

1988 November 24

[A. LOIZOU, P., MALACHTOS, SAVVIDES, STYLIANIDES, KOURRIS, J.]

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellants,*

GEORGHIOS KASTELLANOS,

*Respondent.*

*(Revisional Jurisdiction Appeal No: 610).*

MYRIANTHI PAPAONISIFOROU,

*Appellant-Interested Party,*

GEORGHIOS KASTELLANOS,

*Respondent.*

*(Revisional Jurisdiction Appeal No.612).*

*Public Officers—Promotions—Qualifications—Due inquiry as to—The need of—Specialized post—This fact does not affect the duty to carry out due inquiry—Conclusions of Departmental or, as the case may be, of Advisory Boards—Not binding on Commission, which has an obligation to inquire and decide for itself the matter of qualifications.*

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*Public Officers—Promotions—Qualifications—Judicial control—The scope of the revisional jurisdiction in this respect.*

- Public Officers—Promotions—Head of Department—Recommendations of—Special reasons should be given why they were disregarded—In this case they were not followed because the interested party "in general was superior at the material time and was more suitable..."—In the circumstances this reason is very general and inconsistent with the material in the file.* 5
- Public Officers—Promotions—Confidential reports—What really matters is the picture presented by the overall grade in the report—Republic v. Rousos (1987) 3 C.L.R. 1217 approved.*
- Time within which to file a recourse—A requirement independent from the requirement of legitimate interest—The existence or not of a legitimate interest to challenge a particular act or decision does not affect the computation of the period of 75 days.* 10
- Legitimate interest—Absence of—Does not prevent the time, within which a recourse may be filed, to start running.*
- Annulment of administrative act or decision—Effect—Promotions of public officers—Challenge of the promotion of only one of the four officers, who had been promoted by the same act to a particular post—Annulment of such officers' promotion on a ground affecting legality of the act—Whether administration bound to revoke the promotions of the other three officers—Question determined in the negative—Administration bound to compare afresh the successful applicant with the officer, whose promotion was annulled.* 15  
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- The principles expounded by the Court in dismissing the appeals and cross-appeal in this case appear sufficiently in the hereinabove headnote.
- Appeals and cross-appeal dismissed. No order as to costs.* 25
- Cases referred to:*
- Michael and Another v. The Public Service Commission (1982) 3 C.L.R. 726;*
- Mytides and Another v. The Republic (1983) 3 C.L.R. 1096;* 30
- Photos Photiades and Co. v. The Republic, 1964 C.L.R. 102;*

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

*Lardis v. The Republic*, (1967) 3 C.L.R. 64;

*Hadjiconstantinou and Others v. The Republic* (1973) 3 C.L.R. 65;

*Petrides v. The Public Service Commission* (1975) 3 C.L.R. 284;

5 *Republic v. Haris* (1985) 3 C.L.R. 106;

*The Republic v. Roussos* (1979) 3 C.L.R. 1217;

*Moran v. The Republic*, 1 R.S.C.C. 10;

*Decisions Nos.1371/49 and 1431/67 of the Greek Council of State*;

*Pavrides v. The Republic* (1967) 3 C.L.R. 217.

## 10 Appeals and cross-appeal.

Appeals and cross-appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 24th June, 1986 (Revisional Jurisdiction Case No. 400/84)\* whereby the promotion of interested party M. Papaonisiforou to the post of Senior Welfare Officer was annulled.

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A. *Vassiliades*, for appellant in R.A. 610.

A. *Markides*, for appellant in R.A. 612.

A.S. *Angelides*, for respondent.

A. *Panayiotou*, for interested party M. Neophytou.

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*Cur. adv. vult.*

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\* Reported in (1986) 3 C.L.R. 1014.

A. LOIZOU P.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: These appeals, taken by the respondents and the interested party in the recourse, are directed against the judgment of a Judge of this Court whereby he annulled the promotion of the interested party to the post of Senior Welfare Officer.

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The respondent-applicant in the recourse filed a cross-appeal.

Four posts of Senior Welfare Officer, a specialized post under section 35(2) of the Public Service Law 33/67, were filled by a decision of the appellant Commission dated 10th October, 1981, with effect 15th October, 1981. The Commission by that decision promoted the respondent-applicant Kastellanos and the interested parties Malamo Neophytou, Christakis Pavlou and Antonis Hadjichristou.

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Appellant Myrianthi Papaonisiforou impugned the promotion of Kastellanos by means of Recourse No. 42/82. A Judge of this Court declared it null and void and of no effect on 26th February, 1983, on the sole ground that there was a real probability that it was founded upon a factual misconception as the countersigning officer commented in writing on the confidential reports of the applicant for the years of 1978 and 1979 that applicant's reporting officer was prone to overestimate the performance of his subordinates. (See *Papantoniou and Another v. Republic* (1983) 3 C.L.R. 64.)

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Appeal was taken against that first instance judgment which was dismissed by the Full Bench of the Court on 12th April, 1984. (See *The Public Service Commission v. Papaonisiforou* (1984) 3 C.L.R. 370.)

On 8th March, 1983, the Commission made known to the applicant the result of Recourse No. 42/82 and informed him that consequentially he reverted to his previous post of Welfare Offi-

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cer, Class I. This is consonant to the principle of Administrative Law that an annulling decision of the Court wipes out ab initio the sub-judice decision and no revocative administrative act is required.

5 The Commission following the dismissal of the Revisional Appeal proceeded to fill the post which became vacant on the basis of all the material before it on 10th October, 1981. They considered the candidates; after a first evaluation they reached the conclusion that the selection was between Kastellanos and Papaonisiforou. On 8th May, 1984, they decided to promote Papaonisiforou.

15 On 23rd May, 1984, counsel for the applicant addressed a letter to the Chairman of the Public Service Commission complaining against the process followed for the selection of the interested party, submitting, mainly, that the Public Service Commission ought to have revoked its decision of 10th October, 1981, as a whole, i.e. the promotion of the three interested parties which was not challenged and was not annulled by the Court. In the meantime the recourse was filed whereby the applicant prayed:

20 (a) Declaration and/or judgment of the Court that the decision of the Public Service Commission published in the Official Gazette of the 20th July, 1984, by means of which Myrianthi Papaonisiforou was promoted retrospectively, as from 15th October, 1981; instead of the applicant, to the post of Senior Welfare Officer is null and void.

(b) Declaration of the Court that the omission of the Public Service Commission to respond, examine and answer, to the letter of applicant of 23rd May, 1984, is null and void.

30 (c) Declaration and/or judgment of the Court that the promotion with effect as from 15th October, 1981, of Malamo Neophytou, Christakis Pavlou and Antonios HadjiChristou to the post of Senior Welfare Officer is null and void.

The first instance Judge dismissed prayers (b) and (c) and annulled the decision of the promotion of the interested party Papaoisiforou on the ground that the Commission failed to interpret the relevant scheme of service regarding the required qualifications; did not carry out a sufficient inquiry as to the nature of the qualifications possessed by the interested party and did not decide whether she possessed the qualifications required by the scheme of service. 5

The appellants challenged this part of the judgment and the respondent by cross-appeal raised the issues on which he either did not succeed or were left unresolved by the learned trial Judge. 10

As in a revisional appeal the Court is seized with the case ab initio we shall consider the issues raised in the following order:

A. Whether the Commission interpreted the scheme of service and carried out a due inquiry as to the qualifications possessed by the interested party. 15

B. Whether cogent reasons were given by the Commission for disregarding the recommendations of the Head of the Department.

C. Whether the recourse against the promotion of the three interested parties on 10th October, 1981, which were not challenged in the past before the Court, is out of time. 20

D. Whether the Commission was bound to revoke the said promotions in view of the annulling decision in Recourse No. 42/82 and Revisional Jurisdiction Appeal No. 306. 25

A. Possession by a candidate of the qualifications set out in the relevant scheme of service is a prerequisite for his promotion. The competence of the Commission in case of promotion is regulated by section 44 of the Public Service Law of 1967 (Law No. 33/67). By paragraph (b) of subsection 1 the Commission has to examine whether an officer possesses the qualifications laid down 30

in the scheme of service for that office. The fact that the post is a specialized one does not affect this power and duty of the Commission. The conclusion of the Departmental Board or the Advisory Board, as the case may be, regarding the qualifications of the applicants is not binding on the Commission. The Commission has a statutory obligation to inquire and decide for itself this very serious matter which is a sine qua non to any further step in the process of the exercise of its discretion. (See *Michael and Another v. The Public Service Commission* (1982) 3 C.L.R. 726.)

In *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096, at p. 1111 it was said:

"The Commission has a statutory duty to construe the scheme of service, then ascertain the qualifications of each candidate as a factual situation and finally to apply the scheme of service in this factual situation and decide whether a candidate is under the scheme of service eligible for promotion. These duties cannot be either usurped by or left to the Departmental Board. The ultimate competence and responsibility rest on the Commission."

In the present case paragraphs (1) (a) and (2) of the scheme of service for the post in question provided as follows:

"(1) (α) Δίπλωμα τριετούς Φοιτήσεως εις Ανωτέραν Σχολήν Κοινωνικής Εργασίας/Ενημερίας ή άλλο ισότιμον δίπλωμα επαγγελματικής καταρτίσεως εις την Κοινωνικήν Εργασίαν/Ενημερίαν και τριετής τουλάχιστον υπηρεσία εις την θέσιν Λειτουργού Ενημερίας"

"(2) Ειδική εκπαίδευσις ή μετεκπαιδευσις εις την Κοινωνικήν Εργασίαν/Ενημερίαν ήτις να περιλαμβάνη φοίτησιν εις ανεγνωρισμένον εκπαιδευτικόν ίδρυμα και απόκτησιν σχετικού διπλώματος/πιστοποιητικού."

"(1) (a) A diploma of a three years course in a High School of Social Work/Welfare or other equivalent diploma of vocational training in the Social Work/Welfare and at least three

years service in the post of Welfare Officer;

.....  
(2) Special or post-graduate training in Social Work/  
Welfare which will include studies in a recognized educational  
institution and possession of a relevant diploma/certificate.

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.....")

The Commission, out of a number of candidates, preselected the appellant and the respondent in this appeal and proceeded to a comparison between them. In the course of such comparison it is recorded in the relevant minutes:

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"Από πλευράς προσόντων κατά τον ουσιώδη χρόνο η Παπαονησιφόρου διέθετε Diploma of the School of Social Welfare Studies, Orlinda Child's Pierce College of Athens, δηλαδή ειδική κατάρτιση που απέκτησε ύστερα από σπουδές τριών ετών, ..."

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And in English it reads:

("From the aspect of qualifications at the material time Παπαονησιφόρου possessed a Diploma of the School of Social Welfare Studies, Orlinda Child's Pierce College of Athens, namely special training which she acquired after three years studies, ...")

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As stated in *Photos Photiades & Co. v. The Republic of Cyprus, through the Minister of Finance*, 1964 C.L.R. 102, an administrative authority has a duty to make the reasonably necessary inquiry for the purposes of ascertaining the correct facts to which the relevant legislation is to be applied. The ascertainment of the true factual situation is one of the four necessary steps in the making of an administrative act, as follows: the study and, if necessary, interpretation of the relevant legal provisions; ascertainment of the correct facts; application of the law to the facts; and decision on the course of action.

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Counsel for the appellants submitted that the qualifications of

the promotee satisfied both requirements of the scheme of service hereinabove quoted.

5 It is the contention of counsel for the respondent-applicant that the qualifications of the appellant-interested party satisfied either the qualification under paragraph (a) or the qualification under paragraph (2) but not both. Furthermore, the Commission failed in its duty to address its mind to the issue of qualification and carry out a due or any inquiry.

10 (1) It is well settled that this Court is exercising only a revisional jurisdiction and does not decide whether a particular qualification is satisfied or not. The object and scope of the revisional jurisdiction is the judicial control of the exercise of the power of the administration and the legality of the administrative act challenged.

15 Having regard to the facts and circumstances in the present case we share the view of the first instance Judge that the Commission failed to interpret the relevant scheme of service regarding this particular question and failed to carry out the sufficiently necessary inquiry into the qualifications possessed by the interested party; it exercised its discretion in a defective manner; its decision regarding the promotion of the interested party is, therefore,  
20 wrong in law and in excess and/or in abuse of powers. The minutes of the Commission indicate that the process was defective and that it did not perform its duty as set out in the Case-Law of this Court on the matter of the qualifications required under the  
25 scheme of service with regard to candidate Papaonisiforou.

30 B. The recommendations of the Head of the Department were always considered a most vital consideration not lightly to be disregarded. The Head of the Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidates to discharge the duties of the post.

Section 44(3) of the Public Service Law, 1967 (Law No. 33/67) reads as follows:

"(3) In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to recommendations made in this respect by the Head of Department in which the vacancy exists."

It is well established that the Public Service Commission has to pay heed to such recommendations and if they decide to disregard them they have to give reasons for doing so. (See *Michael Theodosiou and The Republic (Public Service Commission)*, 2 R.S.C.C. 44; *Andreas Lardis v. Republic (Public Service Commission)* (1967) 3 C.L.R. 64; *Costas Hadjiconstantinou and Others v. Republic (Public Service Commission)* (1973) 3 C.L.R. 65; *Emanouel Petrides v. The Public Service Commission* (1975) 3 C.L.R. 284; *Republic v. Haris* (1985) 3 C.L.R. 106.)

The recommendations of a Departmental Head carry considerable weight because he is in a unique position to evaluate in the correct perspective the competing merits of the candidates in terms of ability, knowledge and experience of the beholder on the one hand, and appreciate the needs of the post to be filled on the other.

In the present case, the Head of the Department, the Director of the Social Welfare Services, made very reasoned recommendations comparing their respective merits and demerits on a consideration of all the factors relevant and concluded by recommending Kastellanos as the most suitable for this promotion post. The Commission, if they decided not to act in accordance with such recommendations, they would have to give specific reasons for so disregarding them. Such reasons are subject to scrutiny by the Administrative Court. (See *Republic v. Haris* (supra)). The Commission disregarded the aforesaid recommendations of the Head of the Department and preferred Papaonisiforou instead of the respondent. The Commission referred to the confidential reports, the qualifications and the seniority of the two candidates. Kastellanos is slightly senior to the appellant. Their merits, so far as reflected in the confidential reports, are equal. The confidential reports give partly a description of the merits of candidates. The

more recent ones for both are:

	<b>Appellant</b>	<b>Respondent</b>
1979:	Excellent (12-0-0)	Excellent (12-0-0)
1980:	Excellent (12-0-0)	Excellent (10-2-0)

5 In *The Republic v. Roussos* (1979) 3 C.L.R. 1217 it was said at p. 1224:

10 "... we should stress that what really matters is the general picture presented by the overall grade in the report, on the basis of the aggregate effect of the evaluations of a public officer regarding particular ratable items, and not the arithmetical formula of how many times as regards such items a candidate had been rated as 'excellent' or 'very good', or 'good' etc."

And further down:

15 "... it must not be lost sight of that it is dangerous to embark on these numerical comparisons independently of the nature of the items in respect of which an officer is rated as 'excellent' or 'very good' since such items do differ in significance depending on the qualities to which they relate."

The Commission concluded:

20 "Η Επιτροπή, έχοντας υπόψη τα πιο πάνω, έκρινε ότι δεν ήταν δυνατό να υιοθετήσει τη σύσταση του Διευθυντή για προαγωγή του Καστελλάνου, διότι η Παπαονησιφόρου υπερείχε γενικά αυτού κατά τον ουσιώδη χρόνο και ήταν  
25 πιο κατάλληλη για προαγωγή στη θέση Ανώτερου Λειτουργού Ευήμερίας."

30 ("The Commission, having regard to the above, decided that it was not possible to adopt the recommendations of the Director for promotion of Kastellanos, because Papaonisiforou in general was superior at the material time and was more suitable for promotion to the post of Senior Welfare Officer.")

Having regard to the material before the Commission and the minutes of its meeting, we are of the view that no cogent reasons were given for their departure from the recommendations of the Director. Their reason is very general and inconsistent with the material before them. Thus, they exercised their discretion in a defective manner, contrary to Law and in excess of power. 5

C. It was submitted by counsel for the respondent that the period of time within which the recourse has to be filed starts running from the date that a person acquires a legitimate interest to make a recourse. 10

Paragraph 3 of Article 146 of the Constitution reads as follows:

"3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse." 15

This is a mandatory provision and has to be given effect in the public interest in all cases. Such view is in accordance with the interpretation of analogous provisions given by administrative tribunals in a number of European countries and is also the view of authoritative writers on this subject. It is the view taken by this Court in this country ever since the introduction of the Administrative Law by Article 146 of the Constitution. (See *John Moran and The Republic (Attorney-General and Minister of Interior)*, 1 R.S.C.C. 10.) 20 25

The decision of 10th October, 1981, for promotion of the three interested parties was published in the Official Gazette of the Republic on 13th November, 1981. The respondent was one of the promotees whose promotion, however, was annulled by the Supreme Court as aforesaid. It was submitted by his counsel that the period of seventy-five days starts running as from the final decision of the Supreme Court on 12th April, 1984. We do not subscribe to this view. Paragraph 2 of Article 146, which requires 30

5 the possession of legitimate interest as a prerequisite for the making of a recourse, is not connected with paragraph 3. Paragraph 3 is an independent procedural provision of public policy. Had it been otherwise, paragraph 3 as to time, would have been derogated and unnecessary uncertainty would have been created in the administration with all evil consequences.

10 D. Counsel for the respondent submitted that, as the decision of the Commission to promote him was annulled by the Supreme Court on the ground that in the confidential reports of Papaonisiforou for 1977-1978 the countersigning officer noted that the reporting officer was generally too generous, the Commission as a matter of proper administration and on the ground of the principle of equality should have revoked the promotion of the other three officers who were promoted on the same day, as they comprise in effect one act which was tainted in whole with this illegality.

15 The Court ascertains and determines under Article 146.4 the legality of a particular act which is impugned. The decision of the Administrative Court is binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned. (See paragraph 5 of Article 146 and Article 148.)

20 It is the actual decision in the particular recourse which is binding. This is quite clear if one reads together paragraphs 4 and 5 of Article 146, which read as follows:

25 "4. Upon such a recourse the Court may, by its decision-

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or

30 (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omit-

ted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned." 5

In Case No. 1371/49 the Greek Council of State annulled the appointment of the Head of the 4th surgery clinic of a hospital on the ground that the advertisement of the posts of the head of all the clinics was faulty and illegal and the process of the filling of the post that followed was tainted and illegal. The Executive Committee of the Hospital did not revoke the appointment of the Heads of the other clinics. In case No. 2015/50 (Decisions of the Greek Council of State, 1950, B, p. 428) the Greek Council of State held that the Administration was not bound to revoke the acts of the appointment of the Heads of the other clinics which were effected with the same act, on the ground of annulment of the sub judice decision in Case No. 1371/49. 10 15

In Case No. 1431/67 the Greek Council of State decided that, after the annulment for lack of sufficient reasoning of the promotion of the applicant, the Administration was bound to carry out a new comparison of the applicant with his colleagues whose promotion was annulled, but not to proceed to revoke the promotion of other civil servants since there was no annulling decision. (See, also, Cases 675/68 and 1567/68.) 20

In Theocharopoulou "The Consequences of the Annulment of the Administrative Act" (1980) at p. 176 we read: 25

"Πράγματι, παρατηρείται ίδια εις τον δημοσιοϋπαλληλικόν χώρον, ότι η ακύρωσις παραλείψεως π.χ. προς προαγωγήν του προσφεύγοντος, εκδηλωθείσης διά πράξεως προαγωγών άλλων υπαλλήλων, έχει πολλάκις ως συνέπεια το ότι η Διοίκησις υποχρεούται όπως επιληφθή εκ νέου του ζητήματος της προαγωγής του προσφυγόντος, κρίνουσα τούτον εκ νέου προς προαγωγήν εν συγκρίσει 30

5 όμως όχι προς όλους τους προαχθέντας, αλλά μόνον εν συγκρίσει προς εκείνους εκ των προαχθέντων η πρόκρισις των οποίων έναντι του προσφυγόντος εκρίθη υπό του ΣτΕ ως προϊόν μη νομίμου ασκήσεως της διακριτικής εξουσίας της Διοικήσεως, ή ως ανατιολόγητος. Επάνερχομένη δέ εκ νέου η Διοίκησις υποχρεούται να ανακαλέση την προαγωγήν τινός των προαχθέντων εξ εκείνων μετά των οποίων συνεκρίθη ο προσφεύγων και ευρέθη υπερτερών και όχι άλλου τινός ή όλων των αναφερομένων εις την εν λόγω πράξιν προαγωγών. Δηλαδή, η Διοίκησις υποχρεούται εν 10 προκειμένω να προβή εις την σύγκρισιν μόνον μεταξύ του αιτούντος και του υπαλλήλου του οποίου ηκυρώθη η προαγωγή ως ανατιολόγητος και όχι να συγκρίνη αυτόν προς ετέρους συναδέλφους."

15 We adopt this passage.

With regard to the principle of equality we are of the view that it is not violated.

20 It should be borne in mind that certainty of the law and justice are essential features of the rule of law. Certainty and justice are, also, essential elements of proper administration. (See *Byron Pavlides v. Republic (Commissioner of Income Tax and Another)* (1967) 3 C.L.R. 217).

25 The Public Service Commission was not bound to revoke the promotion of the three interested parties. It has the power of revocation, which should not be exercised contrary to the established principles of Administrative Law.

In the present case the complaint of counsel for the respondent is not sustained by this Court. The Commission acted within the bounds of its authority.

30 In view of all the foregoing, the appeals and cross-appeal are dismissed. The sub judice decision of the promotion of Myrianthi Papaonisiforou, published in the Official Gazette on 20th July,

1984, is declared null and void and of no effect under paragraph 4(b) of Article 146.

Let there be no order as to costs.

*Appeals and cross-appeal  
dismissed. No order as to costs.      5*