

1987 October 14

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNIS SIATIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 313/80).*

*Public Officers — Promotions — Qualifications — Additional qualifications envisaged as an advantage in the scheme of service — Need for due inquiry whether candidates possess such qualifications — Absence of such inquiry — Ground of annulment.*

*Public Officers — Promotions — Qualifications — Additional qualifications envisaged as an advantage in the scheme of service — Need of special reasoning why they were disregarded — No need of specific reference to them, when both applicant and interested party possessed them.* 5

By means of this recourse the applicant impugns the validity of the promotion of the interested parties to the post of Senior Pharmacist. 10

According to the relevant schemes of service, «A university degree or title in Pharmacy will be considered as an advantage».

The main submission of counsel for applicant is that although a university degree or title in pharmacy is considered as an advantage by the scheme of service, yet, there is nothing in the relevant minutes of the Public Service Commission to show as to why the interested parties, who did not possess this qualification were preferred instead of the applicant. 15

It must be noted that interested parties 1, 2 and 3 did not possess the additional qualification, which was envisaged as an advantage by the aforesaid scheme of service, whilst both the applicant and interested party 4 possessed such qualification. 20

Moreover, it must be noted that the Head of the Department in making his recommendations to the respondent Commission, simply stated that the applicant has «sufficient education»

5 Held, *annulling in part the sub judice decision* (1) It is clear from the relevant minutes that the Public Service Commission failed to carry out a due inquiry as regards the additional qualification possessed by the applicant, which was regarded by the scheme of service as an advantage, as opposed to the interested parties, who did not have such qualification

10 (2) Moreover, the Commission failed to give that special reasoning, which is required in cases of this kind, why it disregarded applicant's such additional qualification and it simply rubber stamped the recommendations of the Head of the Department

15 In the case of interested party No 4, however, who possessed the additional qualification, no specific reference was required to be made by the respondent Commission to the additional qualification of the applicant This point was settled by the Full Bench of this Court in the case of *The Republic v Savvas Petndes* (1984) 3 C L R 375 at page 389

20 *Sub judice promotions of interested parties 1, 2 and 3 annulled Recourse dismissed as against interested party 4 No order as to costs*

*Cases referred to*

25 *Partellides v The Republic* (1969) 3 C L R 480,  
*Tourpeki v The Republic* (1973) 3 C L R 592,  
*Republic v Petndes* (1984) 3 C L R 375

**Recourse.**

30 Recourse against the decision of the respondent to promote the interested parties to the post of Senior Pharmacist in preference and instead of the applicant.

*St. Nathanael*, for the applicant.

*A. Vassiliades*, for the respondent.

*Cur adv. vult.*

35 MALACHTOS J. read the following judgment The applicant in this recourse claims, as stated therein, the following remedies:

A. A declaration of the court that the act and/or decision of the respondents, which was published in the Official Gazette of the Republic dated 1.8.80, by which the interested parties, namely, 1.

Andreas I Antoniadou, 2 Emiliou K Savvides, 3 Dina Savvidou and 4 Efpraxia Petronda, were promoted to the post of Senior Pharmacist in preference and/or instead of the applicant, is illegal, null and void and of no legal effect whatsoever, and

B A declaration of the court that the act and/or decision of the respondents, which was published in the Official Gazette of the Republic under the above mentioned elements, by which the interested parties were promoted to the post of Senior Pharmacist in the Department of Medical Services, was taken in excess and/or abuse of power due to the illegal constitution of the respondent authority 5 10

The post of Senior Pharmacist is a promotion post from the immediately lower post of Pharmacist 1st Grade

According to the relevant schemes of service, the required qualifications are - 15

«At least a three-year service in the post of Pharmacist 1st Grade Administrative and organizing abilities as well as ability in the control of personnel A university degree or title in Pharmacy will be considered as an advantage »

The relevant facts of the case are the following 20

The applicant is a graduate of the American University of Beirut from which he was awarded his B Sc degree in 1973 and the title of M.Sc in 1975 having specialised in Hospital Pharmacy During his course for the M Sc. he specialised in administration of hospital staff and, at the same time, he was given a post of Assistant to the Professor for teaching the under graduates 25

His M Sc Thesis was granted a first prize award and was published in the American Journal of Pharmaceutical Society On 15.7.1975 the applicant was appointed to the post of Pharmacist 1st Grade 30

By letter dated 20.7.79 the Director-General of the Ministry of Health requested the Chairman of the Public Service Commission to take all necessary steps and proceed with the filling of four vacant posts of Senior Pharmacist in the Medical Department informing him at the same time, that the Minister of Finance had given his consent to the filling of the said posts. In view of the fact that the post of Senior Pharmacist is a promotion post the Public 35

Service Commission at its meeting of 25.9.79, acting in compliance with section 36 of the Public Service Law of 1967, Law 33/67, gave the relevant instructions to its secretary who, by letter dated 9.11.79, dispatched to the Director of Medical Services, as Chairman of the Departmental Board, five copies of the list of candidates for promotion to the post of Senior Pharmacist, as well as five copies of the relevant schemes of service. The Departmental Board at its meeting of 12.12.79 decided and recommended for promotion in alphabetical order ten candidates, including the applicant, and by letter dated 3.1.80 informed the Chairman of the Public Service Commission accordingly. As the report of the Departmental Board did not contain any reasons as to the suitability in general of the candidates, it was considered incomplete and the Chairman of the Public Service Commission by his letter dated 12.1.80, requested the Chairman of the Departmental Board to consider the matter and comply with this requirement. As a result, a meeting of the Departmental Board was reconvened on 4.3.80 where it was decided that a special form to help in the rating of each candidate should be used indicating also the overall merit of each candidate which should be dispatched to the Public Service Commission. In the light of the assessment and the rating of each candidate and after taking into consideration the experience, the merit, the seniority and the suitability of the candidates for the post of Senior Pharmacist, it was decided that ten candidates, including the applicant and the interested parties, out of the fifty-two eligible for promotion, should be recommended in alphabetical order as the best candidates. It must be noted here that the applicant was rated by the Departmental Board with 91 marks out of 100, interested party No. 1, Andreas Antoniadis 84, interested party No. 2, Emilios K. Savvides 90, interested party No. 3 Dina Savvidou 83, and interested party No. 4 Efpraxia Petronda 85.

The relevant particulars of each candidate were transmitted to the Public Service Commission on 10.3.80.

The meeting of the Public Service Commission for consideration of the promotion to Senior Pharmacist, was fixed for

12.6.80. In the meantime, due to the retirement on 1.4.80 of a Senior Pharmacist, the Minister of Finance gave his consent for the filling of this vacant post as well and so the Director-General of the Ministry of Health, by letter dated 10.6.80, requested also the filling of this post.

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At its meeting of 12.6.80 the Public Service Commission, according to its relevant minutes, after comparing the merits, qualifications and seniority of all the candidates on the basis of their personal files and their confidential reports, and after taking into account the report of the Departmental Board, and the recommendations of the Director of Medical Services, who was present at the meeting, found that the four interested parties, as well as a certain Vassilios Koupepides, with whom we are not concerned as his promotion is not attacked by the present recourse, were, on the whole, superior to the other candidates and suitable for the said post and decided to promote them to the post of Senior Pharmacist as from 1.7.80.

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Against the promotion of the four interested parties the applicant filed the present recourse.

The grounds of law on which the recourse is based, as they appear in the body of the application, are the following:

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(a) The present application is based on the provisions of Article 124.6, 146 of the Constitution and the provisions of sections 4 and 44 of the Public Service Law of 1967 (Law 33/67);

(b) the said administrative act of the respondents was taken under a misconception of facts as regards the qualifications of the candidates, and of the applicant in particular, and the respondents did not consider and/or did not take into account and/or misinterpreted them in excess and/or abuse of power;

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(c) the respondents did not take into consideration sufficiently and/or at all the fact that the applicant possessed better qualifications and/or he was strikingly superior as regards the other candidates and/or he was the best candidate in every respect;

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(d) the decision of the respondents is not duly reasoned and/or lacks sufficient reasoning;

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(e) the respondents did not take fully into account and/or at all the confidential reports of the applicant which were excellent and

they ignored other indispensable and substantial elements, including the submissions and recommendations of the Departmental Board which included, among others, the Director of the Department of Medical Services and the Chief Pharmacist;

5 (f) the respondents did not take into consideration the fact that the applicant fulfils the requirements of the schemes of service and he is in possession of a university degree, which is an additional qualification, and

(g) the act and/or decision of the respondents is null and void  
10 and was taken in abuse and in excess of power as the Public Service Commission was illegally constituted contrary to the Constitution and Law 33/1967, at the time of their appointment and/or the period immediately before and/or the period of time provided by the Constitution for civil service or other prohibited post and,  
15 therefore, it was not properly constituted and/or was not competent for the taking of decisions.

As regards this last ground of law it appears that it has been abandoned as no substantial argument was advanced by counsel for applicant in the course of the hearing of the case.

20 Counsel for applicant, as regards the question of merit, in addressing the Court conceded that both the applicant and the interested parties were more or less the same as they are reported for the last two years prior to the act complained of, as excellent. He also conceded that the interested parties are all senior to the  
25 applicant.

On the question of qualifications, however, he submitted that with the exception of interested party No. 4 Efraxia Petronda, he is much better qualified to all other interested parties as he possesses a university degree in pharmacy and these interested  
30 parties did not possess such degree. He further alleged that although Efraxia Petronda has a university degree the applicant is better qualified as over and above his B.Sc. university degree he has also the title of M.Sc. According always to the submission of counsel for applicant, it seems that the respondent Commission in  
35 effecting the promotions complained of, did not give due weight or at all to the factors of merit and qualifications of the candidates but only to the factor of seniority, thus acting contrary to the principles laid down in the case of *Partellides v. The Republic* (1969) 3 C.L.R. 480 at page 484 where it is stated that seniority

prevails only where the other two factors are more or less equal. This, however, is not the case here.

Furthermore, counsel for applicant submitted that the respondent in taking the sub judice decision, rubber stamped the recommendations of the Director of Medical Services, which were substantially different than the views of the Departmental Board in spite of the fact that he was its Chairman.

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But the main submission of counsel for applicant is that although a university degree or title in pharmacy is considered as an advantage by the scheme of service, yet, there is nothing in the relevant minutes of the Public Service Commission to show as to why the interested parties, who did not possess this qualification were preferred instead of the applicant. He relied on the case of *Vasso Tourpeki v. The Republic* (1973) 3 C.L.R. 592, at p. 602 where the following is stated:

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«An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the sub judice decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

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Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub judice decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it.»

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The relevant minutes of the respondent Commission of 12.6.80 when the decision complained of was taken, read as follows:

5 «At the meeting, present was the Director of Medical Services, who selected six candidates whom he rated as follows:

First: Mr. Andreas Antoniadis because he precedes all of the others in seniority. He has good confidential reports and he is good employee.

10 Second: Mr. Emilios Savvides, who has got sufficient seniority and exceptional confidential reports. He is employed as an assistant in the Stores for the distribution of drugs and he is an exceptionally good employee.

15 Third: Mr. Vassilios Koupepides, who has excellent confidential reports. He has a university degree and is a good employee with relatively great seniority.

Fourth: Mrs. Efpraxia Petronda. She is responsible for the making of syrum and some other drugs. She is devoted to duty and is an excellent employee.

20 Fifth: Mrs. Dina Savvidou, who although she is not a scientist, yet she is a devoted employee and has good confidential reports.

Sixth: Mr. Ioannis Shiatis, whose seniority is small as against the others, but he has sufficient education.

25 After the withdrawal of the Director of Medical Services, the Commission proceeded to the evaluation and comparison of the candidates.

30 The Commission, after examination of all the elements before it, and after taking into consideration the merits, the qualifications, the seniority and experience of the candidates, on the basis of the personal files and their yearly confidential reports, the conclusions of the Departmental Board as well as the views and recommendations of the Director of Medical Services, decided that the following employees, on the whole, are superior to the rest of the candidates, found them  
35 suitable for the filling of the post and decided to promote them to the permanent post of Senior Pharmacist as from 1.8.80: 1. Antoniadis Andreas, 2. Savvides Emilios, 3. Petronda Efpraxia, 4. Koupepides Vassilios, and 5. Savvidou Dina.»



It is clear from the above minutes that the Public Service Commission failed to carry out the due inquiry as regards the additional qualifications possessed by the applicant, which were regarded by the scheme of service as an advantage, as opposed to the interested parties who did not have such qualifications and disregarded them altogether. 5

Furthermore, it failed to give that special reasoning which is required in cases of this kind and it rubber stamped the recommendations of the Director of Medical Services who, although recommended the applicant as suitable for promotion, yet, in reality, underestimated him by placing him sixth on the list and by stating that he has sufficient education instead of stating clearly that as regards qualifications he was the best candidate. 10

Consequently, the promotion of interested parties 1, 2 and 3, who did not possess a university degree or title has to be declared null and void as the respondent Commission failed to carry out a proper inquiry and also for the failure of the said Commission to give special reasons as to why these interested parties were preferred for promotion instead of the applicant. 15

In the case of interested party No. 4, however, who possessed the additional qualification, no specific reference was required to be made by the respondent Commission to the additional qualifications of the applicant. This point was settled by the Full Bench of this Court in the case of *The Republic v. Savvas Petrides* (1984) 3 C.L.R. 375 where at page 389 the following is stated: 20 25

«It is clear from the judgment of the trial Judge that, in dealing with the second issue, i.e. the additional qualification of the applicant, took it for granted that the interested parties did not possess this additional qualification, inspite of the fact that as it is stated earlier on in this judgment, in dealing with the qualifications of the applicant and the interested parties he cited verbatim the contents of the comparative table. On the assumption that the interested parties did not possess the additional qualification, the trial Judge relied on the *Tourpeki* case, supra, in support of his view that no proper inquiry was carried out and no due reasoning was given by the Public Service Commission as to why they did not select the applicant instead of the interested parties. 30 35

5 In the case in hand, however, both the applicant and the interested parties possessed the additional qualifications and so no specific reference was required to be made by the Public Service Commission in its decision to the additional qualifications of the applicant.»

In the result, this recourse succeeds as far as interested parties  
1. Andreas I. Antoniadis, 2. Emiliios K. Savvides and 3. Dina Savvidou.

10 As against interested party No. 4, Efpraxia Petronda, this recourse is hereby dismissed.

On the question of costs, I make no Order.

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