

1988 June 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. DEMETRIOS THEOCLITOU,

2. MARIOS N. ONISIFOROU,

Applicants,

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Consolidated Cases 294/86 and 297/86).

Public Officers—Promotions—Head of Department—Recommendations—Significance of—In no way qualified by the length of service as Head of the Department of the person making them.

5 *Public Officers—Promotions—Confidential reports—Decision to disregard some of them as they emanated from an incompetent organ—Power of the Commission to require administration to fill the gap—Whether its exercise is mandatory—Question determined in the negative—Each case depends on its own facts—In this case and in the light of developments in the Department concerned, it was difficult, if not impossible, to fill the gap by referring the matter back to the Administration—Therefore, it was open to the*
10 *Commission to make the selection by reference to the confidential reports, which were admissible.*

15 *Public Officers—Promotions—Qualifications—Additional academic qualifications not envisaged as an advantage in the scheme of service—Of only marginal significance.*

The main issues and principles expounded by the Court in this case are sufficiently shown in the hereinabove headnotes.

*Recourses dismissed.
No order as to costs.*

20 *Cases referred to:*

Savva and Others v. Republic (1988) 3 C.L.R. 160;

Larkos v. The Republic (1982) 3 C.L.R. 513;

Papadopoulos v. The Republic (1982) 3 C.L.R. 1070;

Papadopoulos v. The Republic (1985) 3 C.L.R. 405;

Makrides v. The Republic (1983) 3 C.L.R. 622;

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

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Hadjisavva v. The Republic (1982) 3 C.L.R. 76;

Hadjiioannou v. The Republic (1983) 3 C.L.R. 1041;

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

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

Theodossiou v. The Republic 2 R.S.C.C. 44;

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

Makris v. The Republic (1985) 3 C.L.R. 1103.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Medical Specialists in preference and instead of the applicants.

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A. *Haviaras*, for applicant in Case No. 294/86.

D. *Michaelidou* (Mrs), for G. *Cacoyannis*, for applicant in Case No. 297/86.

N. *Charalambous*, Senior Counsel of the Republic, for the respondent.

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N. Papaefstathiou, for interested party I. Charalambides.

Cur. adv. vult.

PIKIS J. read the following judgment. Demetrios Theoclitou and Marios Onisiforou challenge by separate actions the promotion of V. Pyrgos and Chr. Charalambides to Medical Specialists in the establishment of Psychiatric Services (Recourses 294/86 and 297/86 respectively). The two applications were consolidated, for purposes of hearing, in the interest of expeditious determination and avoidance of multiplicity of proceedings; and they will be disposed of in one judgment.

The applicants and the interested parties were the four candidates recommended by the departmental committee, set up to screen the eligibility of the contestants, to be qualified and suitable for promotion to the two vacant posts of Medical Specialist. Following representations made on behalf of Mr. Charalambides and the chairman of the Union of Public Employees, PASYDY, the respondents decided to disregard confidential reports on applicant Onisiforou and interested party Charalambides for the year 1982 for the reason that they had emanated from an incompetent organ, in that they had been prepared by a person other than the director, namely, Mr. Petros Matsas. Also they decided to exclude the confidential reports on the afore-mentioned parties for the year 1984, because of a noticeable conflict of interest between each of them and the reporting officer, namely, Mr. Neophytou.

Thereafter, before evaluating the data bearing on the candidates, the respondents invited the views of the newly appointed head of the department, notably, Mr. Malekides, the director of the psychiatric services. The director recommended the interested parties as best suitable for promotion. He founded his recommendation, as he stated to the Commission, on the worth of the recommended candidates and their seniority. The academic qualifications of the candidates were approximately the same. In terms of seniority, the two interested parties were senior to applicant Onisiforou by more than one year and to applicant Theoclitou by

more than three years.

The P.S.C. addressed themselves to the material before them revelatory of the service record of the candidates in order to guide themselves in the choice that had to be made. Specific reference was made to recent confidential reports by way of indication of the merits of the parties. In the end, they subscribed to the views of the head of the department, adopted his recommendations and appointed the interested parties to the position of medical specialist. Demetrios Theoclitou impugnes the decision on two grounds:-

(a) Attachment of inordinate importance to the views of the director. The suggestion is that they attached an importance to his views disproportionate to their intrinsic worth; his views should carry little weight on account of the brevity of his service as director, extending only to seven days.

(b) Misconception of the facts relevant to the academic qualifications of the candidates. The assessment that the qualifications of the candidates in this area were more or less equal, was wrong.

Marios Onisiforou founded his challenge on the following four grounds:-

(a) Lack of an adequate inquiry into the career of the candidates. The gap left by the exclusion of the confidential reports, earlier referred to for the years 1982-1984, remained unbridged. Therefore, the respondents did not have a complete picture of the career of the parties.

(b) Misconception of the facts relevant to the academic qualifications of the candidates. The submission made here is not dissimilar to that of applicant Theoclitou. This argument was pressed, notwithstanding acknowledgment indirectly emerging from the citation of authority, that qualifications additional to those required by the scheme of service are a factor of marginal

significance.

(c) According undue importance to seniority, a factor of little consequence in the context of this case.

5 (d) Striking superiority of the applicant to the interested parties. The suggestion that applicant enjoyed such a degree of superiority over the interested parties is defeated by the principles cited in her address defining the magnitude of the superiority necessary to qualify as striking. (*Hadjisavva v. Republic* (1982) 3 C.L.R. 76; *Hadjioannou v. Republic* (1983) 3 C.L.R. 1041; 10 *Spanos v. Republic* (1985) 3 C.L.R. 1826). However, benevolently one may view the career of the applicant and his suitability for promotion, he did not enjoy anything like glaring superiority over the other contestants for the post. I shall not concern myself further with this aspect of the case.

15 Counsel for the Republic supported the decision of the respondents; he submitted it was at the lowest reasonably open to them, if not inevitable, in the light of the material before them. Because of developments in the Department of Psychiatric Services, it would not be expedient to recall Mr. Matsas for the purpose of 20 filling the gap left by the exclusion of the confidential reports. How to face the situation in the light of the decision to exclude a number of confidential reports was a matter of discretion for the respondents responsible for the inquiry into the facts of the case.

25 Furthermore, counsel submitted that the fact that the director had been newly appointed did not in any way prevent him from making recommendations or reduce the efficacy of his recommendations. On close examination of the confidential reports, counsel stated, the interested parties had a slight edge over the applicant, an edge that was considerably reinforced by the recommendation 30 of the head of the department and the factor of seniority; their selection was virtually inevitable.

The strength of the recommendation of the head of the department is in no way qualified by the length of his service at the top

of the department (s.44(3), Law 33/67; *Spanos v. Republic* (1985) 3 C.L.R. 1826). There is authority that even where the head of a department has no personal knowledge of the candidates he may gauge the gap by informing himself through appropriate inquiries into the qualities of the candidates. (*Mettas v. Republic* (1985) 3 C.L.R. 250; *Leonidou v. Republic* (1986) 3 C.L.R. 1918). No suggestion was made in this case that Mr. Makelides was unacquainted or unaware of the value of the services of the candidates. His recommendations did carry, therefore, the value ordinarily imported by the views of the head of the department (*Theodossiou v. Republic*, 2 R.S.C.C. 44; *Republic v. Haris* (1985) 3 C.L.R. 106; *Makris v. Republic* (1985) 3 C.L.R. 1103).

In *Savva and Others v. Republic* (1988) 3 C.L.R. 160 we did observe that when confidential reports are excluded, it is in the power of the P.S.C. to request the Administration to fill the gap. This is not a mandatory course and every case must depend on its own facts. Developments in the psychiatric department made it difficult, if not impossible, to fill the gap by referring the matter back to the Administration.

It was open to the P.S.C. to adopt the course they followed and evaluate the merits of the candidates by reference to admissible confidential reports, after exclusion of those considered inadmissible. Broadly speaking the reports revealed the candidates to be officers of approximately equal merit. There is nothing to suggest that the respondents misconceived the facts relevant to the event academic qualifications additional to those required by the scheme of service are only a factor of marginal advantage (*Larkos v. Republic* (1982) 3 C.L.R. 1070; *Papadopoulos v. Republic* (1985) 3 C.L.R. 405).

The recommendation of the head of the department was a separate and distinct consideration definitive of the merits of the candidate for promotion. (*Makrides v. Republic* (1983) 3 C.L.R. 622; *Spanos v. Republic* (supra)). On consideration of the materi-

al before them the respondents had no reason to depart from this recommendation whereas the seniority of the interested parties was an additional factor for their selection. In my judgment the applicants failed to establish their case and in consequence the
5 two recourses under consideration are dismissed.

The sub judge decision is confirmed pursuant to the provisions of para. 4(a) of Art. 146 of the Constitution.

Recourses dismissed.