

(1988)

1988 June 30

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NELSON K. NEOCLEOUS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 655/86).*

*Public Officers—Promotions—Head of Department—Recommendations—  
Enhance merit—Cannot be lightly disregarded.*

*Public Officers—Promotions—Qualifications—Additional to those required by  
the scheme of service—Need not be taken into consideration—Do not estab-  
lish by themselves striking superiority.*

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The facts of this case appear sufficiently from the judgment of the  
Court.

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

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

*Stefanou v. The Republic* (1986) 3 C.L.R. 779;

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

*Tokkas v. The Republic* (1983) 3 C.L.R. 361;

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

### Recourse.

5 Recourse against the decision of the respondent to promote the interested party to the post of Assistant Chief Labour Officer in the Department of Labour in preference and instead of the applicant.

*C. Loizou with E. Neocleous*, for the applicant.

*G. Frangou (Mrs.)* for the respondent.

*Cur. adv. vult.*

10 A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks the annulment of the promotion of interested party, Kyriacos G. Kapetanios to the permanent post (Ord. Budget) of Assistant Chief Labour Officer in the Department of Labour, which is promotion post from that of Senior Labour Officer.

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Originally there was challenged also the promotion of Philippos Papadopoulos but after the commencement of the proceedings the respondent Commission revoked the promotion of that interested party and the recourse was withdrawn as against him.

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The respondent Commission at its meeting of the 30th May 1986 considered these promotions. It had already before it the report (Exhibit 4) of the Departmental Board. According to the relevant minutes (Appendix 5) the Head of the Department of Labour Mr. Achilleas Kallimachos was invited to attend and after he was asked to take into consideration in addition to the candidates recommended by the Departmental Board also Kleanthis Karageorgiades, Georghios Synnos, Marina Prastitou and Andreas Kontos, he mentioned the following: "Three are recommended. Taking into consideration the merit, qualifications and the seniority, Kyriacos Kapetanios is the first. Second, is Philippos Papad-

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opoulos and the other one is Timotheos Demetriou, who according to the observations in the report of the Departmental Board he has much more years of service than the others and who, on account of his serving in Nicosia, had to face more problems. In particular, as regards the last one he suggests that he be taken into consideration for the reason that he has great seniority".

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The respondent Commission then started evaluating and comparing the candidates. It took into consideration the confidential reports of the candidates in their totality, and it indicatively referred to those, since 1979 when the new type of confidential reports was introduced, that is, the reports of the last seven years. It also considered the qualifications of the candidates and as regards seniority the respondent Commission noted that all the candidates had been promoted to their present post on the same day, namely the 1st March, 1983. First, however, on the basis of his previous seniority was Demetriou, followed in order of seniority by Karageorghiadis, Synnos, Michaelides, Kapetanios, Prastitou, Christodoulou, Moleskis, Kontos, Papadopoulos, Neocleous and Nicolaou.

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The minutes then go on to say that on the material before it, it adopted the recommendations of the Head of the Department as regards Kapetanios and Papadopoulos having noted that these two officers had the highest confidential reports from among all the candidates (Kapetanios was continuously "Excellent" since 1979 and Papadopoulos was also "Excellent" since 1979 with the only exception for 1983 when he was rated as "Very Good"). As regards Demetriou whom the Head of the Department recommended along with the other two, the Commission found that in spite of his seniority he was obviously lower in merit than the other two and he could not prevail being lower in merit. The minute concludes by saying that the Commission taking into consideration all the material before it, considered on the basis of the established criteria in their totality (merit, qualifications, seniority) that the following were superior to the other candidates and decided to promote these two as the most suitable for the post.

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5 The main ground of Law relied upon by the applicant is that the respondent Commission failed to select the best candidate and violated in this way the principles laid down in *Theodossiou v. The Republic*, 2 R.S.C.C. 44 and followed in a series of cases ever since.

10 The superiority of Interested party Kapetanios was obvious from the material in the personal files and the confidential reports. His superiority was further strengthened from the recommendation of the Head of the Department which was consistent with the material in the file. On this point it may be mentioned here that merit is enhanced, as said in the case of *Stephanou v. The Republic* (1986) 3 C.L.R. 779. Merit is definitely enhanced by the strong recommendations in favour of a candidate by the Head of the Department and which no doubt should be given due regard by the Public Service Commission as envisaged by s. 44 (3) of the Public Service Laws 1967 to 1986. Moreover such recommendations could not be ignored by the respondent Commission when consistent with the material in the files without special reasoning being given.

20 As regards qualifications both the applicant and the interested party had the required ones and any additional qualifications not required by the Scheme of Service need not be taken into consideration by the respondent Commission nor do they by themselves establish striking superiority. (*Larkos v. Republic* (1982) 3 C.L.R. 513, *Tokkas v. Republic* (1983) 3 C.L.R. 361, *Spanos v. Republic* (1985) 3 C.L.R. 1826). It is on the strength of this well established principle that any additional qualifications possessed by the applicant could not have had substantial significance, when the respondent Commission was taking the sub - justice decision.

30 On the totality of the circumstances 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, after due consideration of all the relevant material that was before

it and after exercising properly its discretion. The applicant has in my view failed to establish not only any striking superiority over the interested party in order to justify any interference by this Court with the sub - judice decision, but any superiority at all.

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.*

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