

1987 March 20

(SAVIDES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEOPHYTOS SAWA KIRNIS,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent*

*(Case No 402/85)*

*Public Officers — Promotions — Head of Department — Recommendations of  
— Cannot be disregarded without proper reasons — Bias — Allegation of  
— It has to be established to the satisfaction of the Court*

5 *Public Officers — Confidential reports — When an officer entitled to an overall  
rating of «very good» — The explanatory notes contained in the  
confidential reports — An officer is entitled to such rating, if he has been  
rated as «very good» in at least eight items*

*Public Officers — Promotions — Seniority — Should only prevail, if all other  
factors are equal*

10 *Public Officers — Promotions — Striking seniority — An applicant, in order  
to succeed, should establish such seniority over the interested parties*

The applicant in this recourse challenges the decision to promote the interested parties to the post of Agricultural Superintendent 1st Grade instead of and in preference to him

15 The applicant was senior to the interested parties by about two years, but the latter were better in merit and had been recommended for promotion by the Head of the Department. Applicant's qualifications were not higher than those of the interested parties

20 *The applicant complained, inter alia, that. (a) The Head of the Department was biased against him in that he had rejected applicant's requests as regards applicant's transfer during the years 1981-1984. The only evidence adduced in this respect were three letters addressed by the applicant to the Head of the Department explaining applicant's reasons why he should not be transferred, and (b) That in the confidential report for the year 1981, where the applicant was rated as «excellent» in one item, as «very good» in six items and as «good», in five items, he was rated overall as «good», whereas, on account of such*

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evaluation in respect of the particular items, he should have been rated as «very good»

Held, *dismissing the recourse*: (1) Bias has to be established to the satisfaction of the Court. Having perused the contents of the aforesaid letters adduced by the applicant the Court found nothing tending to show any bias on the part of the Head of the Department or anybody else.

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(2) The explanatory notes contained in the confidential reports specify that in order for an officer to be entitled to be assessed as «very good», he should have been assessed as «very good», in at least eight items. In any event, even if the applicant had been assessed as «very good», the situation would not have changed.

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(3) The Commission cannot disregard the recommendations of the Head of the Department without proper reasons. Seniority should only prevail, if all other factors are equal, which is not the case here. As it has been stressed time and again for an applicant to succeed in a case of this nature, he has to prove striking superiority over the interested party. In this case the applicant has failed to establish such seniority.

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*Recourse dismissed. Costs against applicant.*

*Cases referred to:*

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*Christou v. The Republic* (1980) 3 C.L.R. 437;

*Charalambides v. The Republic* (1985) 3 C.L.R. 992.

*Recourse.*

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

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*St. Charalambous*, for the applicant.

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.* 30

SAVIDES J. read the following judgment. The applicant challenges the decision of the respondent published in the official Gazette of the Republic dated 11.1.1985, whereby the interested

parties, namely Constantinos Constantinides and Andreas Magnitis, were promoted to the post of Agricultural Superintendent 1st Grade as from 1.12.84 instead of and in preference to the applicant.

- 5 All parties concerned were holding, prior to the sub judice decision, the post of Agricultural Superintendent 2nd Grade.

- 10 By letter of the Director- General of the Ministry of Agriculture dated the 3rd May, 1984, the respondent was requested to fill two vacancies in the post of Agricultural Superintendent 1st Grade. In view of the fact that the said post is a promotion post, the respondent sent a list of the names and the files of all officers serving in the post of Agricultural Superintendent 2nd Grade to the Departmental Committee which was set up for the purpose.

- 15 By its report dated the 3rd October, 1984, the Departmental Committee found that only three candidates, that is the interested parties and the applicant, satisfied the requirement of the scheme of service for three years' service in the post of Agricultural Superintendent 2nd Grade, and as a result recommended them for promotion.

- 20 After considering the report of the Departmental Committee, the respondent proceeded, at its meeting of 22.11.1984, to make the selection for the filling of the posts in question. At that meeting the Head of the Department, who was present, stated the following:

- 25 «Constantinos Constantinides and Andreas Magnitis are recommended, because they are excellent officers.  
No one of the candidates possesses the additional qualification provided by the Scheme of Service for the post».

- 30 The respondent then, after considering the material in the relevant files, selected, on the basis of the material before it, the interested parties for promotion to the post in question.

The respondent filed the present recourse challenging the aforesaid decision of the respondent.

Counsel for the applicant raised, by his written address, the

following grounds:

(a) The non-recommendation of the applicant by the Head of the Department was the result of bias by the latter against the applicant.

(b) The reporting officer who made the confidential report of the applicant for 1983 was biased against him. 5

(c) The respondent wrongly relied on the recommendations of the Head of the Department which were unfounded and unjustified.

(d) The seniority of the applicant should have prevailed. 10

In support of his legal grounds counsel for the applicant argued that the Head of the Department was biased against the applicant because the latter did not accept requests of the former for his transfer during the years 1981 - 1984 and the Director of the Department of Agriculture although when acting as chairman of the Departmental Committee recommended the applicant, he failed to do so before the respondent. Counsel also argued that the recommendations of the Director before the respondent were invalid and insufficient as he did not make any mention of the applicant or any comparison between him and the interested parties, and the respondent should not have relied on them. 15 20

With regard to the confidential reports, counsel argued that in respect of 1981 the applicant should have been rated as «very good» and not «good» as stated in his report, in view of the fact that he was evaluated as «excellent» in one item, «very good» in 6 and «good» in 5 items. He also argued that the officer who reported on him in 1983 was biased against him on account of their difference in political beliefs and as a result his report was not impartial. Counsel lastly contended that the applicant was by about two years senior to the interested parties and his seniority should have prevailed in view of the fact that the parties concerned were more or less equal in all other respects. 25 30

It has been stated in a number of cases by this court that bias has to be established to the satisfaction of the Court. (*Christou v. Republic* (1980) 3 C.L.R. 437, 449; *Charalambides v. Republic* (1985) 3 C.L.R.992, 1006). 35

The only evidence adduced by the applicant in support of his allegation of bias on the part of the Director, were three letters, dated 11.5.81, 27.5.83 and 2.5.84, addressed by the applicant to the Director, in which he was explaining the reasons why he did not wish to be transferred. I find myself unable to agree with the submission of counsel in this respect, as having gone through the contents of such letters I find that there is nothing tending to show any bias either on the part of the Director or anybody else. No other evidence was adduced to establish bias either on the part of the Director or the reporting officer for 1983. This contention of counsel should therefore fail.

With regard to the allegation of the applicant that he should have been rated as «very good» in 1981 instead of «good», I need only refer to the explanatory notes contained in the confidential reports as to the mode of assessment of ratings, in accordance with which the applicant should have been assessed as «very good» in at least 8 items in order to be entitled to be assessed as «very good» which is not the case. In any event, even if the applicant was rated as «very good» in that year, this would not have changed the situation, in view of the fact that the interested parties were rated as «excellent».

It has been stressed, time and again by this court that for an applicant to succeed in a case like this, he has to prove striking superiority over the interested parties. It must also be borne in mind that the Public Service Commission must pay due regard to the recommendations of the Head of the Department which cannot be disregarded without proper reasons and seniority should only prevail if all other factors are equal. With these in mind I shall now proceed to consider the sub judice decision.

The applicant and the interested parties were the only candidates found to satisfy the requirements of the scheme of service and were all recommended by the Departmental Committee in alphabetical order, without any special recommendation for any one of them. The Head of the Department, who was also the presiding officer of the Departmental Committee, at the meeting of the respondent

Committee dated 22 11 84, recommended the two interested parties stating that they were both excellent officers. The respondent, taking into consideration the above recommendation as well as the other material before it, decided to adopt the recommendations of the Head of the Department. The respondent also found that the interested parties had generally better confidential reports than the applicant and proceeded to state that in their three last reports the interested parties were rated as «excellent» whilst the applicant as «good» in two years and «very good» in one year only.

It is obvious from the above that the respondent did not take into account only the last three confidential reports, as contended by the counsel, but the whole career of the parties from which it does not emanate in any event, that the applicant is in any way better than the interested parties. On the contrary, the reports of the interested parties are better than those of the applicant. This factor coupled with the recommendation of the Head of the Department, which was in their favour, renders them better in merit than the applicant. The contention of counsel for applicant than the recommendations of the Head of the Department were insufficient is unfounded. His recommendations, to which I have referred earlier, are clear as to whom he recommended and why and there is nothing more to say.

Coming now to the factor of qualifications, the applicant possesses nothing more than a school leaving certificate. Interested party Constantinides possesses a certificate of one year's attendance in the Agricultural School of Salonica and a three months' course on Extension Methods and Fertilizer use, in Israel. Interested party Magnitis possesses certain certificates on Statistics. It is provided by the Scheme of Service that «possession of a Diploma or certificate of an approved college in Agriculture or in a subject relevant to the activities of the Department of Agriculture will be considered an advantage». The respondent at its meeting of 22.11.84 stated that although it could not decide whether the qualifications of the parties amounted to an advantage under the scheme of service, it found that the qualifications of the applicant were not in any event higher than those of the interested parties, a thing which is also obvious from the reference to their qualifications made above. In the circumstances, the seniority of the applicant cannot prevail since

the interested parties are clearly better at least in merit.

On the basis of all the material before me, I find that it was reasonably open to the respondent to reach the sub judice decision in the light of the material before it, which was indeed the only proper one in the circumstances and I find no reason to interfere with it.

In the result this recourse fails and is hereby dismissed with costs against the applicant.

*Recourse dismissed  
with costs.*

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