

1988 June 7

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KATERINA GEORGHIADOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 351/86).

5 *Public Officers—Promotions—Departmental Committee did not include applicant in the list of those recommended because of doubts as to her qualifications—Commission decided that she was qualified—Whether, once the Commission decided as aforesaid, it should send back the matter to the Departmental Committee with a request to consider the position of the applicant and make new recommendations after comparing her with all other candidates—In view of the advisory nature of the recommendations of the Committee, the question was determined in the negative—The course followed did not amount to unequal treatment.*

10 *Public Officers—Promotions—Departmental Committee—Nature of its functions.*

Public Officers—Promotions—Head of Department—Recommendations—Whether they can be made orally—Question determined in the affirmative.

15 *Public Officers—Promotions—Head of Department—Recommendations—Entitled to obtain information from his subordinates—Commission rightly refrained from asking what were the views of such subordinates—Personal knowledge of candidates by the Head of the Department is not a prerequisite for the validity of the recommendations, provided he made the necessary inquiries.*

- Public Officers—Promotions—Qualifications—The superiority of the qualifications of a candidate vis a vis those of another cannot be judged by reference to the date, when they were obtained.*
- Public Officers—Promotions—Seniority—Prevails when other factors are more or less equal.* 5
- Public Officers—Promotions—Head of Department—Recommendations—A factor relating to merit—Cannot be lightly disregarded.*
- Public Officers—Promotions—Confidential reports—Changes effected by the reporting officer himself—Do not amount to irregularity.*
- Public Officers—Promotions—Confidential reports—Changes effected by the countersigning officer—Presumption of regularity.* 10
- Public Officers—Promotions—Confidential reports—Changes effected by countersigning officer—Whether, if irregular, must of necessity lead to annulment of the promotions—Question determined in the negative—Republic v. Argyrides (1987) 3 C.L.R. 1092 explained.* 15
- Public Officers—Promotions—Judicial control—Principles applicable.*
- General principles of administrative law—Presumption of regularity—Public Officers—Confidential reports—Changes effected by countersigning officer, who recorded his remarks under Part V of the relevant form—Inference that he must have discussed the changes with the reporting officer.* 20
- The facts of this case, in which the Court concluded that on the totality of the material before it, it was reasonably open to the Commission to reach the sub judice decision, sufficiently appear in the judgment of the Court.
- Recourse dismissed.* 25
No order as to costs.
- Cases referred to:*
- Thalassinos v. The Republic (1973) 3 C.L.R. 386;*
- Christoudias v. The Republic (1984) 3 C.L.R. 657;*
- Demetriades v. The Republic (1986) 3 C.L.R. 2473;* 30

Gavriel v. The Republic (1971) 3 C.L.R. 185;

Mettas v. The Republic (1985) 3 C.L.R. 250;

Leonidou v. The Republic (1986) 3 C.L.R. 1918;

Spanos v. The Republic (1985) 3 C.L.R. 1826;

5 *Republic v. Argyrides* (1987) 3 C.L.R. 1092;

Papatryfonos v. The Republic, (1987) 3 C.L.R. 1882;

Republic v. Rousos (1987) 3 C.L.R. 1217;

Partellides v. The Republic (1969) 3 C.L.R. 480;

Republic v. Pericleous (1984) 3 C.L.R. 557;

10 *Mikellides v. The Republic* (1981) 3 C.L.R. 461;

Georghiades v. The Republic (1967) 3 C.L.R. 633;

Mitides v. The Republic (1983) 3 C.L.R. 1096;

Kastellanos v. The Republic (1986) 3 C.L.R. 1014;

Ktorides v. The Republic (1983) 3 C.L.R. 171;

15 *Theodossiou v. The Republic*, 2 R.S.C.C. 44;

Republic v. Haris (1985) 3 C.L.R. 106.

Recourse.

20 Recourse against the decision of the respondent to promote the interested party to the post of Sister in the Department of Medical and Public Health Services in preference and instead of the applicant.

Chr. Clerides, for the applicant.

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

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 to the post of Sister in the Department of Medical and Public Health Services as from 20.4.1986 in preference and instead of the applicant.

The interested parties are Eleni Psalti, Anna Chrysafi, Anastasia Chr. Markidou, Katerina Papayianni and Domniki Kourousidou.

The post in question is a promotion post and before the sub judice decision the applicant and the interested parties were holding the post of Staff Nurse, 1st Grade.

Pursuant to a request made by the Director-General of the Ministry of Health to the Public Service Commission for the filling of 33 vacant posts in the post of Sister ("Adelfi"), the 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 post in the Medical Department of the Civil Service. The departmental committee by its report, which was submitted to the respondent Commission by letter dated 25.2.1986, recommended 69 candidates out of 105 as eligible for promotion to the post in question, including all the interested parties. The applicant was not included in this list. The Departmental Committee stated that they were in doubt whether the applicant as well as another 6 candidates possessed the required qualifications for the post in question and they left the matter to be decided by the Public Service Commission.

5 The respondent Commission at its meeting of 3.3.1986 considered the report of the Departmental Committee and decided that the applicant as well as the other six candidates possessed the required qualifications for promotion and included them in the list for promotion together with the candidates recommended as eligible for promotion to the post in question.

10 The final meeting of the respondent Commission took place on 10.3.1986. The Head of the Department was present and was asked by the respondent Commission to take into consideration in expressing his recommendations, in addition to the candidates which the departmental committee recommended, the seven candidates including the applicant which the departmental committee failed to recommend. The head of department made his recommendations and left. After the departure of the Head of the department, the respondent Commission, having assessed the material before them, including the confidential reports of the candidates, their personal files, their seniority, and in the light of the views expressed by the head of the department, they decided to promote 15 33 candidates to the post of sister as from 15.3.1986. The applicant was not promoted, and feeling aggrieved, filed the present recourse . 20

25 The first point raised by counsel for the applicant is that the procedure in promoting the interested parties is against all principles of good and sound administration and as such it nullifies the sub judice decision. He contended, that the respondent commission when it reached the conclusion that the 7 candidates, including the applicant, were fulfilling the requirements of the scheme of service, they should have requested the departmental committee to consider the position of the 7 candidates and make their recommendations on them after comparing them with all the remaining candidates who were recommended for promotion. Instead, he said, they decided that the Director of Medical Public Health Services, as Head of the Department, should be called to attend the meeting and make his recommendations. By following 30 this procedure, he said, the candidates were deprived of the chance of being recommended by the departmental committee 35

specifically set up for this purpose. Also, by doing this the Commission violated the principles of equal treatment in this respect.

I do not think that this point can stand because the Public Service Commission rightly did not send back to the departmental committee for consideration the names of the seven candidates including the applicant, after it decided that they fulfilled the qualifications envisaged by the scheme of service. 5

The recommendations of the departmental committee are advisory in nature and they do not bind the Public Service Commission. (See *Thalassinos v. The Republic* (1973) 3 C.L.R. 386; *Christoudias v. The Republic* (1984) 3 C.L.R. 657; *Demetriades v. The Republic* (1986) 3 C.L.R. 2473. 10

In the *Christoudias* case (supra), it was held that "As a matter of statutory law and proper administrative practice, neither the establishment of an advisory committee nor solicitation of its views on the suitability of candidates entails abdication of the substantive competence vested in the appointing body or divestiture of its powers; that the recommendations of the departmental committee are not binding on the Public Service Commission." 15

It should be noted that the head of the department was asked by the respondent Commission to take into consideration in expressing his views and recommendations, in addition to the candidates that the departmental committee recommended, the 7 candidates including the applicant which the departmental committee failed to consider. 20 25

In conclusion, the respondent Commission at its very first meeting, after they received the report of the departmental committee, they decided that the applicant as well as the other six candidates possessed the qualifications envisaged by the scheme of service and at their meeting on 10.3.1986 when they convened to make the promotions, they asked the head of the department to express his views and recommendations including the applicant and the other 6 candidates. 30

In my view, the procedure followed by the respondent Commission was the proper one and it did not violate the principle of equal treatment in this respect.

5 I now propose to deal with the recommendations of the Head of the Department which were challenged by counsel for the applicant. The complaint of counsel for the applicant is, that the head of the department when he appeared before the respondent commission on 10th March, 1986, made oral representations which were of a very general nature and that no details were given as to why the applicant was not recommended for promotion. 10 Further, he contended, that he obtained information from the senior sisters with regard to the performance of the candidates as staff nurses and he failed to record the opinions of the senior sisters. There is also complaint that the Commission should have taken into consideration the views of the head of the department and not the views of the senior sisters. Furthermore, he said that 15 it does not appear whether the Head of the department knew all the candidates or some of them.

I hold the view that there is no violation of the law of the regulations when the head of the department made oral recommendations before the respondent commission. (See *Georghios Gavriel v. The Republic* (1971) 3 C.L.R. 185). 20

There has been no violation of the law or of any regulations with regard to obtaining information about the candidates from his subordinates in order to appraise himself of the capabilities of the candidates in the absence of personal knowledge. (See *Mettas v. The Republic*, (1985) 3 C.L.R. 250 at p. 256). 25

The respondent commission rightly did not ask the head of the department what were the views of the senior sisters and put their views and recommendations down in writing. There is no law or regulation entitling the respondent commission to regard the views of the subordinates of the head of the department, from whom he obtains information. 30

Again, lack of personal knowledge on the part of the Head of Department of all the candidates is not a factor preventing him from expressing an opinion on the value of the services and suitability of the candidates for promotion. See *Leonidou v. The Republic* (1986) 3 C.L.R. 1918, where it was held that "lack of knowledge of candidates is not an obstacle preventing him from reporting on the candidate provided he makes the necessary inquiries in his department" (See also *Spanos v. The Republic* (1985) 3 C.L.R. 1826).

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With regard to the recommendations of the head of department, it is recorded in the minutes of 10.3.1986 that he made his recommendations with regard to the recognized criteria in their totality, that is merit, qualifications, seniority.

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For all these reasons, this ground fails.

Counsel for the applicant alleged that the sub judice decision is liable to be set aside for irregularity in the preparation of the confidential report of interested party Kourousidou for the year 1981 and of the confidential report of interested party Markidou for the years 1980 and 1983. He contended that the countersigning officer changed certain items in the confidential reports without having discussed the changes with the reporting officer. He relied on the case of *Republic v. Argyrides* (1987) 3 C.L.R. 1092 where the Full Bench decided that strict observance of the provisions of Regulation 9 of the circular pertaining to confidential reports is a condition precedent to their validity and that any departure therefrom taints the report with illegality and results in breach of the provisions of Article 28 of the Constitution safeguarding equality before the administration. And in as much as the confidential report was a material factor for the decision of the appointing authority, the decision was annulled for misconception of the facts recorded in the confidential report.

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It is evident from the confidential report of interested party Kourousidou for the year 1981 that the changes have been made with regard to items 4 and 8 by the reporting officer himself. He

was perfectly entitled to do so and there has been no irregularity whatsoever in the preparation of the confidential report.

5 With regard to the confidential report of interested party Markidou, for the year 1980 the countersigning officer made changes with regard to items 2, 9 and 10 of the confidential report and under part V of the confidential report the countersigning officer recorded his remarks and, the inevitable inference is, that he must have discussed the matter with the reporting officer before making the changes. Furthermore, in administrative law, there is a
10 presumption of regularity which the applicant should rebut and no such rebuttal was made in the present case. Again, with regard to the confidential report for the year 1983, the countersigning officer made changes with regard to items 5, 9 and 10 and again recorded his remarks under part V of the confidential report with
15 the inevitable inference that in making the changes he must have discussed the matter with the reporting officer.

Interested party Markidou for the years 1981 and 1983 was rated as "excellent" and without the changes effected by the countersigning officer again she would have been rated as "excellent"
20 in view of her ratings in the individual items of her confidential reports.

For the above reasons, I am satisfied that there have been no irregularities with regard to the preparation of the confidential reports of interested parties Kourousidou and Markidou. Even if it
25 was held that there have been irregularities with regard to the confidential reports of Markidou, I am of the view that they were immaterial in view of the overall effect of the record of the applicant and that of the interested parties, and made no adverse impact on the final decision for the reasons which I propose to set out here-
30 inbelow.

Pikis, J. in explaining the *Argyrides* case in the case of *Papatryfonos v. The Republic* (1987) 3 C.L.R. 1882 at pp. 1887-1888 said the following:-

"The decision in Argyrides does not compel the Court to set aside every decision of the Public Service Commission where a confidential report was improperly prepared independently of the impact of that impropriety on the final decision. So to hold would lead the Court to annulling every decision of the appointing body irrespective of the remoteness in point of time of any irregularity that occurred in the preparation of a confidential report."

The next issue which falls for determination is whether the Public Service Commission promoted the most suitable persons to the post of Sister in the Department of Medical and Public Health Services.

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 others. On the other hand, the administrative Court cannot interfere nor set aside the decision unless the applicant establishes that he had striking superiority over the interested parties.

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. Roussos* (1987) 3 C.L.R. 1217.

In the present case, it is common ground that the applicant has seniority over the interested parties. She is senior by 7 months to Psalti, 7 months to Chrysafi, 28 months to Markidou, 28 months to Papayianni and 28 months to Kourousidou. It is to be noted that applicant's seniority ought to prevail when other things are more or less equal. (*Partellides v. The Republic* (1969) 3 C.L.R. 480).

Counsel for the applicant suggested that the applicant possessed superior qualifications over the interested parties on the ground that she obtained her qualifications at an earlier date than

the interested parties. I do not think that the superiority in qualifications can be judged by the date the qualifications are acquired. This may show that one has more experience but certainly her qualifications are not superior. What is material is that a candidate who possesses the required qualifications in the case of promotion posts is the date on which the request for the filling of a vacancy is received by the Commission. (See *Republic v. Pericleous* (1984) 3 C.L.R. 557).

There has been also an allegation by counsel for the applicant that interested parties Markidou and Psalti did not possess the necessary qualifications for the post.

I hold the view that this contention cannot stand because the interpretation of a scheme of service and its application will not be interfered with by the Court so long as such interpretation and application was reasonably open to the competent administrative organ. (See *Mikkellides v. The Republic* (1981) 3 C.L.R. 461; *Georghiades v. The Republic* (1967) 3 C.L.R. 653; *Mitides v. The Republic* (1983) 3 C.L.R. 1096; *Kastellanos v. The Republic* (1986) 3 C.L.R. 1014; *Ktorides v. The Republic* (1983) 3 C.L.R. 171, where at p. 173 it is stated:

"It is well-settled that this Court as an administrative Court controlling the exercise of the discretion of the Public Service Commission, when it decided whether or not a candidate possesses the qualifications under a scheme of service, examines only whether the Commission on the material before it, could reasonably have come to a particular conclusion".

I have reached the conclusion that in the circumstances of the present case it was reasonably open for the Public Service Commission to decide that interested parties Markidou and Psalti possessed the required qualifications under the scheme of service.

With regard to merit, which is mainly reflected from the confidential reports, all the interested parties were better than the applicant; all the interested parties were rated as "excellent" for the

years prior to the sub judice decision, i.e. for the years 1982, 1983, 1984 and 1985, whereas the applicant was rated for the years 1982, 1983 and 1984 as "very good" and for the year 1985 as "excellent".

Again, the interested parties were recommended for promotion by the Head of the Department which is "a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded". (See *Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 48). In the case of *Republic v. Haris* (1985) 3 C.L.R. 106, which was decided by the Full Bench at p. 111 it is stated: "It is well-established that the Public Service Commission has to pay heed to such recommendations and if they decide to disregard them they have to give reasons for doing so".

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Also, in the case of *Spanos v. The Republic* (supra) at p. 1831 it is stressed that "The views of the Head of department are an important pointer to the suitability of the candidate for promotion."

To sum up, the applicant is senior to the interested parties, applicant and interested parties possessed the required qualifications for the post in question, but the interested parties are superior to the applicant regarding merit. Furthermore, the interested parties were recommended for promotion by the head of department whereas the applicant was not.

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In the circumstances, it was reasonably open to the respondent Commission on the totality of the material before it, and in the exercise of its relevant discretionary powers, with which I find no sufficient cause to interfere, to select as being the most suitable, the interested parties instead of the applicant notwithstanding the seniority of the applicant.

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For the these reasons, the recourse is dismissed but with no order for costs.

*Recourse dismissed.
No order as to costs.*