

1988 February 18

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

OTHON YIANGOULLIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 540/86).

Public Officers—Promotions—Merit—Confidential reports and recommendations of Head of Department—Significance of.

Public Officers—Promotions—Qualifications—Additional academic qualifications, not envisaged as an advantage in the scheme of service—Do not establish by themselves a case of striking superiority.

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Public Officers—Promotions—Striking superiority.

Reasoning of administrative act—It may be found either in the decision itself or in the official records related thereto.

Natural Justice—Bias—How established.

By means of this recourse the applicant challenges the promotion of the interested party to the post of Senior Town Planning Officer.

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The interested party had slightly better confidential reports and was recommended for promotion by the Head of the Department; as regards qualifications, they both possess more or less equal qualifications. It must, however, be noted that the applicant contended that he holds an additional academic qualification not possessed by the interested party. The interested party was senior by 5 years to the applicant.

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5 Held, *dismissing the recourse*: (1) In deciding on the merits of the candidates, one should look at past annual confidential reports, but especially at the most recent ones. In this case, the difference in merit in favour of the interested party emerging therefrom, is greatly enhanced by the recommendations of the Head of the Department. Such recommendations were consistent with the overall picture transpiring from the administrative records.

10 (2) Lack of impartiality by a public officer against another must be established with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts. In this case the applicant's vague allegation of bias against the Head of the Department has not been substantiated.

(3) Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority.

15 (4) Thus it is clear from the above that the applicant singularly failed to establish a case of striking superiority over the interested party.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- 20 *HadjiIoannou v. The Republic* (1983) 3 C.L.R. 1041;
Georghiou v. Republic (1983) 3 C.L.R. 74;
HadjiGregoriou v. The Republic (1975) 3 C.L.R. 477;
Jacovides v. The Republic (1966) 3 C.L.R. 212;
Theodossiou v. The Republic, 2 R.S.C.C.44;
Republic v. Harris (1985) 3 C.L.R. 106;
25 *Constantinou v. The Republic* (1980) 3 C.L.R. 551;
Christou v. The Republic (1980) 3 C.L.R. 437;
Hadjisavva v. The Republic (1972) 3 C.L.R. 174.

Recourse.

Recourse against the decision of the respondents to promote the interested party to the Post of Senior Town Planning Officer in preference and instead of the applicant.

A.S. Angelides, for the applicant. 5

L. Koursoumba (Mrs.), for the respondent.

Chr. Triantafyllides, for the interested party.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant by means of the present recourse challenges the decision of the respondent Public Service Commission dated 20.8.86 published in the Official Gazette of the Republic on 12.9.86, whereby the interested party, namely Kyriacos Demetriades was promoted to the post of Senior Town Planning Officer, as from 1.7.86, in preference to and instead of the applicant. 10

The complaints of the applicant may be conveniently grouped as follows: 15

(a) Failure of the Respondent P.S.C. to select the most suitable candidate for the post in question.

(b) Failure of the respondent to carry out due inquiry, which resulted to a misconception as to material facts. 20

(c) The recommendation of the interested party by the Head of the Department was inconsistent with I. P's merit and qualifications and was the result of bias and/or lack of impartiality on behalf of the Officer concerned against the applicant. 25

(d) Lack of due reasoning.

In the case of *HjIoannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1045 the Full Bench of this Court reiterated that:

5 "It is a settled principle of administrative law that when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also in 10 such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning - (*Odysseas Georghiou v. Republic*, (1976) 3 C.L.R. 74, at p. 15 83)."

20 In the instant case the respondent P.S.C. after hearing the recommendations of the Head of the Department proceeded to evaluate and compare all the candidates on the basis of the established criteria and decided to promote the interested party adopting the recommendations of the Head of the Department in 25 this respect.

Let us examine now the merit, qualifications and seniority of the applicant and the interested party as they emerge from the material before me, which was also before the respondent P.S.C.

30 The merit of the applicant as it emerges from the confidential reports of the last five years is as follows: Very good for the years 1981 and 1982; excellent for the years 1983 (9-3-0) 1984 (10-2-0) and 1985 (11-1-0).

The merit of the interested party, likewise emerging for the same period, is: very good for the the years 1981 and 1982; excellent for the years 1983 (8-4-0) 1984 (10-2-0) and 1985 (12-0-0).

In *HadjiGregoriou v. The Republic* (1975) 3 C.L.R. 477 at p. 483 the Full Bench of this Court held that: "... it is necessary, in deciding on the merits of the candidates, to look at past annual confidential reports, and especially at the most recent ones, in order to evaluate the performance of the candidates during their careers as a whole".

In *Odysseas Georghiou v. The Republic* (1976) 3 C.L.R. 74 at p. 82 the learned President of this Court stated inter alia the following: "... and the importance of the more recent of such reports has been, also, recognised in *Jacovides v. The Republic*, (1966) 3 C.L.R. 212, 221, and may be derived too from the provisions of paragraphs (c) and (d) of subsection (1) of section 44 of Law 33/67."

In this connection it must be noted that whilst the applicant as well as the interested party are rated "excellent" for the last 2 years their rating for 1984 is identical (10-2-0) whilst their rating for 1985 is not identical, but that of the interested party is even slightly better (12-0-0) than that of the applicant (11-1-0).

The difference in merit however slight it may emerge from the confidential reports in favour of the interested party, is greatly enhanced by the recommendations of the Head of the Department, which should be given due regard by the P.S.C. as envisaged by s. 44(3) of Law 33/67 and which constitute a most vital consideration which cannot be lightly disregarded (*Theodossiou v. The Republic*, 2R.S.C.C. 44).

The reason is clearly stated by the Full Bench of this Court in the *Republic v. Haris* (1985) 3 C.L.R. 106 at p. 111: "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....."

5 In the instant case the recommendation of the Head of the Department, as reproduced in the sub-judice decision reads: "Having in mind the three criteria as a whole, merit, qualifications and seniority he considers that the most suitable for the post is Kyriakos Demetriades" (the interested party).

10 Examining the confidential reports and the personal file of the applicant and the interested party I hold the view that the recommendations of the Head of the Department were quite consistent with the overall picture transpiring from the confidential reports and the relevant administrative files, as we have seen above, in respect of merit and as it will appear later on in the present judgment in respect of qualifications and seniority.

15 And in this connection I may as well add here that, the fact that the Head of the Department did not comment on all candidates does not affect the weight of his recommendation (vide *Constantinou v. The Republic* (1980) 3 C.L.R. 551 at p. 561).

20 Now as regards the vague allegation of the applicant imputing lack of impartiality or bias to the Head of the Department, I shall confine myself in reiterating what was stated by the Full Bench of this Court in *Christou v. The Republic* (1980) 3 C.L.R. 437 at p. 449: "The lack of impartiality by public officer A against public officer B must be established with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts."

25 In the case under consideration there was not an iota in the relevant records pointing to lack of impartiality or bias and I could not even trace a succinct allegation to that end.

30 Concluding on the issue of merit I repeat: Merit transpiring from the confidential reports indicates not only equality between applicant and the interested party but even slight superiority of the interested party over the applicant at least for the last year (1985).

And this superiority of the interested party in merit is as already stated above, enhanced by the recommendation of the Head of the Department in his favour.

Turning now to qualifications:

It was forcefully argued by learned counsel for the applicant that the applicant possesses two post-graduate qualifications in contrast with the one possessed by the interested party. I have noted in the administrative file a series of other qualifications possessed by the interested party; after examining the qualifications of the applicant and those of the interested party I would dare say that they both possess more or less equal qualifications. But even assuming that the applicant possesses 2 post-graduate qualifications in contrast with the one possessed by the interested party, such a qualification is not specified by the Scheme of Service as an advantage; and it is well settled that "Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority" (vide *HjiIoannou v. The Republic* - supra - at pp 1046 - 1047).

As regards seniority it is abundantly clear from the administrative file that the interested party has a seniority of about 5 years over the applicant, the latter having been promoted to the permanent post of Town Planning Officer Class I on 15.5.78 whilst the interested party was holding the same post as from 1.8.1973.

Thus it is clear from the above that the applicant singularly failed to establish a case of striking superiority over the interested party. On the contrary it was proved that the interested party was superior in merit whereas on the question of qualifications the applicant and the interested party are more or less equal ; and we should not loose sight of the fact that the interested party has a substantial seniority, of about 5 years, over the applicant.

Before concluding I am duty bound to refer briefly to

reasoning, once raised by the applicant. It is well settled that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto (*HadjiSavva v. The Republic* (1972) 3 C.L.R. 174, 205).

- 5 In the instant case I hold the view that the reasoning appears sufficiently in the decision itself and can also, find support from the material contained in the relevant administrative files.

In the result present recourse fails and is accordingly dismissed; no order as to costs.

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*Recourse dismissed.
No order as to costs.*