

1987 December 28

{KOURRIS, J}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS KRAMVIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 8/87).

Public Officers — Promotions — Qualifications — Scheme of service — Interpretation and application of — Judicial control — Principles applicable — In this case, it was not reasonably open to the Commission to consider the interested party as qualified under the relevant scheme for the post of Registrar in the Psychiatric Service of the Department of Medical Services — The Registration of interested party as a specialist in Psychiatry under the Medical Registration Law, Cap. 250, as amended, does not satisfy the requirement of the scheme for a diploma or title or speciality in Psychiatry. 5

The Medical Registration Law, Cap. 250 as amended — Medical Council — Does not have power to award diplomas or titles. 10

Public Officers — Promotions — Head of Department — Duties of.

Public Officers — Promotions — Interviews, performance at — Weight to be attached thereto.

Public Officers — Promotions — Confidential reports — A six monthly report for officer serving on probation prepared after advertisement of post in question — Not safe to compare it with several confidential reports of another candidate. 15

Public Officers — Promotions — The criteria, which have to be taken into consideration.

By this recourse, the applicant, challenges the decision of the Public Service Commission to promote the interested party, namely, Andreas Demetriou, to the post of Registrar in the Psychiatric Services of the 20

Department of Medical Services as from 15 6 86 in preference and/or instead of the applicant

5 The relevant scheme of service reads as follows «Registration in the medical register of Cyprus and diploma or title of speciality in Psychiatry acquired after post graduate training and as a result of successful «examination» (δοκιμασία)

10 The interested party is the holder of a diploma in medicine of the Higher Institute of Medicine of Sofia and was registered as a medical practitioner in Cyprus under the Medical Registration Law Cap 250 He is also the holder of a certificate for Specialization in Psychiatry of the Cyprus Medical Council and was appointed as a Medical Officer Class I in the Psychiatnc service on 8 11 85

15 It must be noted that a letter by Professor of Psychiatry F A Jenner who is the Head of the Psychiatric Department of the University of Sheffield stating that the interested party had 8 years of training and work in clinical psychiatry and that he is fully experienced and competent enough to be regarded as a psychiatric specialist was placed before the Commission

20 Held annulling the sub judice decision (A)(1) To satisfy the requirements of the scheme of service in question a candidate must be (a) registered as a medical practitioner in Cyprus (b) the holder of a diploma or title of a speciality in Psychiatry and (c) this degree or title was acquired after post graduate training and as a result of successful examination

25 (2) Nowhere does it appear that the interested party was the holder of a diploma or title of Speciality in Psychiatry obtained in England What the letters of Professor Jenner dated April 1979 and 19th May 1986 convey is the experience and training received by the interested party

30 (3) The registration of the applicant as a specialist in accordance with Regulation 3 of the regulations made under s 23(2) of the Medical Registration Law Cap 250 (as amended) amounts to a diploma or title within the ambit of the scheme of service It appears from the wording of the law that the Medical Council of Cyprus does not award any diploma or title of speciality

35 (4) The word «δοκιμασία» in the scheme of service viewed in the context of the whole of the scheme of service has the meaning of «εξετάσις» i.e examination

(5) In the light of the above, it was not reasonably open to the respondent Commission to interpret the scheme of service in the way it did

(B) Assuming that the interested party was qualified for the post in question

(1) The applicant had better qualifications. With regard to merit, there was before the respondent Commission a six monthly report for the interested party as he was serving on probation at the material time, in which he was rated as «excellent». The report was prepared after the advertising of the sub judge post and the confidential reports of the applicant for each of the years from 1981-1985 by which he was rated «very good». It was not safe to compare the applicant and the interested party regarding merit because the applicant was assessed for a number of years prior to the decision in question, whereas the interested party was assessed for six months. The respondent Commission should not have attached much weight to the confidential reports of the applicant and the respondent.

In view of the above the applicant established striking seniority because in terms he has better qualifications and striking seniority.

(2) The respondent Commission in selecting the interested party gave undue weight to the impression made at the interview and to the fact that his six monthly report rated him as «excellent». The performance of a candidate at an interview is a relevant consideration to which the Department Head, as well as the Commission, may pay due regard, but the significance to be attached to the impressions varies with the requirements of the post and the importance of a candidate's personality for an effective discharge of the duties assigned by the scheme of service.

(3) From a perusal of the minutes of the Public Service Commission, it is apparent that in this case the Head of the Department manifestly failed to carry out his duties as defined in Republic v Hans (1985) 3 C L R 106.

Sub judge decision annulled 25
No order as to costs

Cases referred to

- Papapetrou v The Republic*, 2 R S C C 61,
Petsas v The Republic, 3 R S C C 60,
Republic v Aivaliotis (1971) 3 C L R 89, 30
Vryonides v The Republic (1984) 3 C L R 89,
Frangoulides and Another v P S C (1985) 3 C L R 1680,
Republic v Xinan & Others, (1985) 3 C L R 1922,
Republic v Rousos (1987) 3 C L R 1217,
Republic v Hans (1985) 3 C L R 106, 35
Makndes v The Republic (1983) 3 C L R 622,

Republic v. Maratheftis (1986) 3 C.L.R. 1407;

Savva v. The Republic (1980) 3 C.L.R. 675;

Panayotides v. The Republic (1986) 3 C.L.R. 525;

Recourse.

- 5 Recourse against the decision of the respondent to promote the interested party to the post of Registrar in the Psychiatric Services of the Department of Medical Services in preference and instead of the applicant.

A.S. Angelides, for the applicant.

- 10 *P. Hadjidemetriou*, for the respondent.

M. Tsangarides, for E. Efstathiou, for the interested party.

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 party, namely, Andreas Demetriou, to the post of Registrar in the Psychiatric Services of the Department of Medical Services as from 15.6.1986 in preference and/or instead of the applicant.
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The post is a first entry and promotion post.

- 20 Pursuant to a request made by the Director-General of the Ministry of Health to the Public Service Commission for the filling of two vacancies in the post of Registrar, Psychiatric Services, 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) to investigate and advise on the qualifications and suitability of candidates for promotion to the above posts in the Medical Department of the Civil Service. The Departmental Committee by its report, which was submitted to the respondent Commission by letter dated 15.4.1986, recommended three candidates as eligible for promotion to the post in question, including the applicant and the interested party.
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The advocate of the applicant addressed a letter dated 18.4.1986 to the respondent Commission alleging that the

candidate Andreas Dernetriou was called by the Departmental Committee for an interview although he lacked the required qualifications of the scheme of service to the effect that he was not the holder of a diploma or title of speciality in Psychiatry obtained after post-graduate training, and as a result of successful examination. 5

The respondent Commission at its meeting of 9.5.1986 considered the report of the Departmental Committee, and having taken into consideration all the material before it, including the letter of the Head of the Psychiatric Department of the Sheffield University, (Appendix 7 to the Opposition) decided that the interested party satisfied the requirements of the scheme of service, and the advocate of the applicant was informed accordingly by letter dated 26.5.1986. 10

The final meeting of the respondent Commission took place on the 2nd June, 1986. The Head of the Department was present and the respondent Commission interviewed the candidates in his presence. The Head of the Department expressed his views on the performance of the candidates and left. The respondent Commission made an independent assessment of the performance of the candidates at the interview coinciding with that of the Head of the Department. In the opinion of both, the performance of the interested party at the interview was better than that of the applicant i.e. the interested party was assessed as «Very Very Good» and the applicant as «Very Good». The Respondent Commission, having assessed the material before them, including the confidential reports of the parties, their personal files, their seniority and their performance at the interview, in the light of the views expressed by the Head of the Department, they concluded that the interested party was best suited for appointment and promoted him accordingly. The promotion was published in the Official Gazette of the Republic of 19th May, 1986 under No. 2559 and the applicant, feeling aggrieved, filed a recourse under No. 421/86 challenging the promotion of the interested party. 15
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The advocate of the applicant addressed a letter to the respondent Commission dated 19.7.86 on behalf of his client requesting the review of the decision in question alleging that the promotion of the interested party to the post of Registrar in the Psychiatric Services, is illegal because he does not possess the 40

required qualifications of the scheme of service. He enclosed a letter dated 4.7.1986 by the Dean of the Royal College of Psychiatrists, a telex dated 3.7.1986 and a letter by Dennis Leigh.

5 The office of the Public Service Commission addressed a letter to the interested party asking him to comment on the said letter. The interested party, through his advocate Mr. Efstathiou, addressed a letter to the respondent Commission stating that the interested party possessed the required qualifications of the scheme of service, (appendix 14).

10 The Respondent Commission convened on 5.11.1986, and having reconsidered the matter, decided that the interested party satisfied the requirements of the scheme of service. Their decision appears in Appendix 15 of the opposition which reads as follows:

15 «Η Επιτροπή, αφού εξέτασε με προσοχή το όλο θέμα, έκρινε ότι ο Ανδρέας Δημητρίου ικανοποιεί τις πρόνοιες του Σχεδίου Υπηρεσίας. Ειδικότερα, ο υποψήφιος αυτός αναγνωρίστηκε στην Κύπρο ως Ειδικός Ψυχίατρος δυνάμει του Κανονισμού (3) των περί Εγγραφής Ιατρών (Ειδικά Προσόντα) Κανονισμών του 20 1979 και επομένως έχει τίτλο ειδικότητας στην Ψυχιατρική δυνάμει της Κυπριακής Νομοθεσίας, αφού προηγουμένως έτυχε μεταπτυχιακής εκπαίδευσης και επιτυχούς δοκιμασίας στο Ψυχιατρικό Τμήμα του Πανεπιστημίου του Sheffield».

25 «The Respondent Commission decided that the interested party possessed the required qualifications and in particular they have taken into consideration that the interested party was recognized in Cyprus as a specialist psychiatrist by virtue of Regulation 3 of the Registration of Medical Officers (Special Qualifications) Regulations of 1979, and consequently he had 30 the title of Specialist in Psychiatry in accordance with the Cyprus legislation having previously post graduate training and successful examination at the Psychiatric Department of the University of Sheffield».

35 The advocate of the applicant was informed by letter dated 9.12.1986 of the decision of the Public Service Commission. Hence the present recourse.

At the hearing of this recourse counsel for the applicant withdrew recourse No. 421/86, which was accordingly dismissed.

The central issue in this recourse is whether the interested party possesses the qualifications envisaged by the scheme of service.

The applicant is the holder of a diploma in medicine, University of Athens, and was registered as a Medical Practitioner in Cyprus. He is also the holder of a diploma in Psychology of the Royal College of Physicians of London and the Royal College of Surgeons of England. He is also the holder of a certificate for Specialization in Psychiatry of the Cyprus Medical Council. He was first appointed as a Medical Officer Class II on 15.2.1973 and on 1.5.1977 was promoted to the post of Medical Officer Class I. As from 1.1.1981 he is serving as Medical Officer Class I in the Psychiatric Services of the Medical Department.

The interested party is the holder of a diploma in medicine of the Higher Institute of Medicine of Sofia, and was registered as a medical practitioner in Cyprus under the Medical Registration Law, Cap. 250. He is also the holder of a certificate for Specialization in Psychiatry of the Cyprus Medical Council and was appointed as a Medical Officer Class I in the Psychiatric services on 8.11.1985.

The relevant scheme of service reads:- 20

«3. Απαιτούμενα προσόντα:

A. Διά Πρώτον Διορισμόν

(1) Εγγραφή εις το Μητρώον Ιατρών Κύπρου και δίπλωμα ή Τίτλος ειδικότητας εις την Ψυχιατρικήν, κτηθείς κατόπιν μεταπτυχιακής εκπαίδευσεως και επιτυχούς δοκιμασίας, ή ιδιότης μέλους επαγγελματικού ιατρικού σώματος του Ηνωμένου Βασιλείου, ήτοι M.R.C. PSYCHIATRISTS, η ετέρου ισότημού επαγγελματικού ιατρικού σώματος άλλης χώρας (π.χ. Ιρλανδίας, Καναδά, Ηνωμένων Πολιτειών, Αυστραλίας κλπ.)» 25 30

In English, so far as relevant for the determination of the case, it may be translated as follows:-

«Registration in the medical register of Cyprus and diploma or title of specialty in Psychiatry, acquired after post-graduate training and as a result of successful examination.» 35

In my opinion, to satisfy the requirements of the scheme of service in question, a candidate must be (a) registered as a medical practitioner in Cyprus; (b) the holder of a diploma or title of a specialty in Psychiatry; and (c) this degree or title was acquired after post-graduate training and as a result of successful examination.

Counsel for the applicant argued that the interested party lacks the qualifications for the post in question because he has no diploma or title of specialty in psychiatry, and that possession of a certificate with specialization in psychiatry of the Cyprus Medical Council, does not satisfy the scheme of service.

Counsel for the respondents and counsel for the interested party argued that the interested party possesses the qualifications for the post in question and that the word «dokimasia» does not necessarily mean examination. They further argued that the letter of Professor of Psychiatry F.A. Jenner who is the Head of the Psychiatric Department of the University of Sheffield, stating that the interested party had 8 years of training and work in clinical psychiatry and that he is fully experienced and competent enough to be regarded as a psychiatric specialist is sufficient to satisfy the requirements of the scheme of service in question.

It is common ground that both applicant and the interested party are registered as medical practitioners in Cyprus and they satisfy (a) above. It appears also from the material before me that the interested party is not the holder of a diploma or title of specialty. It appears from the said letter of Professor Jenner that the interested party has been employed as a Senior House Officer in Psychiatry from February, 1973 to May, 1980 and that he has completed a full training course under their rotational registrar teaching training scheme organized by the Department of Psychiatry of the University of Sheffield. When he completed his training as a Registrar he was promoted to a senior Psychiatrist working closely with consultant psychiatrists from April, 1976 until May, 1980. This Professor concluded that the interested party was fully experienced and competent enough to be regarded as a psychiatric specialist. The interested party was also made Honorary Member of the University of Sheffield, U.K. Nowhere does it appear that the interested party was the holder of a diploma or title of Specialty in Psychiatry, obtained in England. What the letters of Professor Jenner dated April, 1979 and 19th May, 1986

state, is the experience and training received by the interested party. These two letters also describe the status of the interested party whilst in the Department of Psychiatry of the University of Sheffield.

In view of the above, the question which poses for consideration is whether the registration of the applicant as a specialist in accordance with Regulation 3 of the regulations made under s. 23(2) of the Medical Registration Law, Cap. 250 (as amended) amounts to a diploma or title within the ambit of the scheme of service. It appears from the wording of the law that the Medical Council of Cyprus does not award any diplomas or titles of speciality. What the law provides is that a medical practitioner may describe himself as a specialist or use the word «specialist» if he possesses certain qualifications. The qualifications provided under this law do not in any way envisage that the medical practitioner should be the holder of a diploma or title of speciality in order to be registered as a specialist by virtue of the law and regulations existing at the time of the sub judge promotion. The provisions of the Medical Registration Law, Cap. 250 merely allow a medical practitioner to make use of the word «specialist» or to describe himself as a specialist.

I am of the view that although the interested party had the qualifications to describe himself as a specialist or to make use of the word «specialist» under the Medical Registration Law, Cap. 250 (as amended), that is, he satisfied the requirements of that law, this certificate of speciality of the Medical Council of Cyprus, does not in any way satisfy the requirements of the scheme of service. The said certificate is not the title or diploma required by the scheme of service which must be obtained after a postgraduate training and as a result of successful examinations.

Counsel for the respondent and the interested party argued that the word «dokimasia» does not necessarily mean examination. The Greek dictionary of Dimitrakou gives the meaning of the word «dokimasia» as «exetasis, erevna, elenhos». He went on to say that in view of the contents of the letter of Professor Jenner the applicant can be considered as possessing the required qualifications, although he did not take any examination.

I have considered this argument and I came to the conclusion that the word «dokimasia» in the scheme of the service viewed in the context of the whole of the scheme of service has the meaning

st «exetasis», i e examination Even if the meaning of the word is not «examination», then I do not think that it helps the case for the interested party any further because he is not the holder of a diploma or title of specialty

5 It is a well established principle that the interpretation of a scheme of service is within the province of the Public Service Commission and that this Court will not interfere with such interpretation so long as it is one reasonably open to the administrative authority, i e the Public Service Commission. See
 10 *Papapetrou v The Republic*, 2 R S C C 61, *Petsas v The Republic*, 3 R S C C 60, *Republic v Aivaliotis*, (1971) 3 C L R 89 *Vryonides v Republic*, (1984) 3 C L R 1567, *Frangoullides and Another v P S C* (1985) 3 C L R 1680, *Republic v Xinan & Others*. (1985) 3 C L R 1922

15 In view of the above, I am of the view that it was not reasonably open for the Public Service Commission to interpret the scheme of service in the way they did, and I conclude that the interested party was not the holder of a diploma or title of Specialist in Psychiatry envisaged by the scheme of service

20 I propose now to examine the substance of the case, if it were held that the interested party possessed the qualifications required by the scheme of service

25 Counsel for the applicant argued that the applicant was strikingly superior to the interest party and he ought to have been promoted to the post in question instead of the interest party

30 It is a well settled principle of Administrative Law that when an administrative organ such as the Public Service Commission selects a candidate on the basis of companson with others, it is not 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 had striking superiority over the interested party.

35 The ctena 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 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 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; the applicant is, by 8 years and six months senior to the interested party.

Regarding qualifications, the applicant has better qualifications because he is the holder of a diploma in Psychology of the Royal College of Physicians of London, and the Royal College of Surgeons of England, obtained after taking a formal and successful examination in psychiatry.

With regard to merit, there was before the respondent Commission a six monthly report for the interested party as he was serving on probation at the material time, in which he was rated as «excellent», and the confidential reports of the applicant for each of the years from 1981 - 1985 by which he was rated «very good». I do not think that it is a safe comparison of the applicant and the interested party regarding merit because the applicant was assessed for a number of years prior to the decision in question, whereas the interested party was assessed for six months; in my view the respondent Commission should not have attached much weight to the confidential reports of the applicant and the respondent, in as much as the confidential report of the interested party was prepared by the reporting officer after the advertising of the posts in the Official Gazette, the post being one of first entry and promotion; i.e. the report of the interested party was prepared when promotions were about to take place.

In view of the above, I am satisfied that the applicant established striking superiority because in terms he has better qualifications and striking seniority.

5 It appears from the sub judge decision which appears at p. 3 of Appendix 10 to the opposition that the respondent Commission in selecting the interested party gave undue weight to the impression made at the interview and to the fact that his six monthly report rated him as «excellent». From a perusal of the minutes of the Public Service Commission, it is apparent that in this case the
10 Head of the department manifestly failed to carry out his duties as defined above. He confined his inquiry to impressions gained from the interview of the candidates and he also stated that all candidates are suitable to serve in the post of Registrar.

15 Relevant is the case of *Republic v. Haris* (1985) 3 C.L.R. 106, a decision of the Full Bench of the Supreme Court, in which at p. 112 the following is stated:

20 «Recommendations' in the context of this section has to be given its popular meaning rather than taken as being used in any narrow legal or technical sense. It carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post. He has to make an assessment of the suitability of every
25 candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto.»

30 Again, in the case of *Makrides v. The Republic*, (1983) 3 C.L.R. 622, it was held that in making recommendations before the Public Service Commission, the Head of Department has a duty to make an assessment of the suitability of a candidate on a consideration of all factors relevant to his merits, qualifications and seniority and, then, make a comparison of the candidates by reference thereto.

35 Furthermore, the recommendations of the Head of the Department to the Public Service Commission as they appear at p. 2 of Appendix 10 to the opposition, is misleading as based on insufficient inquiry. He said that qualifications of all candidates are more or less the same. Further, he said that the possession of a diploma in neurology or psychiatry is an ancillary factor to the
40 exercise of the duties of that post. It is apparent that the

qualifications of the applicant and the respondent are not more or less the same. The applicant, as I said hereinbefore, is the holder of a diploma in psychiatry obtained as a result of examinations whereas the interested party lacks such a diploma. Again, the possession of a diploma in psychiatry is not an ancillary factor but it is a necessary qualification in accordance with the scheme of service.

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It has been held in several cases of the Supreme Court that the performance of a candidates at an interview is a relevant consideration to which the Department Head, as well as the Commission, may pay due regard, and that the significance to be attached to the impressions varies with the requirements of the post and the importance of a candidate's personality for an effective discharge of the duties assigned by the scheme of service. (See *The Republic v. Maratheftis*, decided by the Full Bench on 25.7.1986, Revisional Appeal 575 and not yet reported*; *Makrides v. The Republic*, (1983) 3 C.L.R. 622; *Savva v. The Republic*, (1980) 3 C.L.R. 675, and *Panayiotides v. The Republic*, (1986) 3 C.L.R. 525.

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In the light of the above, I am of the view that the sub judge decision, in addition to the fact that the applicant established striking superiority and ought to have been set aside because the Public Service Commission exercised its discretion wrongfully, this decision should also have been rescinded because it is vulnerable for the reasons I had given hereinabove.

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The recourse succeeds and the promotion of the interested party is set aside, but in the circumstances I do not propose to make any order as to costs.

Sub judge decision annulled. No order as to costs.

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* Reported in (1986) 3 C.L.R. 1407.