

1986 February 25

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDES,  
STYLIANIDES AND KOURRIS, JJ.]

CHRYSOSTOMOS KALOS,

*Appellant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Revisional Jurisdiction Appeal No. 447).*

Public Officers—Promotions—Scheme of service—Qualifica-  
tions required thereunder—Due inquiry into qualifica-  
tions of candidates—Failure to carry such inquiry—  
Ground of annulment—Interviews—Performance at—Un-  
due weight given to such performance—Ground of annul- 5  
ment.

This appeal is directed against the dismissal by a Judge  
of this Court of appellant's recourse, challenging the va-  
lidity of the promotion of the interested party to the post  
of Principal Insurance Officer, a first entry and promo- 10  
tion post. In the course of the hearing counsel for the  
appellant restricted the appeal to the contention that the  
interested party did not possess the qualifications required  
under paragraph (b) of the scheme of service, namely  
"wide knowledge of the modern social insurance" and 15  
under paragraph (e) thereof which provided that "experi-  
ence in the Social Insurance Service will be considered as  
additional qualification".

Both the appellant and the interested party Mrs. E.  
Samuel were amongst the four candidates recommended to 20  
the respondent Commission by the Departmental Com-  
mittee. In reply to a letter dated 18.6.81 the said Com-  
mittee informed the respondent Commission by letter dated

30.6.81 that it has interpreted the term "wide knowledge of modern social insurance" as presupposing knowledge in depth of the principles, philosophy and objects of social insurance, the international trends and practice as they  
5 find expression in the relevant with social insurance International Conventions and Recommendations of the International Labour Office and of the Council of Europe as well as the national schemes of countries with developed social insurance.

10 The Head of the Department was present at the interviews of the candidates before the Commission. He assessed the performance of candidate Yiallourous as excellent and that of the three other candidates as good. He further stated that the interested party did not possess the additional qualification of experience in the service of Social  
15 Insurance, whereas the other three candidates did possess such qualification.

The Commission rated the performance of the appellant at the interview as "good" and that of the interested party as "very good".  
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The Commission found that the interested party does not possess the said additional qualification. The Commission stated in its minutes that though the interested party "does not possess the experience in the department  
25 of Social Insurance, nevertheless she is engaged with subjects of general policy concerning the social insurance sector as administrative officer in the central administration of the Ministry of Labour and Social Insurance." The Commission finally concluded that the appellant's additional qualification cannot overcome the superiority of the  
30 interested party "which emanates from the totality of the material before the Commission". As a result the other three candidates were selected to fill the existing three vacancies in the said post. The appellant filed a recourse  
35 challenging only the promotion of the said interested party.

The trial Judge in dismissing the said recourse found that the qualification under (b) of the scheme of service could be nowhere else better reflected than in the relevant diplomas and certificates of the interested party; that both

the Departmental Committee and the Head of the Department treated the interested party as possessing such qualification; and that special reasons were given for non-selecting the appellant, who possessed the additional qualification under (e) of the Scheme of Service. 5

*Held, allowing the appeal and annulling the sub judice decision:* (1) The question in this case is whether, bearing in mind the fact that the three out of the four candidates, with the exception of the interested party, were holding posts the discharge of duties in respect of which entailed wide knowledge in matters of social insurance, satisfying requirement (b) of the scheme of service and amounting to an additional qualification satisfying requirement (e), whereas the interested party never worked in the department of social insurance and also the explanation of the Departmental Committee as to what it was understood by "wide knowledge of the modern social insurance", the respondent Commission carried out a due inquiry to ascertain possession by the interested party of the required qualifications. 10 15 20

(2) In the light of all the material before the Court and the finding of the respondent that the interested party did not have the necessary experience in social insurance and the observation of the Head of the Department to that effect, the Court reached the conclusion that the respondent Commission failed to carry out a due inquiry into the matter of the qualification of the interested party under (b) of the scheme of service. 25

(3) The respondent Commission gave undue weight to the performance of the candidates at the interview, treating the performance of the interested party as outweighing the wide practical knowledge and experience of the appellant in matters of modern social insurance. Such undue weight led the Commission to the conclusion that the interested party satisfied paragraph (b) of the scheme of service to the extent outweighing appellant's qualifications under paragraph (e) thereof. 30 35

As it has been held time and again by this Court interviews do not constitute a criterion by itself separate

from merit, qualifications and experience of candidates, but merely a means of forming an opinion and evaluating their merits, notwithstanding that it is not the safest one.

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

**Cases referred to:**

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*Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 235;

*Savva v. The Republic* (1980) 3 C.L.R. 675;

*Papadopoulos v. The Republic* (1983) 3 C.L.R. 1423.

**Appeal.**

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Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 15th February, 1985 (Revisional Jurisdiction Case No. 362/81)\* whereby his recourse against the promotion of the interested party to the post of Principal Insurance Officer was dismissed.

*Chr. Triantafyllides*, for the appellant.

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*A. Vladimerou*, for the respondent.

*Cur. adv. vult.*

**TRIANTAFYLLIDES P.:** The judgment of the Court will be delivered by Mr. Justice Savvides.

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**SAVVIDES J.:** This Revisional Appeal is directed against the dismissal by a Judge of this Court sitting in the first instance of appellant's recourse No. 362/81 challenging the validity of the decision of the respondent to promote to the post of Principal Insurance Officer Mrs. Eleni Samuel instead of the appellant.

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The following grounds were advanced in support of the appeal:

\* Reported in (1985) 3 C.L.R. 135.

1. The trial Court wrongly found that the interested party satisfied the requirements under the scheme of service.

2. The trial Court wrongly decided that the respondent took into consideration the seniority of the appellant.

3. The trial Court wrongly decided that the respondent took into consideration and evaluated to the extent it should have done the seniority of the appellant. 5

4. The trial Court did not take into consideration the fact that the appellant and the interested party were serving in different posts with different responsibilities and duties which in the case of the appellant were more difficult and important in the service. 10

In the course of the hearing, however, counsel for appellant restricted his appeal to the contention that the interested party did not possess the qualifications mentioned in the scheme of service under para (b) which required "wide knowledge of the modern social insurance" and under para (e) which provided that "experience in the Social Insurance Service will be considered as additional qualification." 15

The facts of the case are briefly as follows: 20

The appellant was, at the material time, a Senior Insurance Officer in the department of Social Insurance in the Ministry of Labour and Social Insurance.

By letter dated 25th November, 1980, the Director-General of the Ministry of Labour and Social Insurance requested the Public Service Commission (P.S.C.) to take steps for the filling of three vacancies in the post of Principal Insurance Officer in the department of Social Insurance of the Ministry for the filling of which the consent of the Ministry of Finance had already been given. 25 30

Due to the fact that the post of Principal Insurance Officer was a first entry and promotion post, the P.S.C. proceeded with the publication of the vacancies in the official Gazette. As a result of such publication, 37 applications were submitted including those of the appellant and the interested party. 35

All applications were submitted to a departmental committee which was composed of the Director-General of the Ministry, the Head of the Social Insurance Services and the Head of the Social Welfare Services which considered the applications and after having interviewed the candidates selected four candidates whose names it included in the list of candidates recommended, which was submitted to the P.S.C. The appellant and the interested party were amongst the four candidates so recommended. A number of candidates were excluded as in the opinion of the departmental committee they did not satisfy the requirement under paragraph (b) of the scheme of service of wide knowledge of the modern social insurance.

On 18th June, 1981, a letter was sent to the Chairman of the departmental committee by the respondent asking for explanations, inter alia, as to how the assessment of "wide knowledge in modern social insurance" was made. Such letter concluded as follows:

"Due to the fact that in your above finding no mention is made as to the material on which the departmental committee based its decision, the P.S.C. found it necessary to ask for an explanation from the departmental committee as to the way in which it acted during the interviews and how it had been satisfied that the candidates who were excluded did not possess the aforesaid qualification given that some of them possess such academic qualifications and/or experience so that a reasonable presumption arises in their favour, of possessing wide knowledge of the modern social insurance."

The Chairman of the departmental committee by his letter dated 30th June, 1981, informed the respondent as follows:

"

2. In accordance with the relevant scheme of service, one of the required qualifications for this post is 'wide knowledge of the modern social insurance'. Bearing in mind the duties and responsibilities of the

post as set out in paragraph (2) of the scheme of service, the Committee has interpreted the term 'wide knowledge of modern social insurance' as necessarily presupposing knowledge in depth of the principles, philosophy and objects of social insurance, the international trends and practice as they find expression in the relevant with social insurance International Conventions and Recommendations of the International Labour Office and of the Council of Europe as well as the national schemes of countries with developed social insurance. 5  
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3. During the interviews the Committee submitted such questions to the candidates so that it might be in a position to ascertain objectively whether they had knowledge of social insurance of the standard required by the scheme of service. On the basis of such questions the Committee ascertained beyond any reasonable doubt that out of the candidates who were rejected *no one has studied, in the course of his studies or subsequently, the subject of social insurance in the wide degree required.* 15  
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Subsequently the respondent proceeded with the filling of the vacant posts and at its meeting of 29.7.81 it interviewed the four candidates recommended by the departmental committee, in the presence of the Head of the Department. After the completion of the interviews the respondent P.S.C. heard the views of the Head of the Department of the Social Insurance Service about the candidates and his assessment of the performance of the candidates at the interviews. 25  
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According to the minutes of the meeting of 29.7.1981 "questions on matters of general nature and mainly on matters related to the duties of the post as referred to in the relevant scheme of service were submitted to the candidates both by the Director of the Department of Social Insurance and by the Chairman and members of the Public Service Commission." 35

The assessment of the general performance of the candidates, at the interviews, by the Head of the Department

was that the performance of one of the candidates, namely Panayiotis Yiallourous, was excellent whereas that of the other three candidates, including the appellant and interested party Eleni Samuel, were good.

5 The Head of the Department in concluding his opinion about the candidates, added the following:

10 "Concerning the additional qualification of experience in the services of Social Insurance, only the three first candidates possess same, namely, Yiallourous, Kalos and Petasis. Mrs. Samuel does not possess same."

15 After the Head of the Department left the meeting the respondent made its own assessment of the performance of the candidates which concerning the appellant was "Good" and concerning the interested party "Very good".

The respondent concluded its meeting of the 29th July, 1981 with the following observation, and postponed the taking of a final decision to the 31st July, 1981:

20 "The Commission further noted that Mr. Panayiotis Yiallourous, Chrysostomos Kalos and Antonis Petasis possess the additional qualification required under the scheme of service that of experience in the social insurance services, whereas Mrs. Samuel cannot be considered as possessing same taking into consideration  
25 the fact that she has not served in the Department of Social Insurance Services."

The respondent finally met on 31st July, 1981 to select the three candidates for the filling of the vacant posts and decided to appoint to such posts the three other candidates,  
30 to the exclusion of the appellant. As a result, appellant filed recourse No. 362/81 challenging the part of the decision concerning the promotion of interested party Eleni Samuel. In the course of the hearing of such recourse and before deliberation the appellant was also promoted to the post of  
35 Principal Insurance Officer as from the 1st July, 1982. Appellant, however, pursued his recourse as the question of his seniority to the post of Principal Insurance Officer



vis-a-vis the interested party was considered by him as important.

In the minutes of the meeting of the 31st July, 1981 at which the sub judice decision was taken, the following have been recorded:

“The Commission continued the evaluation of the candidates on the basis of all the material before it and reached the conclusion that Panayiotis Yiallourous, Antonis Petasis and Eleni Samuel are superior generally to the other candidate Chrysostomos Kalos.

The Commission took especially into consideration the performance of the four candidates in their present posts as it emanates from their confidential reports. The Commission also gave due weight to the performance of each one of the candidates during the interviews before it. The Commission observed that though Mrs. Eleni Samuel does not possess the experience in the department of Social Insurance, nevertheless she is engaged with subjects of general policy concerning the social insurance sector as administrative officer in the central administration of the Ministry of Labour and Social Insurance. It is a fact that Mr. Kalos is possessed with experience in the Department of Social Insurance by holding the post of Senior Insurance Officer since 15th March, 1971, and having also served in the same department previously in another lower post. Nevertheless this additional qualification which this candidate possesses according to the relevant scheme of service cannot overcome the superiority of Mrs. Samuel which emanates from the totality of the material before the Commission.”

The learned trial Judge dismissed appellant's recourse (see *Kalos v. Republic*) (1985) 3 C.L.R. 135), after he had reached the conclusion on the questions in issue in the present appeal that the knowledge required under (b) of the scheme of service could be nowhere else better reflected than in the relevant diplomas and certificates of the interested party which were filed in her personal file which was before the P.S.C. Also that both the depart-

mental committee in its list of recommendation and the Head of the Department in making his observations after the conclusion of the interviews before the P.S.C. treated the interested party as possessing such qualification. The learned trial Judge further added that the only observation of the Head of the Department was that interested party did not have the additional qualification under para (e) but he made no observations that interested party did not possess qualifications under paragraph (b). Also, with respect to the additional qualification under para (e) the learned trial Judge after reviewing our case law as to the requirement of special reasoning in cases where a person not possessing such additional qualification is selected in preference to another possessing same, as to why such qualification was disregarded, concluded as follows at pp. 149-150:-

“In the present case it is crystal clear that the P.S.C. were conversant with the fact that the interested party could not have the additional qualification of experience in the services of social insurance as she did not work in the Social Insurance, something which appears from her personal file and it was so stated by the Head of Department at the interview, (vide appendix 8 attached to the opposition); (In this connection it was known that the interested party was serving in the Department of Employment as an assistant to the Director-General of the Ministry).

It is also clear that the respondent P.S.C. in its sub judice decision gave special reasoning in this respect which appears in appendix 9 attached to the opposition; furthermore it is abundantly clear from the general reasoning of the P.S.C. appearing in the same appendix that they took into consideration inter alia the better merit of the interested party, a criterion which was held as above sufficient to outweigh the additional qualification of the applicant (vide *Makrides v. The Republic*—supra).”

Counsel for the appellant in expounding on his grounds of appeal submitted that the trial Court was wrong in

dismissing appellant's recourse. He contended that the respondent Commission wrongly came to the conclusion that the interested party possessed the necessary qualifications under paragraph (b) of the scheme of service. The respondent Commission, counsel submitted, in treating interested party as "engaged in matters of general policy, concerning the sector of Social Insurance, as an administrative officer in the Central Administration of the Ministry of Labour and Social Insurance" was labouring under a misconception of fact because the factors relied upon did not in fact exist. The interested party, counsel stressed, was serving in the Department of Employment as an assistant to the Director-General of the Ministry, a post to which she was seconded as her appointment was that of an administrative officer of the Ministry of Finance, and she never worked in the department of Social Insurance so as to acquire any knowledge of the work of such department and on matters of general policy in the field of such department, whereas the appellant had an established career in the department of Social Insurance running over a number of years. He further submitted that apparently the P.S.C. failed to carry out a due inquiry into the matter and gave undue weight to the interviews in forming its opinion about the interested party and it is on the basis of such opinion that it treated the interested party as superior to the appellant.

He concluded his argument by submitting that the P.S.C. failed to take into consideration and give due weight to the possession by the appellant of the additional qualification required by the scheme of service and that the reasons for not treating this as an advantage in favour of the appellant over the interested party are not valid ones.

It is common ground in this case, as it emanates from the material before us, that the appellant had a long practical experience in the field of Social Insurance which he acquired through his long service in the department of Social Insurance in various posts whereas the interested party had never acquired such practical experience as she had never served in the Department of Social In-

urance. From the long experience of the appellant in the Department it may be inferred that he was better acquainted with the policy and practice of the Department than the interested party.

5 In the present case, bearing in mind the fact that the three out of the four candidates recommended, with the exception of the interested party, were holding posts the discharge of the duties in respect whereof entailed wide knowledge in matters of social insurance, satisfying re-  
10 quirement (b) of the scheme of service and amounting to an additional qualification satisfying requirement (e), whereas the interested party never worked in the department of social insurance, and also the explanation given by the departmental committee to the respondent as to  
15 what it was understood by "wide knowledge of the modern social insurance", we have to examine whether the respondent carried out a due inquiry to ascertain whether the interested party satisfied to the extent required by the scheme of service the requirement under paragraphs (b)  
20 and (e) of the scheme.

In the circumstances and having carefully considered all the material before us and the findings of the respondent Commission at its meeting of the 29th July, 1981 that the interested party did not have the necessary  
25 experience in social insurance and also the observations of the Head of the Department to that effect, we find that the respondent failed to carry out a due inquiry into the matter as to whether the interested party satisfied the requirement of the scheme of service under paragraph  
30 (b). It appears that the respondent in evaluating the candidates gave undue weight to the impression formed about the candidates at the interviews which it treated as outweighing the fact that the appellant possessed wide practical knowledge and experience in matters of modern  
35 social insurance which the interested party did not possess.

In the present case the undue weight which was given to the interviews lead the respondent to the conclusion that the interested party satisfied the requirement of para  
40 (b) of the scheme of service to the extent of outweighing

the additional qualification of the appellant under para (e) and as a result it treated the interested party as superior to the appellant.

As it has been held time and again by this Court interviews do not constitute a criterion by itself separate from the merit, qualifications and experience of the candidates but merely a means of forming an opinion and evaluating their merits notwithstanding the fact that it is not the safest one. (See, *Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 235 at p. 245; *Savva v. The Republic* (1980) 3 C.L.R. 675; *Papadopoulos v. The Republic* (1983) 3 C.L.R. 1423 at p. 1428 where it was held that although the impressions given at the interview as to the personality are relevant to the choice of a candidate for promotion especially if the post carries serious administrative responsibilities they cannot be decisive).

In the result the appeal is allowed and the sub judge decision is annulled. In the circumstances we make no order for costs.

*Appeal allowed with no order as to costs.*