

1988 August 31.

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. STYLIANOS KOUMIDES,
2. LOIZOS PACHIS,
3. ADAMOS ADAMOU,
4. PANAYIOTIS CHRISTOPHOROU,

*Applicants,*

v.

THE GRAIN COMMISSION OF CYPRUS,

*Respondent.*

*(Case No. 850/87).*

*The Grain Commission of Cyprus—Promotions—Scheme of service—  
Interpretation and application of—Judicial control—Principles applicable—  
Court will not interfere if on the basis of the wording of the scheme the inter-  
pretation given to it by the appointing organ was reasonably open to such  
organ.*

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*Time within which to file a recourse—Promotions—Combined establish-  
ment—Rejection of an application for applicant's promotion—It is not an  
instance of a continuing omission—Recourse filed after expiration of 75  
days as from such rejection—Out of time.*

The facts of this case sufficiently appear in the judgment of the Court. 10  
The recourse as far as applicants 1 and 2 are concerned was filed after the  
expiration of 75 days as from the day when the decision concerning their  
applications to be promoted in the upper part of a combined establishment.  
As regards the merits of the recourse, its outcome depended on the question 15  
whether the respondents interpreted and applied the relevant scheme of ser-  
vice in a manner reasonably open to them.

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Vafeades v. The Republic*, 1964 C.L.R. 454;

*Georghiades v. The Republic* (1967) 3 C.L.R. 653;

*Constantinou and Others v. The Republic* (1976) 3 C.L.R. 860;

5 *Tsountas and Another v. The Republic* (1985) 3 C.L.R. 784;

*Papapetrou v. The Republic*, 2 R.S.C.C. 61;

*Aivaliotis v. The Republic* (1970) 3 C.L.R. 149;

*Petsas v. The Republic*, 3 R.S.C.C. 60.

**Recourse.**

10 Recourse against the omission and/or "silent refusal" of the respondent to promote the applicants to the post of Accounting Officer, Grade II:

A. S. Angelides, for the applicants.

C. Velaris, for the respondent.

15 *Cur. adv. vult.*

20 A. LOIZOU P. read the following judgment. The four applicants challenge the omission and/or "silent refusal" of the respondent Grain Commission to promote the four applicants on the 1st August 1985, 1st September 1985, 1st December 1986, and the 1st April 1987, respectively to the combined post of Accounting Officer Grade II, and seek a declaration that what was omitted ought to have been done.

25 All applicants hold the post of Accounting Officer Grade III which is a combined post with that of Accounting Officer Grade II. The Scheme of Service of Accounting Officer Grade II (Appendix A), sets out the required qualifications in paragraph (1).

thereof and in a Note thereto three exceptions are set out in three separate paragraphs.

By its paragraph (3) it is provided that "monthly employees, serving on the 1st October 1981, in the post of Accounting Officer Grade III may be promoted after the completion of a five year service, prior service of Storekeeper Grade II until the 31st March, 1982, is deemed as service of Accounting Officer Grade III for the purposes of completing the five years in the post of Accounting Officer Grade III. 5

It is on this paragraph that the four applicants rely. They claim to have completed the five years service and therefore they are eligible for promotion. 10

Applicant No. 1, was first appointed on the 1st October 1976 as a Storekeeper Grade III and was promoted to the post of Accounting Officer Grade III on the 1st November 1983. On the 23rd October 1985, he submitted an application for promotion to the post of Accounting Officer Grade II relying on paragraph (3) of the Note hereinabove referred to, which was refused. On the 3rd September 1987, he submitted a similar application based on the same reasons without, in the meantime, any new facts coming into existence, which was again refused. This decision dismissing his application is subject of the present recourse. 15 20

Applicant No. 2 was first appointed on the 1st October 1976, as Storekeeper Grade III. He was promoted to Accounting Officer Grade III on the 1st December 1983. On the 25th October 1985, he applied like the previous applicant and his application was likewise refused. On the 30th July, 1987, he applied afresh on the same grounds without in the meantime any new facts coming into existence and his application was again refused, hence the present recourse. 25 30

Applicant No. 3 was appointed as a Messenger Grade II on the 1st May, 1973. He was promoted to Storekeeper Grade III on the 1st June 1974. His title was automatically changed to Storekeeper

Grade II on account of the restructuring and reorganization of the service on the 1st January 1979. He was promoted to Accounting Officer Grade III on the 1st March, 1985. On the 9th July, 1987, he submitted an application for promotion to the post of Accounting Officer Grade II, on the basis of paragraph (3) of the Note which was refused, hence the present recourse.

Applicant No. 4, was first appointed as a Storekeeper Grade III on the 2nd January 1978. His post was automatically changed to Storekeeper Grade II on account of the restructuring and reorganization of the service on the 1st January 1979. He was promoted to Accounting Officer Grade III on the 1st July 1985. On the 3rd September 1987, he submitted an application for promotion to the post of Accounting Officer Grade II on the basis of the said paragraph (3) of the Note which was refused and this decision of the respondent Grain Commission is the subject of this recourse.

The recourse of applicants No. 1 and No. 2 are out of time, that is the seventy-five days time prescribed by Article 146(3) of the Constitution as there was a rejection of their application and there does not arise an instance of an omission, that is of a continuing omission. There was a decision taken refusing to promote them, therefore it cannot be said that it amounts also to an omission to do the same thing (See inter alia *Vafeades v. The Republic* 1964 C.L.R. 454).

The act of denying the applicants the right to promotion was contained in the letter sent to them by the respondent Grain Commission on the 31st October 1985, in reply to their respective applications.

In fact their subsequent applications led to confirmatory acts of the previous ones and not to new executory acts, there being no new elements that could change the situation as it existed before the applications were rejected by the letter of the 31st October 1985. Their recourse therefore should be dismissed on that ground. I shall, however, proceed, to examine their recourse on

the merits along with that of the remaining two applicants.

The case for the applicants on the merits is that the respondent Grain Commission did not carry out a due inquiry regarding their qualifications and did not apply the Scheme of Service and the Law properly. In support of the aforesaid proposition reference was made to the cases of *Georghiades v. The Republic* (1967) 3 C.L.R. 653; *Constantinou and Others v. The Republic* (1976) 3 C.L.R. 860; *Tsountas and Another v. The Republic* (1985) 3 C.L.R. 784; where at p. 791 I said the following:

"In the light of the above and in the absence of any reference in the minutes of the Committee as to the construction of the scheme of service in question and the absence of any indication as to how they evaluated the qualifications of this applicant, I find that they did not conduct the necessary inquiry into the qualifications of the applicant and the sub judice decision must be annulled for lack of due inquiry."

In order to complete the factual aspect of the case it may be added here that until the 31st December 1978, the post of Storekeeper Grade III was a first entry post. From that post someone could be promoted either to Storekeeper Grade II or Accounting Officer Grade III and until that date both these last two posts were in accordance with the respective Schemes of Service, equivalent and the holder of anyone of such posts could be promoted to the immediately higher post of Accounting Officer Grade II. Above it there were the posts of Accounting Officer Grade I, and Storekeeper Grade I, which were between them also equivalent. After negotiations with the Trade Unions the agreement of the 2nd October 1982, for restructuring and re-organization was concluded. It was given effect retrospectively as from the 1st January 1977, and was approved by the Council of Ministers on the 9th December 1982 (See Appendices "A" and "B" respectively).

In accordance with the aforesaid agreement the post of Storekeeper Grade III was abolished and its holders were placed to the post of Storekeeper Grade II. Prior service to the post of Store-

keeper Grade II until the 31st March, 1982, would be considered as service of Accounting Officers Grade III for the purposes of completing five years in the latter post. (See Appendix "A" paragraphs 1.5.2. and 2.6.)

5 As claimed by the respondent Grain Commission, a mere reading of the said provisions leads one to the conclusion that the purpose of the agreement was to recognize to the Storekeepers Grade II, who had already been promoted to that post prior to the 31st  
10 December 1978, in contradistinction to those who were placed to that post on account of the restructuring, the right to be promoted to Accounting Officers Grade II in the same way as the Accounting Officers Grade III, that is after five years of service to the post of Storekeeper Grade II.

15 It is clear, learned counsel for the respondent Commission argued, that Storekeepers Grade II referred to in paragraph (3) of the Note, are those who were Storekeepers Grade II on the 31st December 1978, and not those who became Storekeepers Grade II on the basis of the provisions of the agreement, Appendix "A".

20 In his address in reply, learned counsel for the applicant has argued that the Scheme of Service for the post of Accounting Officer Grade II was approved one year after the agreement for the restructuring and reorganization was put into force, that is the 21st December 1983, together with the other Schemes of Service and when it was a given fact that as from the 1st January 1979,  
25 there did not exist the post of Storekeeper Grade II by promotion, which, post by way of promotion, as he urged, existed only until the 31st December, 1978. The reference therefore in paragraph 3 of the note to that post being held on the 31st March 1983, refers, he argued, to the service of Storekeeper Grade II and not to those  
30 who held the post by promotion until the 31st December 1978. For the stand of the respondent Commission that this paragraph of the Scheme of Service is relevant that is to refer only to Storekeepers Grade II with promotion, who were in the service on the 31st December 1978, to be valid the relevant paragraph should  
35 have made special reference for them and should safeguard the

previous service of Storekeeper Grade II only until the 31st December 1978 because as from the 1st January 1979, there did not exist any longer the post of Storekeeper Grade II with promotion.

To my mind this is a simple case of interpretation and application of paragraph (3) of the Note of the Scheme of Service which says that, officers serving on the 1st October 1981 in the post of Accounting Officer Grade III may be promoted after the completion of five years of service and prior service of Storekeeper Grade II until the 31st January 1982, is considered as service of Accounting Officer Grade III for the purpose of completion of the five years service in the post of Accounting Officer Grade III. The words are clear and unambiguous. They have to be given their ordinary meaning without the addition of any other words.

The interpretation of a Scheme of Service is within the discretion of the Administrative Body having competence in the relevant process. And provided that the interpretation given to a particular scheme of service by such body on the basis of its wording is a reasonable one this Court in deciding whether or not such body has conformed with such Scheme of Service, in a given case, will not give to such scheme a different interpretation other than that given to it by such body. (See *Papapetrou v. The Republic*, 2 R.S.C.C. 61 at p. 69; *Aivaliotis v. The Republic* (1970) 3 C.L.R. 149; *Petsas v. The Republic*, 3 R.S.C.C. 60). Moreover the onus remains on the applicant to satisfy the Court that the administrative body in question failed to consider any reasonable interpretation.

In the present case the interpretation was reasonably open to the respondent Grain Commission and for this reason the interpretation given to paragraph (3) of the Note cannot be interfered with judicially.

For the applicants to be entitled to invoke prior service as Storekeepers Grade II, as provided by paragraph (3) of the said Note, they should have been on the 1st October 1981, - that is the material date - already holding the post of Accounting Officers

**3 C.L.R. Koumides & Others v. Grain Commission A. Loizou P.**

Grade III. The opening words of the said paragraph provide so. The applicants do not satisfy this requirement of prior service on the material date, as none of them was then an Accounting Officer Grade III, consequently the abridgment of the period for promotion from Accounting Officer Grade III to Accounting Officer Grade II, as provided by paragraph (3) of the Note, does not come into play in the case of the applicants.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

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*Recourse dismissed.  
No order as to costs.*