

1987 December 12

[KOURRIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSO ADAMOU,

*Applicant.*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent*

*(Case No 539/85)*

*Public Officers — Promotions — Whether necessary to mention each candidate specifically in the minutes — Question answered in the negative*

*Public Officer — Promotions — Absence of specific comparison between applicant and interested party — Not a ground of annulment*

*Public Officers — Promotions — Judicial control — Principles applicable*

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By means of this recourse the applicant challenges the promotion of the interested party to the post of Welfare Officer 1st Grade. The applicant is senior to the interested party by 15 days; she has more qualifications than the interested party though both possessed the additional qualifications envisaged as an advantage in the scheme of service, but the interested party is superior in merit.

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The main complaint of counsel for the applicant is that there has not been made by the respondent Commission the necessary comparison of all the candidates with each other, and in particular, of the applicant with the interested party.

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Held, dismissing the recourse: (1) It is not necessary to mention specifically each candidate in the minutes, because in the absence of any indication that any candidate has been excluded from consideration, it is to be presumed that all of them were duly considered.

2) An administrative Court cannot interfere in order to set aside the promotion, unless the applicant establishes that he had striking superiority over the interested party.

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3) In this case the sub judge promotion was reasonably open to the Commission.

*Recourse dismissed.*

*No order as to costs.*

5 *Cases referred to:*

*Piperi v. The Republic* (1984) 3 C.L.R. 1306;

*Michanikos v. The Republic* (1976) 3 C.L.R. 237;

*Nissiotis v. The Republic* (1977) 3 C.L.R. 398;

*Ioannides v. The Republic* (1979) 3 C.L.R. 628;

10 *Constantinou v. The Republic* (1980) 3 C.L.R. 551;

*Republic v. Rousos* (1987) 3 C.L.R. 1217.

### Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Welfare Officer 1st Grade, in preference and instead of the applicant.

*M. Tsangarides, for E. Efstathiou, for the applicant.*

*A. Vassiliades, for the respondent.*

*Cur. adv. vult.*

20 KOURRIS J. read the following judgment. By the present recourse, the applicant seeks a declaration that the decision of the Public Service Commission to promote the Interested Party, namely, George P. Nicolaidis to the post of Welfare Officer, 1st Grade, as from 1st January, 1985, in preference and/or instead of the applicant, is null and void and of no effect whatsoever.

25 At the time of the sub judge decision both the applicant and the Interested Party were holding the post of Welfare Officer, 2nd Grade.

30 Pursuant to a request made by the Director-General of the Ministry of Labour and Social Insurance for the filling of eight vacancies in the post of Welfare Officer, 1st Grade, the respondent Commission referred the matter to the Departmental Committee which was set up for that purpose in accordance with the provisions of s. 36 of the Public Service Law, 1967 (Law 33/67). By its report which was submitted to the respondent Commission

by letter dated 22nd February 1984 the Departmental Committee recommended 36 candidates for promotion to the post in question in alphabetical order including the Interested Party and the applicant

The respondent Commission at its meeting of 14th December 1984 after hearing the recommendations of the Head of Department proceeded in his absence to evaluate and compare the candidate after examining their confidential reports and their personal files and taking into consideration the recommendations of the Head of Department the Commission reached its decision which appears in Appendix 11 by virtue of which it promoted to the said post the Interested Party The promotion was published in the Official Gazette of the Republic of the 8th March 1985 as a result of which the applicant filed the present recourse

The main complaint of counsel for the applicant is that there has not been made by the respondent Commission the necessary comparison of all the candidates with each other and in particular of the applicant with the Interested Party This submission of counsel for the applicant cannot succeed in view of the principles expounded in the case of *Piperi v The Republic*, (1984) 3 C L R 1306 decided by the Full Bench of the Supreme Court where it was held that it is not necessary to mention specifically each candidate in the minutes, because in the absence of any indication that any candidate has been excluded from consideration it is to be presumed that all of them were duly considered (See also *Michanikos v The Republic* (1976) 3 C L R 237 *Nissiotis v Republic*, (1977) 3 C L R 398, *Ioannides v The Republic* (1979) 3 C L R 628)

Also in the case of *Constantinou v The Republic*, (1980) 3 C L R 551 at p 561 it was stated

«The argument advanced on behalf of the applicant that there has been a violation of the principle of equality because of the fact that the Head of Department did not comment expressly on all candidates but only of those mentioned in the minutes, cannot stand There cannot be, in my view, any question of unequal treatment if a Head of Department expressly comments on some and does not comment on others The inference to be drawn, especially when there is a big number of candidates, as in the present case, is that for

5 those not commented upon there was nothing to be said in favour and it was not his intention to recommend them for promotion or in other instances there is something to be said to explain why and in view of certain circumstances, such as marked seniority, they are not being recommended for promotion or that their seniority or other advantage should be ignored.»

10 Counsel for the applicant has, furthermore, contended that the applicant has more qualifications than the Interested Party relating to the post in question. From a perusal of Appendix 3A to the Opposition stating the qualifications of the applicant and the Interested Party it becomes obvious that the applicant has more qualifications than the Interested Party i.e. she is the holder of a diploma in Social Welfare of the school of Social Welfare «XEN» 15 Athens and a certificate of completion of a diploma course of early childhood in the University of Haifa, Israel, from 1.11.79 to 29.2.80. However, both the applicant and the Interested Party have the qualifications which are considered as an advantage in accordance with the scheme of service for the post in question.

20 It should be noted that the applicant is senior to the Interested Party by 15 days; both applicant and the Interested Party were promoted to the post of Welfare Officer, 2nd Grade on 15.3.82 from the lower grade of Assistant Welfare Officer. In the post of Assistant Welfare Officer the applicant was promoted on 1.1.1978 25 and the Interested Party on 15.1.1978. Consequently, the seniority of the applicant is not substantial.

Turning now to merit, it is obvious that the Interested Party is superior to the applicant because applicant was graded in the confidential reports for each of the years of 1979, 1980, 1981, 30 1982, 1983 and 1984 as «Very good» whereas Interested Party for the same years he was graded as «excellent».

It is a settled principle of Administrative Law that when an administrative organ such as the Public Service Commission selects a candidate on the basis of comparison with others, it is not 35 necessary to show, in order to justify his selection that he was strikingly superior to the others. On the other hand, an administrative Court cannot interfere in order to set aside the decision unless the applicant establishes that he has striking superiority over the interested party.

The criteria which the Public Service Commission have to take into consideration when reaching a decision have been expounded in the case of *Republic v. Rousos*, (1987) 3 C.L.R. 1217 at pp. 1222 - 1223:-

«On the other hand, there is nothing in the Zachariades case 5  
to prevent giving effect to the dictum in the *Menelaou* case,  
supra, which was adopted by the *Haris* case, that 'merit should  
carry the most weight', so long as this is not misunderstood to  
mean that merit should invariably be treated, in an inflexible 10  
way, as being exclusively the decisive criterion, because in  
view of the Judgment in the *Georghiou, Ierides and Christou*  
cases, supra, there may exist situations in the special  
circumstances of which, and provided that there are not  
overstepped the limits of the proper exercise of the relevant 15  
discretionary powers, a criterion other than merit may be  
found to be more important than the other. But it is, indeed,  
obvious that cogent reasons should be given in order to justify  
why merit has not been treated in a particular case, in view of  
the existence of special circumstances, as carrying the most  
weight.» 20

The sum up, the applicant is senior to the Interested Party by 15  
days, she has more qualifications than the Interested Party but the  
Interested Party is superior to the applicant regarding merit. In the  
present instance it was reasonably open to the respondent  
Commission on the totality of the material before it and in the 25  
exercise of its relevant discretionary powers, with which I find no  
sufficient cause to interfere, to select as being the most suitable,  
the Interested Party instead of the applicant notwithstanding the  
slight seniority and the more qualifications of the applicant.

In these circumstances, the recourse fails and is hereby 30  
dismissed with no order for costs.

*Recourse dismissed.*  
*No order as to costs.*