

1986 December 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS PETSAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 222/84).

Educational Officers —Appointments/Promotions to a first entry and promotion post—Seniority—Prevails, if other factors more or less equal—Special reasons should be given why it was disregarded—One of such reasons given in this case not warranted by the facts—Sub judice decision annulled on ground of misconception of fact.

Misconception of fact—See Educational Officers —Appointment/Promotions to a first entry and promotion post—Seniority ante.

10 By means of this recourse the applicant challenges the appointment of the interested party to the post of Inspector of Commercial subjects in the Secondary Education instead and in preference to him. The post in question is a first entry and promotion post.

15 The applicant is senior to the interested party and was holding, at the material time, a senior post to that held by the interested party. The performance of the applicant at the interview was rated as "very good", whilst that of the interested party as "excellent". The
20 respondent Commission expressly noted that both have excellent gradings in their last service reports, but the

comments in the service reports of Mr. Afxentiou give him superiority.

Held, annulling the sub judice decision: (1) Seniority prevails, if all other factors are more or less equal, and it is not to be disregarded without special reasons. 5

(2) In this case the Commission noted applicant's seniority, but proceeded to explain the reasons why it preferred the interested party. The first of such reasons was that the comments in the latter's service reports give him superiority. 10

(3) Having perused the reports, this Court cannot agree with such conclusion. The reports, which were practically prepared by the same person, are crediting both parties as being of equal merit. Besides, as regards the aspect of "Organisation—Administration—Human Relations," which is one of the requirements of the scheme of service for the sub judice post, the applicant was always given 10 marks, whereas the interested party 9 except in his last but one report, where he was also given 10 marks. 15

(4) In the light of the above, the conclusion is that the respondent, in taking the sub judice decision, was labouring under a misconception of fact. It follows that the sub judice decision has to be annulled on this ground. 20

Sub judice decision annulled.

No order as to costs. 25

Recourse.

Recourse against the decision of the respondent to promote and/or appoint the interested party to the post of Inspector of Commercial subjects in the Secondary Education in preference and instead of the applicant. 30

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

G. Triantafyllides, for the interested party.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant challenges the validity of the decision of the respondent to promote and/or appoint the interested party, namely, Andreas Afxentiou, to the post of Inspector of Commercial subjects in the Secondary Education instead of and in preference to him.

On the 29th October, 1983, a number of vacancies to the post of Inspector in the Secondary Education, which is a first entry and promotion post, were advertised in the official Gazette of the Republic, amongst which one vacancy in the post of Inspector of Commercial subjects. Four candidates submitted applications, for the said post of Inspector of Commercial subjects amongst whom the applicant and the interested party. Three of the candidates were interviewed on the 10th March, 1984.

The respondent met on the 15th March, 1984 and after stating the criteria taken into consideration in the assessment of the candidates proceeded to evaluate their performance at the interviews as follows:

“(st) Candidates for the post of Inspector A’ in commercial subjects:

Afxentiou Andreas P.M.P. 2546, Excellent.

Petsas Nicos P.M.P. 2677 Very Good.

Savvides Andreas P.M.P. 3446, Excellent.

Manolis Takis P.M.P. 3453. Did not attend.”

At the next meeting of the respondent which was held on the 16th March, 1984, the Director of Secondary Education was present and stated that all three candidates who attended the interviews were recommended by the Department. At its meeting of the 21st March the respondent studied the personal and confidential files of the candidates.

The respondent finally met and took the sub judice decision on the 6th April, 1984. Its minutes read, in this respect, as follows:

“The Educational Service Commission after having studied the personal and confidential files of the candidates and bearing in mind the relevant provisions of the Law and the Schemes of Service, decides as follows:

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(d) Post of Inspector A' in the Secondary Education (for commercial subjects).

The Educational Service Commission on the basis of the merit, qualifications and seniority of the candidates and taking into consideration the service reports, the recommendations of the appropriate Department and the impression formed from the personal interviews (see minutes of 15.3.84) finds that, Mr. Andreas Afxentiou (P.M.P. 2546) Assistant Schoolmaster of Schools of Secondary Education (Paedagogical Institute and Special Counsellor for the guidance of teachers in commercial subjects) is the most suitable for this post.

It is noted that Mr. Nicos Petsas (who is Headmaster of Schools of Secondary Education as from 9.11.81—Anthoupolis Gymnasium, with total service of 24 years on 31.8.83) is senior to Mr. Afxentiou (with total service of 25 years on 31.8.83). Both Mr. Afxentiou and Mr. Petsas have excellent gradings in their last service reports but the comments in the service reports of Mr. Afxentiou give him superiority. With regard to their post-graduate training both possess a Diploma in Educational Administration, and Mr. Afxentiou also possesses a Certificate in Teaching Methods (a three months' post graduate training).

The Commission has formed, both from the study of the files, as well as the personal interviews (during which Mr. Afxentiou has been evaluated as 'Excellent' and Mr. Petsas as 'Very Good') the view that Mr. Afxentiou has a stronger personality, with wider interests and out of school activities and valuable con-

tribution in education generally, with a rich writing and guidance work.

5 On the basis of the above the Commission unanimously decides to offer promotion to the post of Inspector A' to Mr. Andreas Afxentiou, as from 1.7.1984."

The applicant filed the present recourse against the above decision.

10 Counsel for applicant based his written address on the grounds that:

(a) No contemporaneous record was kept by the respondent in respect of the interviews with the candidates and undue weight was placed at the performance of the candidates at the interview.

15 (b) A personal note concerning the activities of the applicant was not taken into consideration.

(c) The sub judice decision is unlawful.

20 (d) The service report for the applicant for the year 1983/1984 was improperly made and should not have been taken into consideration.

25 In support of the legal grounds raised by him, counsel for applicant argued that although the interviews for the post of inspector for commercial subjects took place on the 10th March, 1984, the evaluation of the candidates interviewed took place on the 15th March, 1984, on criteria set down on that date and not on the date of the interview and on the basis of personal notes kept by the members of the respondent Commission. Counsel also argued that the sub judice decision was mainly based on the performance of the candidates at the interviews. With regard to ground (b) counsel submitted that although the respondent itself requested the candidates to submit personal notes regarding their activities, there is no mention in the minutes that such notes were taken into consideration.
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In support of legal ground (c) counsel contended that:

The applicant, who was holding at the material time the post of Headmaster was superior to the interested party, who was holding at the material time the post of Assistant Headmaster, as regards seniority, length of service and seniority of post; that the respondent wrongly considered only the last two service reports of the candidates and that the applicant's previous reports whilst in the post of Assistant Headmaster are better than those of the interested party; that the respondent should not have compared the reports of the applicant during his service in the post of Headmaster with those of the interested party who was an Assistant Headmaster, since the method of evaluating Headmasters is different from the one used for evaluating Assistant Headmasters. Also that the respondent wrongly found that the comments in the reports concerning the interested party were better from those concerning the applicant; that the respondent wrongly took into consideration a three-months course in Teaching Methods attended by the interested party, which was not required by the schemes of service; that the respondent took into consideration extraneous criteria such as "wider interests and out of school activities" and failed to examine whether the interested party possessed the administrative abilities required by the scheme of service; also that the applicant has a better contribution in education through his writing and guidance work; that the impressions formed at the interviews constituted a decisive factor: the respondent disregarded the seniority of the applicant whilst in its decision regarding the promotions to the post of Inspector for other subjects seniority was considered of vital importance.

Finally, counsel argued that the service report of the applicant for 1983-1984, which is the only one about him as a Headmaster, was made in contravention of Regulations 12, 14, and 17, in that although it concerned the years 1983-1984, it was made in February and not at the end of the school year and that if it was taken into consideration by the respondent the sub judice decision must be annulled.

It is common ground that the applicant is senior to the interested party and was also holding, at the material time, a senior post to that held by the interested party. It is well established that seniority prevails if all other
5 factors are more or less equal, and it is not to be disregarded without special reasons.

As it seems from the minutes of the meeting of the respondent dated 6.4.1984, the respondent took note of the seniority of the applicant. However, after stating that both
10 candidates had excellent service reports, the respondent proceeded to explain the reasons why it preferred the interested party.

The first reason given is that the comments contained in the reports of the interested party give him superiority.
15 The respondent, however, does not make reference to any specific reports or any specific comments on which its conclusions were based. Having perused the reports of the applicant and the interested party, I find myself unable to agree with the said conclusion of the respondent. My
20 conclusion from the perusal of the said reports, which were prepared by practically the same persons, is that they are crediting the applicant and the interested party equally in merit. Besides, in the aspect of "Organisation—Administration—Human Relations" which is one of the require-
25 ments of the scheme of service, the applicant was always given 10 marks whilst the interested party 9, except in his last but one report where he was also given 10 marks.

On the basis of the above I find that the conclusions of the respondent in this respect were not warranted by the
30 material contained in the reports of the candidates. This resulted in a misconception of fact on the part of the respondent, which is a ground for annulment of the sub judice decision.

In view of my finding as above, I find it unnecessary to
35 deal with the remaining grounds. Before concluding, however, I would like to stress, once again, the need for keeping proper official contemporaneous records of the

meetings of collective organs so as to make judicial control of their decisions easier and possible.

In the result this recourse succeeds and the sub judice decision is hereby annulled with no order for costs.

Sub judice decision annulled. 5
No order as to costs.