned were advertised in the Official Gazette, on the 31st December 1982, the
20 aforesaid paragraph 3(e) was worded as follows: "(ε) Ἐπιτυχία σὲ εἰδικὸ γραπτὸ διαγωνισμό πού θά διεξαχθεῖ ἀπὸ τὸ Ὑπουργεῖον Ἐξωτερικόν" ("(e) Success in a special written examination, which will be held by the Ministry of Foreign Affairs").

25 The difference, as regards language style, between the text of paragraph 3(e) of the scheme of service as it was enacted by means of the aforementioned regulation 7 and as it was later on published in the advertisement of vacancies in the Official Gazette, gave rise to a lot of speculation during the proceedings before the trial Judge, which
30 is reflected in his judgment.

In our view the only validly in force wording of the scheme as a whole and, particularly, of its paragraph 3(e),

above, has all along been that which was published by means of the aforesaid regulation 7, which has the force of delegated legislation and has to be applied by the appellant Commission.

Furthermore, in our opinion, the only correct interpretation and application of the said paragraph 3(e), on the basis of its clear and unequivocal wording and in the context of the scheme of service concerned as a whole and of the relevant Regulations, is that each time when vacancies in the post of Attaché are advertised all those who on that occasion apply for appointment have to sit for, and succeed in, a special written examination to be held by the Ministry of Foreign Affairs in relation to the filling of the particular vacancies then advertised, even though such examination is not a competitive one but a qualifying one in order to ascertain who of the candidates possess the required minimum standard of knowledge in the subjects in relation to which they are examined.

It would be strange, indeed, if all candidates applying for appointment to particular vacant posts of Attaché were not to be subjected, in that connection, to the same qualifying examination so that on the basis of the same examination questions there would be an opportunity to find out who amongst them had reached the qualifying level. Otherwise, if the erroneous view was to prevail that a candidate who has passed on an earlier occasion a qualifying examination for the post of Attaché need not sit again for such examination when it is held in relation to new vacancies for which he has applied afresh, the unorthodox result would follow that if the earlier examination was of an easier standard and the later examination of a more difficult standard the said candidate, who might not have reached the qualifying level in the latter, even though he had reached the qualifying level in the former, would still be treated as qualified for appointment in respect of the new vacancies.

It is, also, worth noting that in accordance with the prevailing practice, which has been explained to us by counsel before us, a candidate who passes a qualifying examina-

tion of this nature is not informed about his success in it, nor is he furnished with any certificate that he has succeeded, and, therefore, when new vacancies in the same post are advertised he has no legitimate means of knowing whether he has passed such qualifying examination on an earlier occasion. Consequently, the examination in question cannot really be regarded merely as a qualifying examination which a candidate has to pass on any one particular occasion once and for all.

The aforementioned paragraph 3(e) in the relevant scheme of service must be read together with regulation 3 of the Foreign Service of the Republic (Examinations) Regulations, 1970 (No. 344, Third Supplement, Part 1, to the Official Gazette of 1st May 1970); and the provisions of the said regulation 3 strengthen our view about the correct interpretation and application of such paragraph 3 (e).

For all the above reasons we find that the interested party had to pass the examination which was held by the Ministry of Foreign Affairs in respect of the particular vacancies in the post of Attaché to which he had applied to be appointed and as—apparently because he was wrongly informed that having passed a similar examination on a previous occasion he need not have to do so again—he did not turn up to sit for such examination he could not be lawfully treated as satisfying the requirements of the relevant scheme of service and, thus, he could not be regarded as a candidate for appointment to the post concerned.

In this respect, and in order to avoid any misunderstanding about the qualifications to which reference was made in the judgment in the case of *The Republic v. Pericleous*, (1984) 3 C.L.R. 577, we have to point out that, necessarily, the success in the qualifying examination envisaged by regulation 3 (e), above, is not a qualification such as those to which the principles expounded in *Pericleous* case, supra, would be applicable, because by its very nature the success in the said qualifying examination

is something which can ensue only after the application for appointment to the post concerned is made.

In the light of all the foregoing this appeal is dismissed and the annulment of the sub judice appointment of the interested party, which was ordered by the learned trial Judge, is affirmed, even though not with exactly the same reasoning. 5

We do not propose to make any order as to the costs of this appeal.

Appeal dismissed.

No order as to costs.

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