

1988 October 31

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARGYROULLA VASSILIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 394/86).

*Public Officers—Promotions—Head of Department—Recommendations of—
Whether they can be made orally—Whether he is entitled to obtain informa-
tion regarding capabilities of candidates from his subordinates—Both ques-
tions determined in the affirmative—Whether Commission entitled to in-
quire as to subordinates' views—Question determined in the negative.*

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*Public officers—Promotions—Head of Department—Recommendations of—
Inconsistent with overall picture of candidates as emanating from the confi-
dential reports—Principles applicable.*

The applicant's complaints may be summarized thus:

(A) The Commission should not have relied on the recommendations of the Head of the Department, because they were made orally and because, before making them, the Head of the Department obtained information from his subordinates.

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(B) The recommendations of the Head of the Department should have been disregarded as being contrary to the picture relating to merit, as emerging from the relevant confidential reports.

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It must be noted that comparison of the confidential reports leads to the conclusion that the applicant was better in merit than the interested parties.

Held, annulling the sub judice decision:

(1) Oral recommendations by the Head of the Department are not contrary to any law or regulation. The Head of the Department is entitled to obtain information from his subordinates in order to appraise himself of the capabilities of candidates. The Commission rightly refrained from inquiring what such views were.

(2) When the recommendations of the Head of the Department are not consistent with the overall picture presented by the confidential reports they should be disregarded or given limited weight depending on the extent of inconsistency.

(3) In this case the recommendations were inconsistent with the picture emanating from the confidential reports. By relying on such recommendations the Commission acted under a misconception of fact. Moreover, for the same reason it is obvious that the Commission failed to make a due inquiry.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Gavriel v. The Republic (1971) 3 C.L.R. 185;

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

Georghiadou v. The Republic (1988) 3 C.L.R. 1181;

Republic v. Koufettas (1985) 3 C.L.R. 1959;

Christodoulou v. CYTA (1978) 3 C.L.R. 61.

Recourse.

Recourse against the decision of the respondents to promote the interested party to the post of Sister in the Department of Medical and Health Service in preference and instead of the applicant.

A.S. Angelides, for the applicant.

A. Papasavvas, *Senior Counsel of the Republic*, for the respondents.

Cur. adv. vult.

KOURRIS J. read the following judgment. By this recourse, the applicant challenges the decision of the Public Service Commission to promote the interested parties to the post of "Sister" in the Department of Medical and Public Health Services as from 15/3/1986 in preference and instead of the applicant. 5

Originally the interested parties were 24 but counsel for the applicant during the hearing withdrew the recourse against all the interested parties except interested party (1) Maria Nicolaidou, interested party (2) Eftychia A. Neophytou, interested party (8) Andriani Nissioti, interested party (14) Maria Kyriacou and interested party (17) Anastassia Charalambous. Consequently, the recourse proceeded to hearing in connection with the said interested parties whereas the recourse against the other parties was dismissed with no order for costs. 10 15

The post in question is a promotion post and before the sub judice decision the applicant and the interested parties were holding the post of Staff Nurse, 1st Grade. 20

Pursuant to a request made by the Director-General of the Ministry of Health to the Public Service Commission for the filling of 33 vacant posts in the post of "sister" (Αδελφή)/Senior Nurse, the respondent commission referred the matter to the departmental committee which was set up for that purpose in accordance with the provisions of Section 36 of the Public Service Law 1967 (Law 33/67) to investigate and advise on the qualifications and suitability of candidates for promotion to the above post in the Medical Department of the Civil Service. The departmental committee by its report, which was submitted to the respondent commission by letter dated 25/2/1986 recommended 33 candidates out of 105 including the applicant and all the interested parties. The departmental committee stated that 69 possessed the required 25 30

5 qualifications envisaged by the scheme of service and that the rest 36 did not possess the required qualifications. The departmental committee also stated that they were in doubt whether 7 candidates possessed the required qualifications for the post in question and they left the matter to be decided by the Public Service Commission.

10 The respondent commission at its meeting of 3/3/1986 considered the report of the departmental committee and decided that the 7 candidates possessed the required qualifications for promotion and included them in the list for promotion together with the candidates recommended as eligible for promotion to the post in question.

15 The final meeting of the respondent commission took place on 10/3/1986. The head of the department was present and was asked by the respondent commission to take into consideration, in expressing his recommendations, in addition to the candidates which the departmental committee recommended, the 7 candidates which the departmental committee failed to recommend. The head of the department made his recommendations and left. After the 20 departure of the head of the department, the respondent commission having assessed the material before them, including the confidential reports of the candidates; their personal files, their seniority, and in the light of the views expressed by the head of the department, they decided to promote 33 candidates to the post of "Sister" as from 15.3.1986. The applicant was not promoted, and 25 feeling aggrieved, filed the present recourse.

30 I propose to deal with the recommendations of the head of the department which were challenged by counsel for the applicant. The complaint of counsel for the applicant is, that the head of the department when he appeared before the respondent commission on the 10th of March, 1986, made oral representations which were of a very general nature and that no details were given as to why the applicant was not recommended for promotion. Further, he contended, that he obtained information from the senior sisters 35 with regard to the performance of the candidates as staff nurses

and he failed to report the opinions of the senior sisters.

I examined these points in *Georghiadou v. The Republic* (1988) 3 C.L.R. 1181, and I held the view that there is no violation of the law or of the regulations when the head of the department made oral recommendations before the respondent Commission (see *Georghios Gavriel v. The Republic* (1971) 3 C.L.R. 185).

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There has been no violation of the law or of any regulations with regard to obtaining information about the candidates from his subordinates in order to appraise himself of the capabilities of the candidates in the absence of personal knowledge (see *Mettas v. The Republic* (1985) 3 C.L.R. 250 at page 256).

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The respondent commission rightly did not ask the head of the department what were the views of the senior sisters and put their views and recommendations down in writing. There is no law or regulation entitling the respondent commission to regard the views of the subordinates of the head of the department from whom he obtains information.

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With regard to the recommendations of the head of the department, it is recorded in the minutes of 10/3/1986 (see written address of counsel for the respondent page 10) that he made his recommendations with regard to the recognized criteria in their totality, that is merit, qualifications, seniority.

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But, the main complaint of counsel for the applicant is that although the applicant was superior in merit from the interested parties yet the head of the department did not recommend her for promotion. He submitted a list of the candidates whom he recommended for promotion and he did not include the applicant and he gave no reasons why he did not recommend her. Counsel for the applicant went on to say that the sub judice decision is liable to be set aside because the recommendations of the head of the department are not supported by the contents of the relevant annual confidential reports, a situation that makes the reasoning of the deci-

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sion inadequate.

5 The respondent commission in evaluating the merits of the applicant and the interested parties have considered the confidential reports of the year 1979 till 1985, noting also that they have been prepared by different reporting officers, that is, the last seven years before the date of appointment. Applicant is rated as excellent for all the years whereas interested party (1) Maria Nicolaidou is rated "good" for 1979, "very good" for 1980 and 1981 and "excellent" for the years 1982, 1983, 1984 and 1985. Interested party (2) Eftychia A. Neophytou is rated as "good" for 1979, "very good" for 1980 and 1981 and "excellent" for 1982, 1983, 1984 and 1985. Interested party (8) Andriani Nissioti is rated as "good" for 1979, "very good" for 1980 and 1981 and "excellent" for 1982, 1983, 1984 and 1985. Interested party (14) Maria Kyriacou is rated as "good" for 1979, "very good" for 1980 and 1981 and "excellent" for 1982, 1983, 1984 and 1985. Lastly, interested party (17) Anastassia Charalambous is rated as "good" for 1979, "very good" for 1980 and 1981 and "excellent" for 1982, 1983, 1984 and 1985. It should be noted that all the interested parties are senior to the applicant.

20 The respondent commission accepted the recommendations of the head of the department and took them into consideration in assessing the various candidates before it (see written address of counsel for the respondent page 14).

25 In a series of cases of the Supreme Court it has been stated that when the recommendations of the head of the department are not consistent with the overall picture presented by the confidential reports they should be disregarded or given limited weight depending on the extent of inconsistency (see inter alia the case of 30 *The Republic v. Koufettas* (1985) 3 C.L.R. 1959 decided by the Full Bench).

In the case of *Koufettas* (supra) it is stated at page 1962:

"It is well established, however, that when the recommen-

dations of the Head of a Department are inconsistent with the overall picture presented by the confidential reports, they should be disregarded or be given limited weight, depending on the extent of inconsistency-...

The Court in the exercise of its judicial control and considering the validity of a promotion scrutinizes the reasons given for the recommendations of the Head of the Department in order to ascertain whether they are consistent with the overall picture presented by the confidential reports of the applicant and the interested parties."

The picture appearing from a perusal of the confidential reports of the applicant and the five interested parties for the years 1979 till 1985, which was the material time to be taken into consideration, does not support the recommendations of the head of the department at the meeting of the Public Service Commission on 10/3/1986 when the sub judice decision was reached and it is clear that his recommendations are inconsistent with the overall picture presented by the confidential reports of the applicant and the interested parties and as the respondent commission relied on the recommendations of the head of the department it is apparent that the commission acted under a material misconception of fact, which justifies the annulment of an administrative act (see, inter alia, *Christodoulou v. CYTA* (1978) 3 C.L.R. 61).

It also follows that in the circumstances of the present case the respondent Commission failed to make due enquiry with regard to the merits of the candidates because had it made a proper enquiry they would have found out that the recommendations of the head of the department were inconsistent with the confidential reports of the applicant and they would have disregarded his recommendations.

For all the above reasons the recourse is allowed and the promotion of the interested parties is set aside without any order for costs. As the matter will be re-examined by the Public Service Commission I do not propose to examine the point raised by

counsel for the applicant that the applicant is strikingly superior to the interested parties.

Sub judice decision annulled.

No order as to costs.