

1988 September 7

[A. LOIZOÚ, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARISTOS ARISTIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 91/86).*

5 *Public Officers—Promotions—Scheme of service—Circular 614 dated 3.3.82 of the Council of Ministers—A general supplementary provision relating to all schemes of service—As such, the circular could be issued under sections 29 and 13 of the Public Service Law, 1967 (Law 33/67), whereby the Council of Ministers is authorised to issue schemes of service—In the light of its aforesaid nature, the circular is not a regulatory decision and, therefore, its publication in the Official Gazette was not necessary.*

*Public Officers—Promotions—Schemes of service—Interpretation and application of—Judicial control—Principles applicable.*

10 *Constitutional Law—Equality—Constitution, Art. 28—Does not exclude reasonable differentiations—Promotion of Public Officers—Scheme of service—Differentiation between leave of absence for post graduate studies and leave of absence for graduate studies—Reasonable.*

15 *Legitimate interest—Promotion of public officers—Applicant not possessing required qualifications—Does not possess such an interest.*

The principles expounded and applied in this case appear sufficiently from the hereinabove headnote.

*Recourse dismissed. No order as to costs.*

## Cases referred to:

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

*Soteriou v. The Republic* (1980) 3 C.L.R. 237;

*Republic v. Arakian* (1972) 3 C.L.R. 294;

*Santos and Others v. The Republic* (1969) 3 C.L.R. 28;

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*Miltiadous v. The Republic* (1969) 3 C.L.R. 210.

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Land Officer, 2nd Grade, in preference and instead of the applicants.

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*K. Talarides*, for the applicant.

*L. Koursoumba (Mrs.)*, for the respondents.

*P. Papageorghiou*, for interested parties Nos. 3, 4, 6, 7, 9, 10, 11, 12, 13 and 14.

*C. Varda*, for interested party No. 15.

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*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. This recourse was to be heard together with recourses 96/86, 159/86, and 198/86, but the objection raised by the respondent Commission that the applicant did not have a legitimate interest as he did not possess the required under the relevant scheme of service qualifications, has been thought proper to be taken separately and as a preliminary point to the hearing of the recourse itself, whilst the other recourses were adjourned sine die awaiting the result of Revisional Appeal 728 in which the question of the validity of confi-

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dential reports made without strict compliance to Circular No. 491 of the 26th March 1979, was to be determined by the Full Bench.

5 The applicant in this recourse challenges the validity of the decision of the respondent Commission to promote the interested parties to the post of Land Officer Second Grade, in preference and instead of himself.

10 Amongst the qualifications required by the relevant Scheme of Service is "at least five years service to the post of Assistant Land Officer". Also the Scheme of Service further provided that "possession of a University degree or title or equivalent qualification in an appropriate subject e.g. Law (including Barrister-at-Law) Land administration etc., or Member of the Royal Institute of Chartered Surveyors (General Practice Division), constitutes an advantage". Under Note (2) to the Scheme of Service "for the filling of the vacant posts during the first five years after the approval of the present Scheme of Service"—it was approved on 15 the 16th July 1981—"there may, also, be promoted officers who do not possess five years service to the post of Assistant Land Officer, but they possess at least five years service to the post of 20 Assistant Land Officer and Land Clerk First Grade".

The applicant was promoted to the post of Land Clerk First Grade on the 1st March, 1978 and went abroad for studies on the 27th June, 1979. From the 2nd July 1979 to the 21st September 25 1979, he was attending a course of English at South Devon Technical College at Torquay. As from the 1st October 1979 he started attending the North East London Polytechnic for the purpose of obtaining a University degree. He returned to Cyprus on the 10th July 1982.

30 By means of a letter dated 26th August 1985, applicant informed his Head of Department that according to his own estimate he did complete the "five years service required by the Scheme of Service on the 20th June 1985", and so he could be considered as a candidate for the above post. In his above letter,

the applicant referred to Circular No. 614, of the Director of Public Administration and Personnel, dated the 3rd March, 1982, which deals with the question of recognition as "service", for purposes of the Schemes of Service, of the period of Studies also. By this circular there was communicated a decision of the Council of Ministers dated 12th February 1982, and in so far as relevant it reads: 5

"(c) Education or post-graduate education abroad relating to the duties of the post and not leading to the acquisition of

(i) University diploma or title or other equivalent qualification, or 10

(ii) Post-graduate diploma or title, should be considered as service or experience up to one year at the maximum, provided that such education or post-graduate education is not deemed as an education under the relevant scheme of service. 15

(d) Education abroad leading to the acquisition of a university diploma or title or of another equivalent qualification by an officer not possessing such a diploma or title or equivalent qualification should not be deemed as service or experience."

The respondent Commission at its meeting of the 21st October 1985, dealt with the question of the possession by the applicant of the "five years service" required by the relevant Scheme of Service and its relevant minute reads: 20

"Aristos Aristidou by his letter dated the 26th August 1985, requested to be credited with service held for the period of eighty-four days which was standing to his credit as leave and for the period of three months scholarship as well as for the three months period of learning the English language. The Commission after taking into consideration all the relevant material before it, decided that the decision of the Council of Ministers embodied in Circular No. 614 dated 3rd March, 1982, of the Director of Public Administration and Personnel, is not 25 30

applicable in the case of Aristos Aristidou and therefore he has not completed the required five years' service, so as to rank as a candidate for the post."

5 Notwithstanding the above decision whereby the applicant was found not to possess the qualifications required by the relevant Schemes of Service, it appears that the applicant was eventually considered for promotion for in the relevant minute of the respondent Commission dated the 11th December, 1985, we read the following:

10 "The Commission has also not failed to take into consideration that Aristos Aristidou who was not selected, possesses the qualifications which constitute an advantage and has 'excellent' in all respects confidential reports during the last years. The Commission, however, having noted that he ranks 36th in  
15 seniority, decided that the above officers who were selected possessed on the basis of the totality of the criteria better claims to promotion."

The above situation led to an application on behalf of the applicant calling upon the respondent Commission to clarify whether  
20 applicant was considered as a candidate. Thereafter learned counsel for the respondent filed a statement to the effect that the applicant was found by the Public Service Commission as not having completed five years service as required by the Scheme of Service and so he could not be taken into consideration as a candidate; but  
25 that due to an inadvertence which was due to the fact that his name had not been deleted from this list of evaluation of candidates which were before the Commission he too was taken into consideration along with the other qualified candidates.

30 Learned counsel for the applicant in his written address attacked both the decision relating to the non-possession of the qualification of "five years' service" by the respondent and the decision relating to the promotion of the interested parties and made the following contentions:

"(a) That the decision of the Council of Ministers embodied in Circular 614 of 3rd March, 1982, is ultra vires the enabling legislation.

(b) That even if the Council of Ministers possessed legislative authorisation to issue the said decision such a decision is a regulatory decision and has to be published in the Official Gazette and be placed before the House of Representatives. 5

(c) That even if the said decision was validly issued the Public Service Commission misinterpreted the said decision.

(d) That if the meaning of paragraph (d) is to deprive the applicant of his period of service whilst on study leave then the decision of the Council of Ministers makes a discrimination vis-a-vis the case of post-graduate studies. There is, also discrimination between those falling within paragraph (d) and those falling within paragraph (c)". 10 15

Dealing with contention (a) above, I must say that authorization for the issue of the said decision of the Council of Ministers is to be found in section 29 of the Public Service Law, 1967 (Law No. 33/67), which gives power to the Council of Ministers to make the Schemes of Service for the various posts. The said decision is nothing but a general supplementary provision relating to all Schemes of Service and as such is authorized by the provisions of sections 29 and 13, therefore it is not ultra vires. Contention (a) must therefore fail. My conclusion regarding contention (a) seals the fate of contention (b). The said decision being a general decision concerning Schemes of Service is not a regulatory decision and need not be published in the official Gazette. Contention (b) must, therefore, fail. 20 25

Contention (c) brings into the picture the principle governing judicial control of the interpretation of Schemes of Service. Under these principles the Court will not interfere with the interpretation given by the Commission to a scheme of service, if such interpretation was a reasonable one. (See *Petsas v. The Republic*, 3 30

R.S.C.C. 60; *Soteriou v. The Republic* (1980) 3 C.L.R. 237).

5 Having regard to the contention of the relevant Scheme of Service and the factual situation before the Public Service Commission, the interpretation which it did give to the Scheme of Service was reasonably open to it. Contention (c) must therefore fail too. Regarding the contention about discrimination, I must say that the principle of discrimination or unequal treatment is applicable to situations which are of the same nature or entail equal or similar treatment of all those who are to be found in the same situation. 10 (See *Republic v. Arakian* (1972) 3 C.L.R. 294.)

15 The obtaining of a post-graduate degree is a situation which is not of the same nature as the obtaining of a graduate degree. The differentiation is a reasonable one, and therefore there is no discrimination, as equality exists only among equals. Contention (d) must therefore fail.

20 For all the above reasons the decision of the respondent Commission that applicant did not possess the "five years service" was reasonably and lawfully open to it. In view of this conclusion applicant has no legitimate interest under Article 146.2 to file a recourse which must, for this reason, be and is hereby dismissed. (See *Santos and Others v. The Republic* (1969) 3 C.L.R. 28 and *Miltiadous v. The Republic* (1969) 3 C.L.R. 210.)

25 In the circumstances, however, there will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*