

(1988)

1988 May 26

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS DEMETRIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 1015/85).

Public Officers—Appointments/Promotions—First entry and promotion post—Seniority—A factor that should be taken into consideration—It may tip the scales, if other factors are more or less equal.

Public Officers—Appointments/Promotions—First entry and promotion post—Applicant repeatedly in the past recommended for promotion to other posts—Since such recommendations appear in the files, they are deemed to have been taken into consideration by the Commission. 5

Public Officers—Appointments/Promotions—First entry and promotion post—Qualifications—Inquiry into—Duty of the Commission—Fact that applicant was considered in the past as having a particular qualification needed for another post—Does not absolve the Commission from duty to inquire whether he possesses such qualification required for the sub judice post. 10

Reasoning of an administrative act—Public Officers—Appointments/Promotions to first entry and promotion posts—Suggestion that as the decision to appoint the interested party is detrimental to the applicant, such decision should have been specially reasoned—Such suggestion not accepted. 15

Natural Justice—Bias—Public Officers—Appointments/Promotions to first entry and promotion posts—Complaint that confidential reports were tainted

by reason of bias of the reporting officer—Not substantiated.

5 *Constitutional Law—Equality—Constitution, Art. 28—Public Officers—
Appointments/Promotions to first entry and promotion posts—
Qualifications—Complaint of discriminatory treatment because at the inter-
view, the applicant was examined more than the others—Commission may
validly do so.*

The facts of this case sufficiently appear in the Judgment of the Court.
Finally the Court found that the applicant not only failed to establish striking
superiority, but any superiority at all over the interested party.

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

Marathefus v. The Republic (1986) 3 C.L.R. 533.

Recourse.

15 Recourse against the decision of the respondent to promote the
interested party to the post of Director of Labour in the Ministry
of Labour and Social Insurance in preference and instead of the
applicant.

J. Erotocritou, for the applicant.

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P. Hadjidemetriou, for the respondent.

M. Kyriakides, for the interested party.

Cur. adv. vult.

25 A. LOIZOU P. read the following judgment. The applicant in
this recourse prays for a declaration that the decision of the re-
spondent Commission to promote A. Kallimachos to the post of
Director of Labour in the Ministry of Labour and Social Insurance
instead of himself is null and void and of no legal effect what-
soever.

For the post in question which is a first entry and promotion post seven candidates applied, out of which five were considered by the respondent Commission as possessing the qualifications required by the Scheme of service for the post and who were therefore invited for an interview which however only three attended. 5

The Director-General of the said Ministry who was present at the interviews and the members of the respondent Commission questioned the candidates on general matters as well as on the matters concerning the duties of the post. The Applicant was also questioned in English in order to ascertain that his knowledge of the language was of the required under the Scheme standard i.e. "very good". 10

Afterwards, having heard the views and recommendations of the Director-General to the effect that both the applicant and the interested party were suitable for the post, the respondent Commission considered all the material factors concerning the candidates, their personal files and confidential reports, their performance at the interviews and the seniority by 14 years of the interested party over the applicant and concluded that on the basis of the established criteria the interested party was superior to the other candidates and the most suitable and decided to promote him to the post in question as from the 1st September 1985. 15 20

As against this decision the applicant filed the present recourse. 25

It was contended by the applicant that the respondent Commission failed to select the most suitable candidate for the post, as the applicant who held the post of Chief Labour Officer had more versatile duties than the interested party, who held the post of Chief Inspector of Factories, and was thus more able to perform the duties of the post of Director of Labour. For this reason he also contended that the seniority of the interested party was wrongly taken into account being a factor irrelevant to the suitability of the candidates. 30

From what is before me it does not transpire that the interested party was any less capable of performing the duties of the post of Director.

5 As far as the question of seniority is concerned, it is one of the factors which an appointing organ has to consider together with merit and qualifications and if all other things are equal it may tip the scales in a candidate's favour. If disregarded it requires special reasoning to be given. In this case the substantial seniority of the interested party of fourteen years, is in any event indicative of
10 the greater experience that the interested party possesses.

15 It was contended next that the applicant had on several occasions in the past been recommended for promotion both in his confidential reports as well as by the Director General of the said Ministry for several other executive posts. On the presumption of regularity and there is no evidence to the contrary, though such recommendations appear to have been given in respect of other posts, in which case I would consider that they may be relevant only as regards those particular posts, nonetheless, such recommendations being in his files, which were at all times before the
20 respondent Commission, are deemed to have been so considered.

25 It was then argued that the respondent Commission wrongly took into consideration the confidential reports of the applicant for the years 1983 and 1984 since the reporting officer who compiled them was prejudiced against him, there being between them professional differences.

30 As far as the report for the year 1983 is concerned since the alleged dispute occurred in 1984 it could clearly not have affected it. As far as the report for the year 1984 is concerned, in the first place there is no evidence that the alleged dispute had any bearing on such report; moreover such likelihood is also excluded by the mere fact that the same reporting officer gave his unconditional recommendation before the respondent Commission for this candidate. Such ground therefore fails.

It was further argued that the respondent Commission by examining the applicant in more subjects than the interest party and also by examining his knowledge of English acted in a discriminatory manner as against the applicant.

I find no merit in this argument. The respondent Commission is not precluded but it has a duty to carry out a due inquiry in order to ascertain whether any one candidate possesses the specified qualifications at the required standard and this does not amount to discrimination. The fact that the applicant was considered in the past to possess the same qualifications in respect of a different post does not preclude the Commission from inquiring into it again nor does it "absolve the Commission from its duty to satisfy itself that in the present instance, for this particular post, the interested party was qualified for promotion." (*Maratheftis v. Republic* (1986) 3 C.L.R. 533 at 538).

In any case since it was found after such inquiry that he did possess such a qualification the matter is without importance. Moreover, from the record of the proceedings before the respondent Commission it does not transpire that the applicant was examined more than the others, but even if he were, it may validly be done and may even be considered to be in a candidate's favour, in order to enable the respondent to properly evaluate the particular candidate before it.

Moreover the argument advanced on behalf of the applicant that the sub-judice decision being to his detriment was in need of special reasoning, cannot stand. The mere selection of one candidate does not merit special reasoning and so long as adequate reasoning exists in order that the validity of such decision may be judicially examined, such decision will be considered by the Court as duly reasoned, as it is so considered in this instance, such reasoning appearing in the decision itself as supplemented by the material in the relevant files.

In conclusion I find that it was reasonably open to the respondent Commission to select the interested party for the post in

question and to consider him as the most suitable for the post, such selection having been made properly, without bias and after due consideration of all the relevant material that was before it. The applicant has in my view failed to establish not only any striking superiority over the interested party in order to justify interference by this Court with the sub-judice decision, but any superiority at all. I also find that it exercised its discretion properly and within the limits of the law, such discretion being in the circumstances a wide one, the post being a high executive post.

For the reasons stated above this recourse fails and is hereby dismissed, but in the circumstances there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*