

1987 December 12

[KOURRIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOPHIA PAPADOPOULOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Case No. 532/85)

*Public Officers — Promotions — The Public Service Law 33/67, section 31(2) —
No Public Officer may be promoted for more than one grade at a time.*

5 *Public Officers — Secondment — The Public Service Law 33/67, section 33(2) —
Does not change status of an officer, but it is a factor to be taken into
consideration in assessing overall picture of the merits of the candidates for
promotion — Republic v Psaras (1985) 3 C L R 1939 explained*

10 *Public Officers — Promotions — Judicial control — Principles applicable —
Applicant senior to interest party by 8 years, but latter strikingly superior in
ment to the former — Selection of interested party reasonably open to the
appointing organ*

By means of this recourse the applicant impugns the validity of the promotion of interested parties to the post of Welfare Officers, 1st Grade

15 The contentions of the applicant were (a) That interested parties 1-4 were not eligible for promotion. Indeed, these interested parties never held the post of Welfare Officer, 2nd Grade i.e. the immediately lower post to the sub-judice post, but they held at the material time, the post of Welfare Officer, 3rd Grade, though they were serving on secondment to the temporary post of Welfare Officer 1st Grade and (b) That the applicant was strikingly superior to interested party 5. The applicant was senior to the interested party by 8 years, but the interested party was superior to the applicant as regards merit

20 Held, annulling the promotions of interested parties 1-4. No Public Officer may be promoted for more than one grade at a time (Section 31(2) of Law 33/67). Secondment under section 33(2) of the same law does not change the

status of the public officer, it is of an undeterminable and temporary nature and it is neither a promotion nor an appointment, even if it is effected after a selection, but it is one of the factors that can be taken into consideration in assessing the overall picture of the merits of the candidates The ratio of *Republic v Psaras* (1985) 3 C L R 1939 is confined to the interpretation of the scheme of service under examination in that case and in the particular circumstances of that case 5

It follows that it was not reasonably open for the respondent Commission to interpret the scheme of service the way they did

Held, further, dismissing the recourse as regards interested party 5 (1) An administrative Court cannot interfere in order to set aside a promotion, unless the applicant establishes that he had striking seniority over the interested party 10

(2) In the present case, in so far as seniority is concerned there is a marked difference between the applicant and the interested party in favour of the applicant. But, there is also a striking seniority of merit of the interested party over the applicant 15

(3) In the circumstances it was reasonably open for the Commission to reach the sub judge decision

Promotions of interested parties 1-4 annulled Recourse as against interested party 5 dismissed No order as to costs 20

Cases referred to

- Republic v Anstotelous* (1982) 3 C L R 479,
- Arkattis v The Republic* (1967) 3 C L R 429, 25
- Republic v Koufettas* (1985) 3 C L R 1950,
- Republic v. Psaras* (1985) 3 C L R 1939,
- Koufettas v The Republic* (1980) 3 C L R 226,
- Republic v Rousos* (1987) 3 C L R 1217

Recourse. 30

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

A. *Panayiotou*, for the applicant.

A *Vassiliades*, for the respondent 35

Cur. adv. vult.

KOURRIS J read the following judgment By this recourse the applicant challenges the decision of the Public Service Commission to promote the interested parties set out hereinbelow to the post of Welfare Officer 1st Grade as from 5 1 1985 in preference and/or instead of the applicant

The said interested parties are the following

(1) Mary Tekki (2) Zoe Adamidou (3) Chryso Neophytou (4) Vera Paraskevopoullou. and (5) George P Nicolaides This post is a promotion post

10 At the time of the sub judice decision, the applicant and I P No 5 were holding the post of Welfare Officer, 2nd Grade and the interested parties Nos 1 to 4 were holding the substantive post of Welfare Officer 3rd Grade but were seconded to the temporary post of Welfare Officer, 1st Grade as from 1 12 1982

15 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
20 the provisions of s 36 of the Public Service Law 1967 (33/67) By its report which was submitted to the respondent Commission by a letter dated 22nd February, 1984, the Departmental Committee recommended 36 candidates for promotion to the post in question in alphabetical order including the interested parties and
25 the applicant

The respondent Commission at its meeting of 14 12 1984, after hearing the recommendations of the Head of the Department proceeded in his absence to evaluate and compare the candidates, after examining their confidential reports and their
30 personal files and taking into consideration the recommendations of the Head of the Department, the Commission reached its decision which appears in appendix 11 by virtue of which it promoted to the said post, among others the five interested parties The promotions were published in the Official Gazette of
35 the Republic of the 8th March 1985 as a result of which the applicant filed the present recourse

Counsel for the applicant argued that the interested parties Nos 1 to 4 do not possess the qualifications required by the scheme of service The relevant scheme of service so far as material for the
40 determination of this recourse, reads as follows -

«Απαιτούμενα Προσόντα:

(1) Τριετής τουλάχιστον υπηρεσία εις την θέσιν Λειτουργού Ευημερίας 2ας Ταξεως.

(2) Επιτυχία εις ενδομηματικές εξετάσεις.

(3) Ακεραιότης χαρακτήρος, διοικητική και οργανωτική ικανότης, ισχυρά προσωπικότης, ωριμότης και συναισθηματική σταθερότης. 5

(4) Ικανότης δημιουργίας εποικοδομητικών σχέσεων με ανθρώπους. Γνήσιον ενδιαφέρον δι' ανθρώπους οι οποίοι αντιμετωπίζουν προβλήματα. Ικανότης να κερδίζει την εμπιστοσύνη άλλων και να χειρίζεται το κοινόν με υπομονήν και συμπάθειαν. 10

(5) Ειδική εκπαίδευσις ή μετεκπαίδευσις εις την Κοινωνικήν Εργασίαν/Ευημερίαν θα θεωρήται πλεονέκτημα. 15

Σημ.: Διά την πλήρωσιν των κενών θέσεων κατά τα πρώτα τρία έτη μετά την έγκρισιν του παρόντος Σχεδίου Υπηρεσίας εάν δεν υπάρχουν υποψήφιοι με τριετή υπηρεσίαν εις την θέσιν Λειτουργού Ευημερίας, 2ας Τάξεως, δύναται να προαχθούν και υπάλληλοι με 7ετή συνολικήν υπηρεσίαν εις τας θέσεις Λειτουργού Ευημερίας, 2ας Τάξεως/Λειτουργού Ευημερίας, 3ης Τάξεως/Βοηθού Λειτουργού Ευημερίας. 20

(Ενεκρίθη υπό του Υπ. Συμβουλίου - Απόφασις υπ' αρ. 22.517 και ημερ. 9.12.1982).» 25

In English the Note to the required qualifications reads as follows:-

«For the filling of the vacant posts during the first three years after the approval of the present scheme of service, if there are no candidates with 3 years service in the post of Welfare Officer, 2nd Grade, there may be promoted, and officers with a total service of seven years in the posts of Welfare Officer, 2nd Grade/Welfare Officer, 3rd Grade/Assistant Welfare Officer.» 30

The applicant was appointed in the Welfare Office on 13.9.1965, as an Assistant Welfare Officer on a daily basis and on 1.8.1969 she was appointed to the temporary post of Assistant 35

Welfare Officer and as from 1.7.70 to the permanent post, and as from 15.3.1982 she was promoted to the post of Welfare Officer, 2nd Grade.

5 From 1.1.1981 the nomenclature of the posts was changed and the applicant was emplaced to the post of Welfare Officer, 3rd Grade.

10 Interested Party Mary Tekki was first appointed into the service in 1969 in the post of Assistant Welfare Officer, and as from 1.1.1981 she was emplaced in the post of Welfare Officer, 3rd Grade. Interested party Zoe Adamidou was first appointed in the post of Assistant Welfare Officer in 1971 and was emplaced in the post of Welfare Officer, 3rd Grade on 1.1.1981. Interested party Chryso Neophytou was appointed in 1971 in the post of Assistant Welfare Officer and she was emplaced as from 1.1.1981 in the post of Welfare Officer, 3rd Grade. Interested party Vera Paraskevopoullou was appointed in the post of Assistant Welfare Officer in 1972 and on 1.1.1981 was emplaced in the post of Welfare Officer, 3rd Grade.

20 Counsel for the applicant argued that to possess the required qualifications of the scheme of service, one should have three years' service in the post of Welfare Officer, 2nd Grade, and that the applicant had a three-year service in the post of 2nd Grade and she was eligible for promotion, whereas the interested parties Nos. 1 to 4 did not have three years service in the post of 2nd Grade and, therefore, they were not eligible for promotion.

30 Further, he went on to say that it was not reasonably open for the Public Service Commission to interpret the Note to the Scheme of service in the way they did, i.e. that if there are no candidates in the post of Welfare Officer, 2nd Grade, with three years service during the first three years after the approval of the scheme of service, then one is eligible for promotion if one has a total service of 7 years in the post of Welfare Officer, 2nd Grade and 3rd Grade or a total service of 7 years in the post of Welfare Officer, 3rd Grade/Assistant Welfare Officer. He contended that one to be eligible for promotion must hold the post of Welfare Officer, 2nd Grade, and if one did not have three years service in that post, then he would be eligible if he had a total service of 7 years; and he submitted that the interested parties did not satisfy the requirement of the scheme of service in the post of Welfare Officer, 1st Grade, because their prior service was in the post of Welfare Officer, 3rd Grade and their secondment as from

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1 12 1982 to the post of Welfare Officer 1st Grade and they were
promoted to the post of Second Grade

In the case of *Republic v Aristotelous*, (1982) 3 C L R 479
decided by the Full Bench of the Supreme Court, it was held that
the principle of administrative law that no public officer may be
promoted for more than one grade at a time, as expounded in the
case of *Arkattis v The Republic*, (1967) 3 C L R 429, was
applicable and because it found expression in s 31(2) of the Public
Service Law 1967, and in the absence of express provision to the
contrary, it should be given full effect, and that as the promotion of
the interested party involved jumping more than two steps on the
ladder at a time, her promotion had to be declared void as being
contrary to s 31(2) of Law 33/67

In the case of *The Republic v Koufettas*, (1985) 3 C L R 1950
decided by the Full Bench, it was held that the secondment under
s 33(2) of Law 33/67 does not change the status of the public
officer, it is of an undeterminable and temporary nature and it is
neither a promotion nor an appointment, even if it is effected after
a selection, but it is one of the factors that can be taken into
consideration in assessing the overall picture of the merits of the
candidates It was further held that the ratio of the decision in the
case of *Republic v Psaras*, (1985) 3 C L R 1939, does not
purport to attach any different significance to secondment than the
one indicated in this Judgment Its ratio is confined to the
interpretation of the scheme of service under examination in that
case and in the particular circumstances of that case

The case of *Koufettas v The Republic*, (1980) 3 C L R 226
cited by counsel for the respondent, does not in any way help the
case for the respondent Commission because the facts of that case
are different from the facts of the case in hand In that case the
interested party was serving in the immediately lower grade before
his promotion, unlike the facts of this case where the interested
parties were serving two grades lower than the promotion post

In view of the above principles, I am of the view that the course
adopted by the respondent Commission in this case was not
possible in law, that is, it was not possible to promote the
interested parties Nos 1 to 4 to the post of Welfare Officer, 1st
Grade, because it involved jumping more than one step on the
ladder and I have decided to annul the promotions of interested
parties 1-4 because they did not possess the required

qualifications for the post in question. In view of the above, it was reasonably open for the respondent Commission to interpret the scheme of service the way they did.

5 In view of this decision, I do not propose to examine the contention of the applicant that she was strikingly superior to the interested parties Nos 1-4 because the matter will be examined afresh by the Public Service Commission.

10 I now propose to examine the second point raised in this recourse to the effect that the decision of the respondent Commission to appoint interested party No. 5, George P. Nicolaides in preference and instead of the applicant is null and void. Counsel for the applicant argued that the applicant is strikingly superior to the interested party and that the respondent commission should have appointed her to the post in question.

15 The applicant, as I have stated hereinabove, was appointed in the Welfare Office on 13.9.1965, as an Assistant Welfare Officer on a daily basis and on 1.8.1969 she was appointed to the temporary post of Asst. Welfare Officer, and as from 1.7.1970 to the permanent post, and on 15.3.1982 she was promoted to
20 Welfare Officer, 2nd Grade.

It appears from her file of the confidential reports (exhibit 2) that each of the years 1979, 1980, 1981, 1982 and 1984 she was graded «Very Good».

25 The interested party No. 5 was appointed as a Court Bailiff on 1.4.1961 and on 1.4.1975 he changed department and was appointed to the post of Temporary Asst. Welfare Officer on secondment; and as from 15.1.1978 to the permanent post; and as from 15.3.1982 he was promoted to the post of Welfare Officer, 2nd Grade.

30 As it appears from the file of the confidential reports of the Interested Party Nicolaides (exhibit 12), in the year 1979 he was graded «Very Good» and in each of the years 1980, 1981, 1982 and 1984 he was graded «Excellent».

35 It is obvious from the above facts that the applicant was superior to the interested party by 8 years; and this in accordance with s. 46(2) of Law 33/67. The interested party is superior in merit to the applicant, and the question arises whether it was reasonably open for the respondent Commission to select the interested party as

the most suitable person for the promotion.

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 necessary to show, in order to justify his selection that he was strikingly superior to the other. On the other hand, an administrative Court cannot interfere in order to set aside the decision unless the applicant establishes that he had 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 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 way, as being exclusively the decisive criterion, because in view of the Judgments 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 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.»

In the present case, in so far as seniority is concerned, there is a marked difference between the applicant and the interested party in favour of the applicant. But, there is also a striking superiority of merit of the interested party over the applicant.

In the light of the above, I am of the opinion that it was reasonably open for the Commission to reach the sub judice decision and to promote to the post of Welfare Officer, 1st Grade, the interested party instead of the applicant.

In the circumstances the recourse against interested parties 1, 2, 3 and 4 succeeds and the recourse against interested party 5 George P Nicolaides fails and is hereby dismissed

In the circumstances, I do not propose to make any order as to
5 costs

*Recourse against interested
parties 1, 2, 3 and 4 succeeds
Recourse against interested party 5
dismissed No order as to costs*