

1987 September 25

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MILITSA KASTELLANI,

Applicant,

v.

THE CYPRUS PORTS AUTHORITY,

Respondent.

(Case No. 83/83)

Public Corporations — Cyprus Ports Authority — The Cyprus Ports Authority Regulations 317/82, Reg. 1 — In virtue of Reg 1 and in the absence of regulations made by the Authority to the contrary, the provisions of the Public Service Law 33/67 are deemed to apply to the employees of the Authority.

Public Corporations — Cyprus Ports Authority — Appointments — Selection Committee, recommendations of — Board not bound to adopt or follow them. 5

Public Officers — Promotions — Departmental Boards — The Public Service Law 33/67 — Section 36 and the Regulations made thereunder — Do not take away the competence of the Public Service Commission. 10

By means of this recourse the applicant impugns the validity of the appointments of the interested parties to the post of Port Officer, 3rd Grade.

It must be noted that some of the interested parties were not among the candidates recommended for appointment by the Selection Committee. Furthermore, the applicant obtained higher marks in the written examinations than most of the interested parties. 15

Held, dismissing the recourse: (1) The Selection Committee is an informal body for the purpose of advising the Board, which is not bound to adopt its recommendations.

Moreover, in virtue of Regulation (1) of the Cyprus Ports Authority Regulations 317/82, the terms and conditions of service of public service are applicable to officers of the Authority, unless the latter publishes any regulations to the contrary. As no such regulations were published, the provisions of the Public Service Law 33/67 are applicable. As it emanates 20

from the case law, section 36 thereof, referring to Departmental Boards, and the relevant regulations do not take away the competence of the Public Service Commission

- 5 (2) The factor of applicant's higher marks in the written examinations was taken into account together with other relevant factors. The selection of the interested parties was entirely open to the Authority

*Recourse dismissed No
order as to costs*

Cases referred to

- 10 *Mytides v The Republic* (1983) 3 C L R 1096.
Komodromou v The Republic (1985) 3 C L R 2250

Recourse.

- 15 Recourse against the decision of the respondent to appoint the interested party to the post of Port Officer, 3rd Grade in preference and instead of the applicant.

N. Pelides, for the applicant.

N. Papaefstathiou for T. Papadopoulos, for the respondent.

Cur. adv. vult.

- 20 MALACHTOS J. read the following judgment. By the present recourse the applicant claims a declaration of the Court that the decision of the respondent Authority to appoint the interested parties to the post of Port Officer, 3rd Grade, is null and void and of no legal effect whatsoever.

The relevant facts of the case are as follows:

- 25 On 13.4.82 there were advertised twelve posts of Port Officer, 3rd Grade, in the Cyprus Ports Authority. In response, 354 applications, including that of the applicant, were submitted.

- 30 An Advisory Selection Committee set up for the purpose, decided that the applicants be required to sit for written examinations in English and General Knowledge, to be followed by oral interviews of those selected after the said examinations. The interested parties and the applicant were among the fifty-one candidates selected after the written examination.

Out of the forty-nine candidates who appeared at the interviews, which took place on 5.7.82 and 8.7.82, the Selection Committee selected twenty candidates whose names were submitted to the Board of Management of the Authority.

On 7.10.82 the Board considered the matter and decided (1) 5
that the Selection Committee should recommend another four
candidates, i.e. a total of twenty-four and (2) that a Committee of
the Board consisting of the Chairman and Messrs. Ieropoulos,
Papaioannou and Tatianos to interview at least twenty-four
candidates or any other number which this Committee would 10
consider necessary and to submit a final recommendation to the
Board as regards the persons to whom appointment was to be
offered.

Accordingly, on 15.10.82, another four persons were
recommended to the Committee of the Board by the Selection 15
Committee.

On 1.11.82 and 2.11.82, the Committee of the Board
interviewed forty-nine candidates. Finally on 16.12.82 having
before it their relevant applications, their written examination
papers and all relevant material concerning the candidates, it 20
considered each candidate individually and decided to offer
appointment to the twelve interested parties, namely: 1. Th.
Papadopoulos, 2. A. Christofi, 3. P. Louca, 4. I. Kantounas, 5. N.
Dorotheou, 6. E. Maliotis, 7. M. Parparinos, 8. M. Spatharis, 9. E.
Savva, 10. P. Avgoustis, 11. C. Georgi and 12. S. Anastasiadou. 25

As a result the applicant filed the present recourse.

It was argued on behalf of the applicant that the respondent
acted in excess and/or in abuse of power in that it appointed
others than those recommended by the Selection Committee 30
without giving any proper reasons for doing so. Furthermore, it
was argued that the respondent failed in its primary duty to
appoint the best candidates having appointed others than the
applicant who had obtained higher marks in the written
examinations than most of the interested parties.

Indeed, it is a fact that the interested parties appointed were 35
selected as follows: Six from the original twenty recommended,
two from the four recommended later and four from those not
recommended.

In the first place the Selection Committee is not a body set up by
any Law with specific powers but it is an informal body for the 40

purpose of advising the Board in the exercise of its duties. There is no obligation on the part of the Board on which the final decision rests to follow and adopt the recommendations of the Committee as such action would fetter its discretion.

- 5 Moreover, in Regulation (1) of the Cyprus Ports Authority Regulations, Not. 317/82, published by virtue of section 19(2) of the Cyprus Ports Authority Law 1973 (Law No. 38 of 1973), it is provided that the terms and conditions of service applicable to public servants also apply to the employees of the Authority unless
10 the Authority publishes any regulations to the contrary. Since no such regulations have been published the provisions of the Public Service Law 1967 (Law No. 33 of 1967) are deemed to apply. Section 36 thereof provides for the establishment of Departmental Boards whose powers are limited to those envisaged therein.
15 Under such section 36 regulations were made by the Council of Ministers, defining the functions and procedure of such Boards. Regulation 7 inter alia, provides:

- 20 «Provided further that if the Public Service Commission does not consider the candidates recommended by the Departmental Board as suitable for appointment or promotion, it may invite for an interview any candidate not recommended, whom it considers suitable, or re-advertise the vacant post, if it is a First Entry and Promotion one, for the purpose of finding a suitable candidate.»

- 25 It is clear, therefore, that such section and regulations do not, and indeed they cannot, take away the competence of the Public Service Commission (See *Mytides v. The Republic* (1983) 3 C.L.R. 1096 at p. 1110-1111 and *Komodromou v. The Republic* (1985) 3 C.L.R. 2250 at p. 2259-61).

- 30 The other submission of counsel for applicant is that although she obtained higher marks at the written examinations, yet she was not selected for appointment to the post in question. This factor, however, as it appears from the file, was taken into account by the respondent Authority together with all the other relevant factors
35 and in the exercise of its discretion it selected for appointment the interested parties as it was entirely open to it to do.

For the reasons stated above, I consider that the sub judice decision was reached in accordance with the law and is duly

reasoned and, therefore, the recourse fails and is hereby dismissed.

There will be no Order as to costs.

Recourse dismissed.

No order as to costs.

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