

1988 September 17

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS P. ANDREOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 299/85).

*Public Officers—Promotions—Head of Department—Recommendations of—
Disregarded in view of the interested party's better confidential reports—
Recommendations based on fact of applicant's seniority, which was not
substantial—In the circumstances the requirement of special reasoning for
not following the recommendations satisfied.*

*Public Officers—Promotions—Striking superiority—Applicant, in order to
succeed, should establish such superiority.*

In this case the respondent Commission did not follow the views of the
Head of the Department, who had recommended the applicant, in view of
the latter's seniority. The Commission gave as a reason for doing so the
better confidential reports of the interested party, coupled with the fact that
applicant's seniority was not substantial.

Held, dismissing the recourse: (1) The applicant was recommended by
the Head of the Department solely on account of seniority which as found
by the Commission was only very slight whereas the reports of the interest-
ed party were clearly better. These findings of the Commission which are
stated in its minutes can be considered as sufficient reasoning in the circum-
stances of the case.

(2) Moreover the applicant has failed to discharge the burden of establishing that he is strikingly superior to the interested party so as to justify the intervention of the Court in his favour.

Recourse dismissed.

No order as to costs.

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Cases referred to:

Constantinou v. The Republic (1984) 3 C.L.R. 498.

Recourse.

Recourse against the decision of the respondents to promote the interested party to the post of Senior Bailiff in preference and instead of the applicant. 10

Chr. Pourgourides, for the applicant.

P. Hadjidemetriou, for the respondents.

A.S. Angelides, for the interested party.

Cur. adv. vult. 15

HADIITSANGARIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Public Service Commission to promote the interested party Mikis Michaelides to the post of Senior Bailiff as from 15.11.1984 in preference to and instead of him is null and void and of no effect whatsoever. 20

The post of Senior Bailiff is a promotion post and a Department Committee was set up under the provisions of section 36 of the Public Service Law 1967 (Law 33/67). The Departmental Committee on 13.9.1984 after consideration of the list of candidates and all particulars pertaining to each one of them recommended in alphabetical order to the respondent Commission two candidates namely the applicant and the interested party. 25

The Commission at its meeting on 2.11.84 heard the views and recommendations of the Chief Registrar of the Supreme Court Mr. Andreas Olymbios who stated the following:

5 "Συστήνεται ο Ανδρέου Κωνσταντίνος. Τόσο αυτός όσο και ο άλλος υποψήφιος Μίκης Μιχαηλίδης είναι καλοί στα καθήκοντα τους, προτείνεται όμως και συστήνεται λόγω αρχαιότητας ο Ανδρέου. Ο Ανδρέου υπηρετεί στο Επαρχιακό Δικαστήριο Λεμεσού. Ο Μιχαηλίδης υπηρετεί στο Επαρχιακό Δικαστήριο Πάφου. Η φετεινή μέχρι σήμερα απόδοση και των δύο είναι περίπου η ίδια ως και πέρυσι."

(English translation)

15 "Andreou Constantinos is recommended. Both he and the other candidate Mikis Michaelides are good in the performance of their duties but Andreou is preferred and recommended on account of seniority. Andreou serves at the District Court of Limassol. Michaelides serves at the District Court of Paphos. The performance of both during this year is approximately the same as last year."

20 The Commission then proceeded to make its own assessment and after a general evaluation of the candidates and a comparison between them it reached the conclusion that the interested party was superior to the applicant and decided to promote him to the post of Senior Bailiff.

25 In reaching its decision to promote the interested party in preference to the applicant the Commission stated in its minutes that it considered the confidential reports of both candidates which are as follows:

30 1. Andreou Constantinos - 1981 - Very Good (0-10-0)
1982 - Very Good (0-10-0)
1983 - Excellent (8-2-0)

- 2. Interested Party - 1981 - Excellent (10-0-0)
- 1982 - Excellent (10-0-0)
- 1983 - Excellent (10-0-0)

And noted that the interested party has clearly superior confidential reports than the applicant for the last three years. 5

As regards seniority the respondent noted that the applicant is slightly senior to the interested party. They were both promoted to their present post as from 15.2.83 but the applicant was appointed to his previous post of Bailiff 2nd Grade on 1.3.69 while the interested party was appointed on 15.7.69. 10

The Commission having taken into consideration the above as well as the qualifications of the candidates found that it was not possible to adopt the recommendations of the Chief Registrar and having concluded on the basis of the established criteria that is merit, seniority and qualifications, that the interested party was superior to the applicant, decided to promote him to the post of Senior Bailiff as from 15.11.84. The applicant feeling aggrieved of the decision filed the present recourse. 15

In his written address learned counsel for the applicant states his legal grounds of grievance as follows: 20

a. That the respondent Commission acted in contravention to the recommendations of the Head of the Department without providing special reasoning for taking such an exceptional course while it was under a duty to do so.

b. Failed to consider properly the overall picture of the candidates and paid undue weight to only one of the relevant factors that should have been taken into account namely the confidential reports. 25

c. Failed to pay due weight to the fact that the applicant had seniority over the interested party. 30

Counsel for the applicant in expanding all his legal grounds in his written address argued making reference to decided cases that the recommendation of the Head of the Department is the most important factor to be taken into consideration and cannot be disregarded without special reasons and the sub-judice decision does not provide the special reasoning required. He also argued that the confidential reports were the determining factor in the minds of the respondent and that the finding of the respondent that the confidential reports of the interested party were by far better to those of the applicant was not warranted by the material before it. Counsel lastly argued that the slight superiority of the interested party in his confidential reports is outweighed by the recommendations of the Head of the Department in favour of the applicant and the two candidates being thus more or less equal in merit and qualifications the applicant's seniority should have prevailed.

Counsel for the respondent on the other hand argued relying on decided cases in support of his arguments that the recommendations of the Head of the Department do not bind the Public Service Commission which can depart from them giving its reasons for doing so, that the sub-judice decision is duly reasoned, that the reasoning can be also supplemented by the material in the file and that it was reasonably open to the respondent to arrive at the sub-judice decision.

I have carefully considered the contents of the confidential reports in respect of the applicant and the interested party especially for the years 1981, 1982, 1983 and there is no doubt that the interested party has better confidential reports than the applicant. I therefore find that the finding of the respondent in this respect was reasonably open to it. As regards seniority, the seniority of the applicant over the interested party is only very slight (about 4 1/2 months). The Public Service Commission as stated in the case of *Constantinou v. The Republic* (1984) 3 C.L.R. 498 at pp. 501-502 which was cited by counsel for the respondent are: "the arbiters of manning the Public Service by appointment and promotion. They can depart from the recommendations of the departmental head whenever they consider this course conducive to the

interests of the service". However, the Commission must reason its departure from the recommendations of the departmental head.

In the present case it is obvious that the applicant was recommended by the Head of the Department solely on account of seniority which as found by the Commission was only very slight 5
whereas the reports of the interested party were clearly better. These findings of the Commission which are stated in its minutes can be considered, in my view, as sufficient reasoning in the circumstances of the case.

Moreover the applicant has failed to discharge the burden of 10
establishing that he is strikingly superior to the interested party so as to justify the intervention of the Court in his favour. In proceedings such as the present recourse this Court will not interfere with the exercise of the discretion by the respondent Commission 15
in making promotions if the decision of the Commission was reasonably open to it in the circumstances of the case. And in the present instance on the basis of the material that was placed before the Commission and is now before me it was in my view 20
reasonably open to the respondent to arrive to its sub-judice decision.

For all these reasons the recourse is dismissed but with no order as to costs.

*Recourse dismissed.
No order as to costs.*