

1987 March 20

(MALACHTOS J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS KARAVIA AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

*(Cases No 242/80, 251/80, 252/80,
266/80 and 274/80)*

Public Officers — Promotions — Officers serving on probation — Entitled to be considered for promotion

Public Officers — Promotions — Confidential reports — Absence of — Does not preclude officer from being considered for promotion

Public Officers — Promotions — Scheme of service — Interpretation of — The province of the appointing organ — Judicial control — Principles applicable — Scheme of service for post of Registrar in Department of Medical Services requiring «experience in one's specialization» — Experience means practice in the field of specialization not necessarily as a specialist

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Public Officers — Promotions — Qualifications — Material date on which a candidate must possess the required qualifications — It is the last day fixed for the submission of applications for promotion

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The applicants in these recourses seek the annulment of the decision to promote the interested parties instead of the applicants to the post of Registrar in the Department of Medical Services, which is a first entry and promotion post. The applicants complained that the respondent Commission disregarded their stinking superiority over the interested parties, and that it wrongly exercised its discretion, especially as regards interested party Zambartas, who, as the applicants alleged, did not qualify as he lacked the required by the scheme of service practice and experience and who could not be properly compared with the other candidates, as he did not have confidential reports and was on probation.

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* Recourse 266/80 was withdrawn and dismissed on 24 10 83

The relevant part of the scheme of service requires «at least two years experience after the acquisition of the degree or title for specialization or at least six years experience in his specialization including the time spent for acquiring such degree or title of specialization»

5 Held, *dismissing the recourse* (1) There is no merit in the argument that an officer on probation cannot be promoted (*Leonidou v The Republic* (1986) 3 C L R 1647 adopted) The absence of a confidential report is not a factor precluding an officer from being considered for promotion (*Frangos v The Republic* (1970) 3 C L R 312 at 325 and *Leonidou v The Republic supra* adopted) In any event interested party Zambartas, being on probation, had no annual confidential reports, but instead he had six-monthly confidential reports in accordance with s 45(2) of the Public Service Law 33/67

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(2) The requirement of experience is practice in one's speciality but not necessarily as a specialist (*Mettas v The Republic* (1985) 3 C L R 250 at pp 257-258 adopted) The interpretation of a scheme of service is within the discretion of the appointing organ and this Court will not interfere with such interpretation, if it was reasonably open to it The relevant date on which the interested party Zambartas ought to satisfy the requirements of the scheme of service is the 16 6 79, the last day specified for the submission of applications (*The Republic v Pencleous* (1984) 3 C L R 577 at pp 585-586 followed) In this instance there was evidence before the Commission to conclude that the said interested party satisfied the second alternative of the scheme of service, that is 6 years experience, including the period of his training

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(3) In the light of all material placed before the Court, this Court reached the conclusion that the applicants failed to establish striking superiority over the interested party

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Recourse dismissed
No order as to costs

Cases referred to

- 30 *Leonidou v The Republic* (1986) 3 C L R 1647,
Frangos v The Republic (1970) 3 C L R 312,
The Republic v Pencleous (1984) 3 C L R 577,
Mettas v The Republic (1985) 3 C L R 250,
- 35 *Papapetrou v The Republic*, 2 R S C C 61,
Constantinides v The Republic (1984) 3 C L R 643,
Frangoullides v The Public Service Commission (1985) 3 C L R 1680

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Registrar in the Department of Medical Services in preference and instead of the applicants.

- E. Efstathiou*, for the applicant in Case No. 242/80.
 - R. Michaelides*, for applicants in Cases Nos. 251/80 and 252/80. 5
 - Chr. Demetriou (Mrs)*, for applicant in case 274/80.
 - G. Erotocritou (Mrs)*, Senior Counsel of the Republic, for the respondent.
 - C. Adamides*, for interested party No. 8. 10
 - M. Kleopas for A. Triantafyllides*, for interested party No. 9. 10
- Cur. adv. vult.*

MALACHTOS J. read the following judgment. By the present recourses, which were heard together as they attack the same administrative decision, the applicants seek a declaration of the Court that the decision of the respondent Commission to promote the interested parties instead of the applicants, as from the 1st May, 1980, published in the official Gazette of the Republic No. 1610 dated 13.6.80, is null and void and of no legal effect whatsoever. 15

The facts of the case, so far as relevant are as follows: 20

The Director-General of the Ministry of Health by letter dated 18.4.79 requested the Public Service Commission for the filling of eight posts of Registrar in the Department of Medical Services. The post of Registrar being a First Entry and Promotion post from the immediately lower post of Medical Officer, 1st Grade, was accordingly advertised and 34 applications were submitted, which were placed before the Director of Medical Services as Chairman of the Departmental Board, together with the relevant schemes of service and the Confidential Reports of the candidates, who were all at the time in the Government Service. 25 30

The Departmental Board recommended on 21.9.79, eighteen candidates — in alphabetical order — including the applicants and the interested parties.

By letter dated 12.11.79 addressed to the respondent Commission, the Director-General of the Ministry of Health requested the filling of one more post of Registrar, which had become vacant on 6.8.79.

5 As it appears from the relevant minutes, the respondent Commission interviewed on 19, 20, 21 and 31 March, 1980, thirty-one candidates in all, including those who were recommended by the Departmental Board.

10 At its meeting of 21.4.80 the respondent Commission having heard the views of the Director of Medical Services, considered the Personal Files and the Confidential reports of the candidates, their performance at the interview, including their personality and intelligence, the recommendations of the Departmental Board, the qualifications required by the Scheme of Service and the candidates' merit, qualifications, seniority and experience, concluded
15 that the interested parties, namely,

1. D. Theoclitou, 2. A. Cleanthous, 3. A. Achilleoudi, 4. M. Angastiniotis, 5. Y. Yiannaka, 6. P. Nicolaidou, 7. C. Varnavas, 8. Gl. Ionides and 9. C. Zambartas, were on the whole the best
20 candidates and decided to promote them to the post of Registrar as from 1.5.80.

As a result, the applicants, namely, G. Karavias (Case 242/80), St. Michaelides (Case 251/80), M. Ioannides (Case 252/80), A. Christodoulides (Case 266/80) and P. Pilides (Case 274/80), filed
25 the present recourses.

On 24th October, 1983 recourse No. 266/80 was dismissed as withdrawn in view of a written application to this effect dated 17th September, 1983, signed by both counsel concerned.

30 The basic grounds of law upon which these recourses were based, are that the respondent Commission acted in excess and/or abuse of powers, under a misconception of fact and exercised its discretion wrongly in that it failed to select and promote the most suitable candidates.

35 The main argument of the applicants is that the respondent Commission disregarded their striking superiority as regards merit, qualifications and seniority and promoted the interested parties

instead of the applicants, they exercised their discretion wrongly acting thus in excess and/or in abuse of power especially as regards interested party Zambartas who, as they contended, did not qualify under the scheme of service, either for promotion or for first entry as he lacked the necessary practice and experience. Furthermore, it was contended that no proper comparison could be made of this interested party with the other candidates having no confidential reports and being on probation. 5

In the first place there is no merit in an argument that an officer on probation cannot be promoted; nowhere in the law is provided that officers serving on probation are not entitled to promotion. (See *Leonidas Leonidou v. The Republic*, Case No. 556/84, judgment given on 25.9.86, not yet reported).* 10

Furthermore, as correctly stated, interested party Zambartas being on probation at the relevant period, had no annual confidential reports but instead six-monthly confidential reports were submitted for him, as is provided by section 45(2) of the Public Service Law 1967 (Law No. 33 of 1967), for every officer who is serving on probation. However, the absence of a confidential report is not a factor precluding a candidate/officer from being considered for promotion. See *Andreas Frangos v. The Republic*, (1970) 3 C.L.R. 312 at 325; *Leonidou v. The Republic* (supra). 15 20

Proceeding now to a comparison between the candidates, from a perusal of their confidential reports, which are before me, it transpires that all parties have been rated as excellent except applicant Karavias who appears either as Very Good or Good and interested party Nicolaidou, who appears as Very Good in 1979 but has an excellent report for 1978. 25

As regards the recommendations of the Head of the Department, which appear in the minutes of the meeting of the respondent Commission of 21.4.80, when the sub judice decision was reached, all interested parties have been described as excellent and have been recommended. 30

Applicants Pilides and Ioannides have also been recommended but interested party Nicolaidou, specialist in Anaesthetics, was considered as better to Pilides. Applicants Karavias and Michaelides do not appear to have been recommended. 35

*Reported in (1986) 3 C.L.R. 1647.

It is also recorded therein that interested parties Angastiniotis, Yiannaka, Zambartas, Theoclitou and Ioannides and applicant Karavias, made an excellent impression, whereas interested parties Achilleoudi, Vamavas, Ioannides, Cleanthous, Nicolaidou and Piliades made a very good impression

As regards qualifications, as provided, inter alia, in the relevant scheme of service, the following is required

«For promotion

Degree or Title of specialization obtained abroad and recognised by the Medical Board of Cyprus, by virtue of the Medical Registration Law

At least two years experience after the acquisition of the degree or title of specialization or,

At least 6 years experience in his specialization including the time spent for acquiring such degree or title of specialization»

All parties satisfy the requirements of the scheme of service and any difference as regards the date of acquiring their specialization, is of no consequence as it does not create precedence of one party over the other, as it has been alleged on behalf of the applicants

As regards interested party Zambartas, he obtained his basic degree in Medicine in 1972 and his MRCP (UK) on 29 7 77. He registered in Cyprus on 17 10 77 and his MRCP was recognised as a specialization by the Medical Board of Cyprus on 18 10 77

The argument of the applicants that he lacked the number of years experience specified in the scheme of service and that, therefore, he did not satisfy its requirements, must fail because from a perusal of the documents and evidence before me, it transpires that he was so qualified.

The relevant date on which he ought to satisfy such requirements, is the 16th June, 1979, the last day specified in the advertisement for the submission of applications. (See *The Republic v. Pericleous* (1984) 3 C.L.R. 577 at pp. 585 - 6)

The post in question, being also a promotion post, this interested party was required under the scheme of service, under one of

the alternatives, to have six years experience in his specialization, including the time spent for obtaining such specialization. As held in *Mettas v. The Republic* (1985) 3 C.L.R. 250 at pp. 257 - 8, the requirement of experience is practice in the field of his speciality but not necessarily as a specialist. And in this instance there was evidence before the respondent Commission to conclude that the interested party did have the necessary experience as is required, if one adds up the period of his training, which is from February, 1973 to June, 1979.

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In any case the power of interpreting the schemes of service, is within the discretion of the appointing organ and the court cannot interfere, if it was reasonably open to it, as is the present instance, to decide as it did. (See *Papapetrou v. The Republic*, 2 R.S.C.C. 61, *Constantinides v. The Republic* (1984) 3 C.L.R. 643 at 652 and *Frangoullides v. The Public Service Commission* (1985) 3 C.L.R. 1680, where extensive reference to the Case Law is made at pp. 1684 - 5).

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Finally, as regards seniority, interested parties Theoclitou, Cleanthous, Achilleoudi, Angastiniotis and Yiannaka are senior to all applicants, having been appointed prior to them to the post of Medical Officer, 1st Grade.

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Interested party Nicolaidou, is junior only to applicant Michaelides by about five months, who, in any case, had not been recommended by the Head of the Department.

The same applies also as regards interested party Vamava, who is also junior to Michaelides by about seven months. As regards applicant Pilides, he ranks equal.

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Interested party Ionides is junior to applicants Michaelides by 2 1/2 years, Ioannides by about 21 months, Pilides by 22 1/2 months and ranks equal to Karavias, but as already stated above Michaelides had not been recommended and special reasoning has been given in respect of Ioannides and Pilides.

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Finally, as regards interested party Zambartas, it is stated therein that from those selected, Zambartas has a shorter service but on the basis of the excellent general picture which is presented by his exceptional qualifications, excellent reports from the hospitals he

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worked and the impression he made at the interview, he was considered that he was superior to those candidates not selected.

5 In the result, I find that it was reasonably open to the respondent Commission to promote the interested parties instead of the applicants who failed to establish the striking superiority which is required in order to justify any interference by the Court with the sub-judice decision under consideration.

Therefore, these recourses fail and are hereby dismissed.

On the question of costs I make no Order.

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*Recourses dismissed.
No order as to costs.*