

1987 October 10

[PIKIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS PAPAMICHAEL,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Case No 328/86)

*Administrative Law — General principles — Dismissal of recourse for annulment
— Operates in personam, whereas annulment of the act operates erga
omnes*

5 *Public Officers — Promotions — Head of Department, recommendations of —
Special reasons should be given for not following them*

*Public Officers — Promotions — Qualifications — Additional qualifications — Of
only marginal importance*

10 *Public Officers — Promotions — Posts entailing varied duties — Experience in
various branches of administration and sound knowledge of administrative
process — Importance of such factors*

*Public Officers — Promotions — Misconception of fact — Final conclusion that the
successful candidates were the most suitable for promotion contradicted by
the facts — Promotions annulled for misconception of fact*

15 *By means of this recourse the applicant challenges the promotion of the
two interested parties to the post of Administrative Officer, Grade «A».*

*It must be noted that the sub judice act was, also, the subject of review in
another recourse by another applicant. Such other recourse was finally
dismissed.*

20 *In this case the respondent Commission promoted the interested parties on
account of their additional qualifications, notwithstanding applicant's
seniority and the recommendations in his favour by the Head of the
Department.*

Held, *annulling the sub judice decision* (1) Dismissal of a recourse and consequently affirmation of the decision challenged operates in personam and leaves unaffected review of administrative action at the instance of any other aggrieved party. In contrast, judicial decisions entailing the annulment of administrative action, operate erga omnes

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(2) It is settled in administrative Law that departure from the recommendation of the Head of the Department must be specially reasoned. In this case the respondents never addressed themselves to the question whether the additional academic qualifications of the interested parties were a sufficient reason for departing from the recommendation of the Head of the Department

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(3) The respondents attached inordinate importance to the additional qualifications possessed by the interested parties. It is settled, again on authority, that additional qualifications to those required by the scheme of service are not in themselves a decisive factor for the choice to be made

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(4) In a position carrying such varied duties as that of the post in question, experience in the various branches of the administration and sound knowledge of the administrative process are important factors, the significance of which does not appear to have attracted the attention of the respondents

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(5) The final conclusion of the respondents that the interested parties emerged objectively on a consideration of the data bearing upon their worth as most suitable for promotion is contradicted by the facts relevant to their suitability

Sub judice decision annulled
No order as to costs

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Cases referred to

Piens v Republic (1983) 3 C L R 1054,

HadjiConstantinou v Republic (1973) 3 C L R 65,

Makndes v Republic (1983) 3 C L R 622,

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Papadopoulos v Republic (1982) 3 C L R 1070,

Papadopoulos v Republic (1985) 3 C L R 405,

Makns v Republic (1985) 3 C L R 1103,

Spanos v Republic (1985) 3 C L R 1826

Recourse.

Recourse against the promotion of three out of the four interested parties appointed to the post of Administrative Officer Grade «A» in preference and instead of the applicant

- 5 A Panayiotou, for the applicant
 A Vassiliades, for the respondent
 Interested party C Makrides, present

Cur adv vult

- 10 PIKIS J read the following judgment At the outset the applicant challenged the promotion of three of the four parties appointed to the position of Administrative Officer Grade 'A' In the course of the proceedings he confined the issue to the promotion of only two of them, namely, C Makrides and Gr Theophanides The sub
 15 justice decision was the subject of review at the instance of another unsuccessful candidate, namely, A Papaioannou (Recourse No 250/86). In that case the challenge was directed to the selection of all four appointees In actual fact, the two cases were examined together The absence of consolidation made necessary the delivery of two judgments Dismissal of the recourse of A
 20 Papaioannou resulting in the affirmation of the decision under para 4(a) of Art 146 does not, in any way, affect the outcome of this case Dismissal of a recourse and consequently affirmation of the decision challenged operates in personam and leaves unaffected review of administrative action at the instance of any
 25 other aggrieved party In contrast, judicial decisions entailing the annulment of administrative action, operate erga omnes and binding vis-a-viz the world at large as decisions affecting status are*

- 30 Applicant and interested parties and many other Administrative Officers, Second Grade, were among the candidates competing for promotion to the post immediately above their position, that of Administrative Officer Grade 'A' All three of them were among the 16 candidates recommended by the Departmental Committee to be suitable for promotion. The Head of the Department of
 35 Personnel, to the establishment of which the post belonged,

* See, *inter alia*, *Conclusions from the Greek Council of State 1929 1959* p 279 et seq., *Dagtolou General Administrative Law, Tome C2, 1982 Ed*, p 107 *Plens v Republic (1983) 3 C L R p 1054*

recommended the applicant as more suitable for promotion than either of the two interested parties. What actually happened is that Mr. Kofteros recommended the applicant and the two other appointees, whose appointment is not challenged in these proceedings, as the candidates best suited for the filling of the three first posts of Administrative Officer, Grade 'A'. The interested parties were among the three candidates recommended for the filling of the fourth post. The inevitable inference from the assessment of the work of the candidates made by the Head of the Department is that applicant was more suitable for promotion than either of the two interested parties.

The recommendation of the Head of the Department was founded, as he informed the respondents, on a personal appreciation of the merits of the candidates. Otherwise the three candidates had in essence equal merits to the extent that could be deduced from their confidential reports. Applicant had one other advantage over the interested parties; he enjoyed seniority over them.

Notwithstanding the recommendation of the Head of the Department and the seniority of the applicant, the respondents selected the interested parties. They arrived at this conclusion on a consideration of the totality of the material before them and guided by the statutory criteria governing the exercise of their discretion to make promotions in the public service. As far as may be inferred from the reasoning attendant to their decision, the academic qualifications of the interested parties were superior to those of the applicant and that consideration outweighed both the recommendation of the Head of the Department and the seniority of the applicant. They did not specifically reason their decision in the way indicated above, but that is the reason for preference of the interested parties as far as it may be gathered from examination of the minutes of the respondents read in their entirety. They never addressed themselves to the question whether the additional academic qualifications of the interested parties were a sufficient reason for departing from the recommendation of the Head of the Department. It is settled in administrative law that departure from the recommendation of the Head of the Department must be specially reasoned*. On the whole they appear to have underestimated the importance of the recommendation of the

* See, *inter alia*, *HadjiConstantinou v. Republic* (1973) 3 C.L.R. 65.

Head of the Department as a factor distinct in itself reflecting upon the merits and suitability of the candidates for promotion*.

- In choosing the interested parties they attached inordinate importance to the additional qualifications possessed by them. It is settled, again on authority, that additional qualifications to those required by the scheme of service are not in themselves a decisive factor for the choice to be made. What such qualifications confer is a marginal advantage the magnitude of which must necessarily be related to the particular needs of the service**. In a position carrying such varied duties as that of Administrative Officer, First Grade, experience in the various branches of the administration and sound knowledge of the administrative process are important factors, the significance of which does not appear to have attracted the attention of the respondents.
- 15 The final conclusion of the respondents that the interested parties emerged objectively on a consideration of the data bearing upon their worth as most suitable for promotion is, in my judgment, contradicted by the facts relevant to their suitability. In the end I feel constrained to annul the sub judge decision for:
- 20 (a) Failure to reason specifically departure from the recommendation of the Head of the Department.
- (b) Attachment of inordinate importance to additional qualifications of the interested parties.
- (c) Misconception of the facts relevant to the suitability of the candidates, particularly those objectively reflecting their overall worth.

Therefore, the promotions of interested parties Theophanides and Makrides are hereby annulled and I so declare the decision so far as it affects the interested parties to be wholly void pursuant to the provisions of Article 146.4(b).

Promotions of interested parties Theophanides and Makrides annulled.

* *Makrides v. Republic* (1983) 3 C.L.R. 622; *Spanos v. Republic* (1985) 3 C.L.R. 1826.

** *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070; *Papadopoulos v. Republic*, (1985) 3 C.L.R. 405; *Makris v. Republic* (1985) 3 C.L.R. 1103; *Spanos v. Republic* (1985) 3 C.L.R. 1826.