

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOFANIS HJISAVVA AND ANOTHER,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Cases Nos. 10/66, 11/66).

*Public Officers—Appointments—Principles applicable—Paramount duty of the Public Service Commission under Article 125.1 of the Constitution—To select the best or most suitable candidate—Candidates entitled to equal treatment under Article 28 of the Constitution—Discretion of the said Commission—Improper or defective exercise of such discretion—Will lead to the annulment by the Court of a decision taken as a result of improper or defective exercise of such discretion—All relevant factors must be taken into account—On the contrary, irrelevant factors must not—Recommendations by the Head of the Department concerned—Due weight must be given thereto—Not to be disregarded without adequate reasons properly recorded—Views of the Head of the Department must be sought in a proper case at the proper time—Recommendations emanating from the Minister cannot be said to have done away with the need to attribute proper weight to those of the Head of Department or to seek his views at the proper time—Because in cases of appointments (or promotions) in the public service the views of a political personality such as the Minister are no substitute for the views or recommendations of the public officer who is the Head of a particular Department and who is the person primarily responsible for the proper functioning of the branch of the public service under him—And for making recommendations about those serving under him—See, also, below.*

*Public Officers—Appointments—Recourses under Article 146 of the Constitution against the validity of the appointment of the Interested Party to the post of Veterinary Officer, Class II —*

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Appointment annulled as made contrary to law (i.e. not in the proper exercise of the powers vested in the Respondent Commission under Article 125 of the Constitution, contrary to Article 28 of the Constitution and contrary to the relevant principles of Administrative Law), and in excess and abuse of powers—See, also, under Public Officers above; and under Public Service Commission below.*

*Public Service Commission—Its paramount duty under Article 125.1 of the Constitution in cases of appointments or promotions in the public service—To select the best candidate—Discretion—Improper or defective exercise of such discretion—See, also, under Public Officers (twice) above.*

*Public Service—See above.*

*Appointments—Of public officers—See above.*

*Administrative and constitutional Law—Recourse under Article 146 of the Constitution—Legitimate interest—“Existing legitimate interest adversely and directly affected” by the decision, act or omission complained of—Article 146.2 of the Constitution—Meaning and scope of the said expression—See, also, under Public Officers above—In the present case such legitimate interest of the Applicants has been adversely and directly affected by the appointment complained of.*

*Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Time required for the filing of such recourse—Period of seventy-five days—Method of computation of such period—Article 146.3 of the Constitution.*

*Administrative Law—Administrative decisions—Contrary to law and in excess and abuse of powers—Appointment in the public service annulled under Article 146 of the Constitution as made (a) contrary to law (i.e. as the produce of improper and defective exercise of the discretionary power vested in the Respondent Commission, (b) contrary to Article 28 of the Constitution establishing the principle of equal treatment, and (c) contrary to the relevant principles of Administrative Law), and in excess and abuse of powers—Article 146.1 of the Constitution.*

*Administrative Law—Principles of Administrative Law—See above under Public Officers; Administrative Law.*

*Abuse of powers—Abuse and excess of powers—See above.*

1967  
Feb 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Discretion—Discretionary powers—Improper or defective exercise of—See above*

*Excess of powers—Excess and abuse of powers—See above*

*Recommendations—Emanating from the Head of Department—From the Minister—See above under Public Officers*

*Legitimate Interest—Within Article 146 2 of the Constitution—See above*

*Head of Department—Recommendations by the Head of Department—Due weight to be given—See under Public Officers, above*

*Minister—Recommendations emanating from a Minister—Not a substitute for those emanating from the Head of Department—See under Public Officers, above.*

*Recourse under Article 146 of the Constitution—Legitimate interest—Article 146 2—Time required—Article 146 3—“Contrary to Law”, ‘excess and abuse of power’—See above.*

*Time—Period of seventy-five days required for the filing of a recourse under Article 146 of the Constitution—Article 146.3 of the Constitution—Method of computation—See above*

In these two recourses under Article 146 of the Constitution, which have been heard together because they challenge one and the same decision of the Respondent Public Service Commission, the two Applicants complain against the validity of the appointment to the post of Veterinary Officer, Class II, of the Interested Party Nicos Artemiou, such appointment having been decided by the said Commission on the 11th October, 1965, and published in the Official *Gazette* on the 4th November, 1965

On the 11th February, 1965, the Council of Ministers approved the filling of a vacancy in the post of Veterinary Officer, Class II, in the Department of Veterinary Services, which is a first entry and promotion post. As a result and in an effort to appoint the most suitable person, the Respondent Commission decided that the vacancy in question should be advertised and, in effect, the relevant advertisement appeared in the Official *Gazette* on the 25th February, 1965, and, as it is the practice, it incorporated the scheme of service for the post concerned.

As a result, there were three Applicants for such post the two Applicants in the present proceedings and the aforesaid

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

Interested Party. It would seem that the recommendations of the Head of Department, *i.e.* the Director of the Department of the Veterinary Services, were most adverse to the Interested Party, although the said Director, in his letter of the 13th March, 1965, stated that he was unable to recommend the appointment of any newly qualified veterinary surgeon to the post of veterinary officer, such post to be left for promotion of Assistant Veterinary Officers after they have gained the necessary experience.

On the 12th May, 1965, the Respondent Commission decided "that none of the three candidates was suitable for the post of veterinary officer, bearing in mind that Government's policy is that graduate veterinarians without previous post-graduate experience should be appointed as assistant veterinary officers and be promoted to the post of veterinary officer, class II, after they have acquired post-graduate experience".

The three Applicants—candidates were in due course informed accordingly that they had not been selected for appointment to the post of veterinary officer, Class II. Eventually, the Respondent Commission decided on the 10th June, 1965 to appoint the said three Applicants to three of the vacancies in the post of Assistant Veterinary Officer. As the posts in question are temporary posts, the two Applicants in the present recourses were offered Appointment on a month to month basis, whereas the Interested Party—who was a permanent Veterinary Assistant—was offered a secondment thereto.

The two Applicants in these proceedings accepted the appointment offered to them, whereas the Interested Party, in spite of repeated reminders and warnings, failed to give any reply to the said offer. The Commission having noted the silence of the Interested Party, decided on the 6th September, 1965, to cancel the offer made to him for secondment to the post of Assistant Veterinary Officer as aforesaid.

On the 28th September, 1965, the Interested Party applied to the Respondent Commission for a re-examination of his original application and for an appointment to the post of Veterinary Officer, Class II; he requested that his seventeen years' service in the government be taken into account in his favour. This application of the Interested Party was strongly recommended by the Minister of Agriculture.

On the 11th October 1965, the Commission, yielding to the

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

recommendations of the Minister and without consulting the Head of the Department (*i.e.* the Director of the Department of Veterinary Services) decided by majority of three to two to appoint the Interested Party to the post of Veterinary Officer, Class II as per his Application. This appointment was published in the Official *Gazette* of the 4th November, 1965. It is against this appointment that the two recourses were made and filed on the 18th January, 1966, whereby the two Applicants challenge its validity.

It was argued, *inter alia*, by counsel on behalf of the Interested Party that the Applicants were not legitimated in making these recourses because they did not challenge the decision of the Respondents dated the 12th May, 1965, not to appoint them (*supra*) and because they subsequently accepted appointments as Assistant Veterinary Officers (*supra*). Paragraph 2 of Article 146 of the Constitution provides: "Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a community, is adversely and directly affected by such decision or act or omission".

The Court in annulling the appointment of the Interested Party:

*Held, I. As to the question of time under Article 146.3 of the Constitution.*

The appointment complained of was published in the official *Gazette* on the 4th November, 1965, and these recourses were filed on the 18th January, 1966. In accordance with the method adopted in the case *Holy See of Kitium and the Municipal Council Limassol*, 1 R.S.C.C. 15, for the purpose of computing the period of seventy-five days under Article 146.3 of the Constitution, these recourses were filed on the last day of such period and are, therefore, within time.

*Held, II. As to the issue of the legitimate interest, under Article 146.2 of the Constitution, of the Applicants, as raised by counsel on behalf of the Interested Party, supra:*

(1) In the light of *Papapetrou and the Republic*, 2 R.S.C.C. 61, I am of the opinion that once the Applicants had applied for appointment to the post of Veterinary Officer, Class II, their existing legitimate interest, as candidates, was directly and adversely affected, in the sense of Article 146.2 of the Constitut-

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

ion (*supra*) by the appointment of the Interested Party, which was made by the Respondent Public Service Commission on further and final consideration of the matter of the vacancy in question; and it has been, indeed, the case for both the Respondent and the Interested Party that the said Commission on the 11th October, 1965, reconsidered such matter once again, and decided to appoint the Interested Party to the post concerned, the said appointment having been published in the official *Gazette* on the 4th November, 1965 (*supra*).

(2) Nor was the legitimate interest of the Applicants extinguished by their acceptance of appointments to the post of Assistant Veterinary Officer, because it is obvious that they were so appointed by way of an intermediary stage towards becoming eventually veterinary officers, Class II; so they continued possessing an interest in the existing vacancy in such post and the *sub judice* appointment of the Interested Party has prejudiced their own advancement (see *Papasavvas and the Republic*, reported in this Part at p. 111 *ante*).

(3) The policy of the Government (*supra*) to the effect that no appointments to the post of veterinary officer, Class II, should be made without post-graduate experience of the candidates concerned, does not amount to a consideration which refers to the essential qualifications of candidates for such a post,—in which case, of course, the absence of such experience would amount to lack of an essential qualification and, consequently, lack of the existing legitimate interest required under Article 146.2 of the Constitution—but it relates only to the suitability for appointment of candidates who appear to be qualified under the relevant scheme of service; therefore, such policy could not operate to disqualify the Applicants from being candidates for the post in question and, consequently from being entitled, under Article 146.2, to file the present recourses.

*Held, III. On the validity of the sub judice appointment of the Interested Party.*

(1) (a) Counsel appearing on behalf of the State has conceded that the Respondent Commission, although acting *bona fide*, has exceeded, to some extent, the proper limits of its discretion, by not asking—before reaching a new decision on the 11th October, 1965, *supra*—for supplementary information concerning the Applicants as well, and by not reconsi-

dering afresh all three of them, the Applicants and the Interested Party, as candidates for the post in question *i.e.* the post of Veterinary Officer, Class II.

(b) But in a recourse under Article 146 of the Constitution, this Court, as an Administrative Court, cannot proceed to annul the *sub judice* decision on the strength of an admission—such as the one made by counsel for the State; it has to be satisfied itself about the validity or invalidity of the *sub judice* decision (see *Dafnides and the Republic* (1964 C.L.R. 180). So, though what counsel for the State has conceded is, indeed, a consideration to be borne duly in mind, I have still to decide myself on the validity or otherwise of the appointment of the Interested Party, on the basis of all the material before me.

(2) On the material before the Court, I find myself unable to accept that on the 11th October, 1965, the Commission was, in fact, examining in the usual course and in the proper manner, the question of the filling of the vacancy in the post of Veterinary Officer, Class II, and was trying to reach a decision as to who out of the three candidates before it was the most suitable for appointment to such post, as it was its duty to do (see *Theodossiou and The Republic*, 2 R.S.C.C. 44 at p. 47).

(3) Yet, the Interested Party, though not possessing the desirable for suitability post-graduate experience as veterinarian, and having refused to serve in the post of Assistant Veterinary Officer, like the two Applicants, with a view to his becoming suitable for Appointment to the post of Veterinary Officer, Class II, was in the end, on the 11th October, 1965, appointed to the latter post, on the ground that he was a very hard-working officer, devoted to his duties and with unquestionable integrity. This, however, was a case not of character unsuitability but of professional unsuitability, in view of his lack of the necessary post-graduate professional experience.

(4) (a) The proper conclusion to be reached is, in my opinion, that the Respondent Commission in appointing the Interested Party veered off the course of its paramount duty, under Article 125.1 of the Constitution, of appointing to the public office concerned the *most suitable* candidate (see *Theodossiou and the Republic*, supra, *Georghiades and the Republic* (1966) 3 C.L.R. 252) and appointed thereto a candidate whose relevant meritorious character traits were clearly not such as to render

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

him professionally *suitable*, at the material time, for appointment to such post.

(b) In doing so the Commission has, also, acted contrary to one of the objects of the exercise of its powers under Article 125 (*supra*), namely, the safeguarding of the efficiency and proper functioning of the public service (see *Nedjati and the Republic*) 2 R.S.C.C. 78, at p. 82.

(c) It follows, therefore, that the *sub judice* appointment of the Interested Party has to be annulled.

(5) Moreover, I am of the view that the Commission, in the manner in which it has appointed the Interested Party, has proceeded to act contrary to another of the objects of its relevant powers, namely, the protection of the legitimate interests of individual holders of public offices (see *Nedjati's case supra*); such holders being in the present instance the two Applicants.

(6) In appointing the Interested Party, the Respondent Commission has also contravened Article 28 of the Constitution, by not affording equal treatment to the three candidates (*i.e.* the two Applicants and the Interested Party) and by treating the Interested Party more favourably without sufficient grounds justifying such a course.

(7) (a) A further reason making it necessary to annul the said appointment is the fact that the recommendations of the Head of Department *i.e.* of the Director of the Department of Veterinary Services, were not followed, and in adopting such a course the Respondent Commission has not recorded in its relevant minutes any adequate reasoning in support thereof. The need for the Commission to follow the recommendations of Heads of Department, and the consequences of not doing so and not giving adequate reasons therefor, have been gone into recently in the case of *Lardis and the Republic* (reported in this Part at p. 64 *ante*); and what has been stated in that judgment need not be repeated all over once again.

(b) In the light of *Lardis' case, supra*, I have no doubt that the *sub judice* decision has been reached in a manner leading to the inevitable conclusion that it has to be annulled as being in abuse and excess of powers.

(8) (a) Also, the Commission, when deciding to appoint the Interested Party, has failed to pay any regard to a most



material consideration in not inviting the Head of the Department concerned (*i.e.* the Director of the Department of Veterinary Services) to express his views in relation to the developments which supervened since the 12th May, 1965, when it was decided that all three candidates were not suitable then for appointment to the post of Veterinary Officer, Class II (*supra*).

(b) It has been repeatedly laid down that an administrative organ, in reaching a decision has to pay due regard to all relevant considerations (see, *inter alia*, *Saruhan and The Republic*, 2 R.S.C.C. 133; *Constantinou and the Greek Communal Chamber*, (1965) 3 C.L.R. 96) and to ascertain all relevant facts after due inquiry (see, *inter alia*, *Photiades and Co. and The Republic*, 1964 C.L.R. 102). Failure to do so leads to a defective exercise of the relevant discretion and the annulment of the decision which is the product of such exercise.

(c) In the present instance, therefore, the total failure of the Commission to seek the views of the Head of the Department has resulted in a defective exercise of the Commission's relevant discretion and can only lead to the annulment, for this reason too, of the appointment of the Interested Party.

(9) (a) The recommendations emanating from the Minister of Agriculture cannot be said to have done away with the need to attribute the proper weight to the recommendations of the Head of Department, or to seek his views again at the proper time (see *Frangoulides (No. 2) and the Republic* (1966) 3 C.L.R. 676). As it is clearly to be derived from this case, the recommendations of a Minister, who is the political Head of a Ministry, cannot be substituted for the recommendations of the public officer who is the Head of a particular department, and who is the person primarily responsible for the proper functioning of the branch of the public service under him and for making recommendations about those serving under him.

(b) The views of the Minister, which he, obviously, felt that he had to place before the Commission, in order to inform it fully of the position as he saw it, could only be acted upon to the extent to which it was possible to do so within the proper limits of the exercise of the relevant competence of the Commission. They could not be taken—and no doubt they were never intended—to be a licence to the Commission to exceed such limits.

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(10) For all the foregoing reasons, I am of the opinion that the appointment of the Interested Party has to be declared null and void and of no effect whatsoever, as made contrary to law (*i.e.* not in the proper exercise of the powers under Article 125 of the Constitution, contrary to Article 28 of the Constitution, *supra*, and contrary to the relevant principles of Administrative Law) and in excess and abuse of powers.

*Decision complained of  
declared null and void.*

Cases referred to:

*The Holy See of Kitium and the Municipal Council Limassol*, 1 R.S.C.C.15, principles laid down as to the method of computation of the seventy-five days period in Article 146.3 of the Constitution, applied;

*Papapetrou and The Republic*, 2 R.S.C.C. 61 applied;

*Papasavvas and The Republic*, reported in this Part at p. 111 *ante*, applied;

*Dafnides and The Republic*, 1964 C.L.R. 180, applied;

*Theodossiou and The Republic*, 2 R.S.C.C. 44 at p. 47, applied;

*Georgiades and The Republic* (1966) 3 C.L.R. 252, applied;

*Nedjati and The Republic*, 2 R.S.C.C. 78 at p. 82, applied;

*Lardis and The Republic*, reported in this Part at p. 64 *ante*, followed;

*Saruhan and The Republic*, 2 R.S.C.C. 133, followed;

*Constantinou and The Greek Communal Chamber*, (1965) 3 C.L.R. 96 followed;

*Photiades and Co. and The Republic*, 1964 C.L.R. 102, followed;

*Frangoulides (No. 2) and The Republic* (1966) 3 C.L.R. 676 followed.

**Recourse.**

Recourse against the validity of the appointment to the post of Veterinary Officer, Class II, of the Interested Party Nicos Artemiou in preference and instead of the Applicants.

A. *Indianos* with E. *Efstathiou* for the Applicants.

L. *Loucaides* and M. *Spanos*, Counsel of the Republic,  
for the Respondent.

L. *Clerides* for the Interested Party.

*Cur. adv. vult.*

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In these two recourses, which have been heard together because they challenge one and the same decision of the Respondent Public Service Commission, the Applicants complain against the validity of the appointment to the post of Veterinary Officer, Class II, of the Interested Party Nicos Artemiou; it is proposed, in the circumstances, to determine by this Judgment both such recourses.

The history of relevant events, on the basis of the material before the Court, including the Oppositions which have been filed in these Cases by counsel for Respondent and which are very fairly and comprehensively drafted, appears to be as follows:

On the 11th February, 1965, the Council of Ministers approved the filling of a vacancy in the post of Veterinary Officer, Class II, in the Department of Veterinary Services, which is a first entry and promotion post.

On the 22nd February, 1965, the Public Service Commission decided that the vacancy in question should be advertised; thus, it is clear that the Commission decided to fill such vacancy not only by way of promotion but by way of first entry, too, in an effort to appoint the most suitable person.

The relevant advertisement appeared in the official *Gazette* on the 25th February, 1965, and, as it is the practice, it incorporated the Scheme of Service for the post concerned (see *exhibit* 1).

As a result, there were three Applicants for such post: the two Applicants in the present proceedings, Theofanis Hjisavva and Pavlos Economides, and the Interested Party, Nicos Artemiou.

The applications of the two Applicants were forwarded to the Commission on the 11th March, 1965, by the Director

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

of the Department of Veterinary Services. The relevant part of the letter which he addressed, for the purpose, to the Commission reads as follows: (see *exhibit 17*).

“Both these graduates have been working on daily wages in the Department since 18th December, 1964, and have given very satisfactory service.

Mr. Economides was posted in the Central Laboratory where there was no Veterinarian as both the Veterinary Officers in the Laboratory deserted the Service in December, 1963. He had shown exceptional abilities in bacteriological work and had been a great help to me in looking after the Laboratory. He had also contributed in the diagnosis of new diseases namely Paratuberculosis, Caseous Lymphadenitis and Theileriasis. He is no doubt a good Laboratory worker who will give very good service in the Department.

Mr. HjiSavva was posted in the Nicosia Clinic where since December, 1963 there was only one Veterinary Officer namely the District Veterinary Officer. He has proved a hard worker, keen and devoted to his work and profession. His character and background is such that he will no doubt prove as good addition to the Department.

Both these Veterinarians had an outstanding academical career and had been highly recommended by their professors. They are modest, loyal, cooperative and both will be an asset to the Department”.

Both the Applicants have qualified as Veterinarians at the Thessaloniki (Salonica) University, wherefrom they graduated in 1964. Their qualifications are attached to their respective Applications in these recourses (see *exhibit 2 (a) – 2 (c) and 3 (a) – 3 (c)* ).

The Interested Party applied also for appointment on the 12th March, 1965 (see *exhibit 16*). At the time, he was a Veterinary Assistant, and he had been in the service of the Veterinary Department since 1948; from 1959 to 1964 he had studied at the Thessaloniki University wherefrom he graduated as a Veterinarian.

By his application for appointment (*exhibit 16*) he applied for appointment as Veterinary Officer, Class I, – the posts of Veterinary Officer, Class II, and of Veterinary Officer, Class I, being on a combined establishment.

His Head of Department forwarded his application by letter dated 13th March, 1965, which is attached to such application; the relevant part of this letter reads as follows:

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

“1. The application is being sent to you today because Mr. Artemiou only yesterday afternoon at 4 p.m. consented to submit it through me. This consent was the result of being turned down by the Director-General, Ministry of Agriculture and Natural Resources.

2. No copies of his diploma nor any certificates in respect of the additional qualifications claimed have been attached.

3. He appears to be applying for a post not in accordance to the advertisement in the *Gazette* under Not. No. 207 of 25.2.1965 and notwithstanding the fact that he is only a new graduate and does not possess the additional qualifications required by the approved scheme of service for the post of Veterinary Officer, Class I.

4. I can find no records in his Personal File confirming his claim of attending a Law School for two years nor has he produced any certificate to that effect.

5. There is no record to confirm his statement that during the period May to November, 1959 following his reinstatement to the Service he had been seconded as assistant to the Deputy Minister of Agriculture and Natural Resources.

6. There are no records of leave being granted to him prior to his study leave for the trips to *all* countries of Europe for educational purposes, unless of course he visited 13 countries and attended higher level studies in each country during the period of his studies at the School of Veterinary Medicine at Salonika — a feature that considered in connection with the hard work needed to obtain a degree in Veterinary Science — his concurrent studies (I suppose) of Law and Political Science, his regular trips to Cyprus even during scholastic periods, will be hardly feasible.

7. This Officer gave rise to considerable number of reports to be made against him by my predecessor and myself for behaviour unbecoming of a junior officer.

8. I regret to say that he is rude, insolent, uncooperative,

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER

v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

impossible to handle and appears to be considering himself beyond the jurisdiction of any Senior Officer of this Department.

His attitude and general behaviour most probably originate from his belief of the greatness of himself, his very exaggerated imagination, his disrespect and contempt of other Veterinarians, and his belief that the livestock industries depend on himself.

9. Finally I have to say that I cannot add my recommendations to the appointment of any newly qualified Veterinary Surgeon to the post of Veterinary Officer especially since the posts of Assistant Veterinary Officers were included in 1965 Estimates for the sole purpose of appointing new graduates to these posts, and the post of Veterinary Officer to be left for promotion of Assistant Veterinary Officers which have gained the needed experience or have obtained an additional post graduate qualification or specialization”.

On the 15th March, 1965, the Director-General of the Ministry of Agriculture and Natural Resources, under which comes the Department of Veterinary Services, wrote a letter to the Commission on the subject of the three candidates before it (see *exhibit* 11), the relevant parts of which read as follows:

“2. With respect to Mr. Artemiou’s application we have no way of verifying his claim of possession of additional qualifications and we believe that the Public Service Commission is the more appropriate Authority to probe into this matter, nor do we think that it is within our jurisdiction to adjudicate whether Mr. Artemiou’s qualifications satisfy the requirements of para. 3 of the Notification under which it is stated that ‘Preference will be given to those who possess post graduate training or to those who have had previous experience’. This we believe is something for the Public Service Commission to establish and decide upon.

.....  
.....

4. We would like to record that we consider Mr. Artemiou as very devoted man to his work and to his country and we believe that he will devote all his energies and knowledge to the service of his fellow-countrymen.

5. It is true that a certain amount of friction has been generated in the Department since the arrival of Mr. Artemiou. In this respect we would like to point out that Mr. Artemiou has only recently arrived from abroad and probably he has not as yet fully appreciated the new set up of the administration. It is also doubtful whether the attitude of Mr. Artemiou is not the result of re-action of his colleagues at the prospect of his promotion or *vice versa*.

6. The Minister and myself have repeatedly talked to Mr. Artemiou about the necessity of showing a spirit of co-operation and respect for his seniors and our impression is that once Mr. Artemiou is appointed he may change his attitude.

7. Mr. Artemiou has served in the Department since March 1948 and his past record has been exemplary though he had for political reasons been persistently persecuted by the ex-colonial administration of the island. He was eventually detained as a political detainee and perhaps he, unjustifiably, connects the present Head of the Department with the previous regime. This would account for many of the incidents which created the present friction.

8. In all fairness I should add that both Messrs. Economides and Hjisavvas have proved themselves exceptional Veterinarians with very good academic record — Mr. Economides was the first student of the University as per document attached to his application — and their work at the Department was extremely valuable. Their character and attitude has been exemplary”.

On the 31st March, 1965, the Public Service Commission met to consider the applications before it, in the presence of the Director of the Department of Veterinary Services, and interviewed the three candidates. As it appears from its relevant minutes (see *exhibit 4*) the selection of the person to be appointed was adjourned.

On the 13th April, 1965, the then Acting Minister of Agriculture and Natural Resources — who has been in charge of the Ministry at all times material for these Cases — wrote a letter to the Chairman of the Commission requesting that the filling of the post in question should not be proceeded

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

with, pending a re-organization in the Department of Veterinary Services, (see *exhibit 5*).

On the 10th May, 1965, the Minister informed the Commission that it was not found possible to proceed with the proposed re-organization and he requested the Commission to proceed with the filling of the vacancy in question (see *exhibit 6*).

On the 12th May, 1965, the Commission met and considered the matter and its relevant minutes (see *exhibit 7*) read as follows:

*"Filling of vacancy in the post of  
Veterinary Officer, Class I & II.*

The Chairman referred to the correspondence on the question of the filling of the vacancy in the post of Veterinary Officer, Class I & II, and stated that it seemed that at the moment the desire of the Ministry concerned was that the filling of this vacancy should be proceeded with. The Commission interviewed three candidates for this post on 31.3.65. The Chairman was of the opinion that having regard to the experience and education of the candidates interviewed, the most suitable person to be appointed was Mr. Nicos Artemiou and proposed that he be appointed.

The Commission after considering the Chairman's proposal decided, by majority, that none of the three candidates was suitable for the post of Veterinary Officer, bearing in mind that Government's policy is that graduate veterinarians without previous post-graduate experience should be appointed as Assistant Veterinary Officers and be promoted to the post of Veterinary Officer, Class II, after they have acquired post-graduate experience. Letter No. 289/59/3 of 11.12.64 and its enclosure from the Director-General, Ministry of Agriculture & Natural Resources refers".

The letter of the 11th December, 1964, from the Ministry of Agriculture, which is referred to in the above minutes of the Commission has not been produced before the Court; it is not, however, in dispute that it did convey to the Commission the policy which has been referred to by the Commission in its above minutes. Such policy coincided with the views expressed, in the concluding paragraph of his letter of the 13th March, 1965, by the Director of the Department of



Veterinary Services, the contents of which have already been quoted in this Judgment. (See *exhibit* 16).

After the said decision of the Commission, the three candidates were informed that they had not been selected for appointment and it was suggested to the Ministry of Agriculture that it should seek the approval of the Council of Ministers for the filling of four new posts of Assistant Veterinary Officer, which had been created as from the 1st January, 1965, so that the relevant policy could be implemented.

On the 10th June, 1965, the Council of Ministers, on a submission of the Ministry of Agriculture, approved the filling of such posts, which are all first entry posts.

The matter came up before the Commission on the 21st June, 1965 (see minutes *exhibit* 8) and it was decided to appoint the Applicants and the Interested Party to three of the vacancies in the post of Assistant Veterinary Officer, and to advertise the remaining one. Such advertisement was made but no qualified candidate came forward.

As the posts of Assistant Veterinary Officer are temporary posts, the Applicants were offered appointment on a month to month basis, whereas the Interested Party — who was a permanent Veterinary Assistant — was offered a secondment thereto.

The Applicants accepted the appointments offered to them; the relevant correspondence between the Applicants and the Commission, leading to their appointments as Assistant Veterinary Officers, is to be found attached to their respective Applications in these recourses.

The Interested Party did not reply at all to the offer made to him in the matter, in spite of a reminder and a warning that such offer would be withdrawn.

On the 27th July, 1965, the Minister of Agriculture intervened in the matter and addressed a letter to the Chairman of the Commission which reads as follows (see *exhibit* 10):

“Will you please refer to your letter P. 3145 of 23rd July, 1965 addressed to Mr. N. Artemiou, who has been offered a secondment to the temporary post of Assistant Veterinary Officer. I am now informed that Mr. Artemiou has not as yet signified his acceptance of the post offered.

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

“In this connection I would like to invite your reference to letter No. 289/59/3 of the 15th March, 1965, addressed to you by my Director-General,” — *i.e.* *exhibit* 11, above, — “who was acting on my specific directions, with which Mr. Artemiou’s application was forwarded for the post of Veterinary Officer.

I am of the firm opinion that Mr. Artemiou is capable of being appointed to the post of Veterinary Officer and I, therefore, request you, if possible to reconsider your decision as above with a view of appointing him to this post and not for that of Assistant Veterinary Officer”.

The Commission met on the 28th July, 1965, and considered the letter of the Minister and reached the following decision (see *exhibit* 12):

“The Commission after considering the Ag. Minister’s recommendation made in his letter No. P.V. 41 of 27.7.65, for Mr. Artemiou’s appointment to the post Veterinary Officer, Class II, decided that there was no reason to alter its previous decision recorded in paragraph 2 of the minutes of 12.5.65, under which Mr. Artemiou was not found suitable for appointment to the post of Veterinary Officer, Class II”.

On the 6th September, 1965, the Commission — having noted (see the minutes *exhibit* 9) that the Interested Party had been offered secondment to the post of Assistant Veterinary Officer, by letter dated 23rd June, 1965, to which he had not replied, and that he had been asked by letter dated the 23rd July, 1965, to reply to such offer, and informed that if he did not reply by the 30th July, 1965, the offer made to him would be cancelled, and that in spite of that he had still failed to furnish a reply — decided to cancel the offer made to the Interested Party for secondment to the post of Assistant Veterinary Officer.

On the 15th September, 1965, the Minister of Agriculture addressed a further letter to the Commission, (see *exhibit* 13) the relevant part of which reads as follows:

“2. You will recollect that I wrote to you my letter No. P.V. 41 of the 27th July, 1965,” — *i.e.* *exhibit* 10, above, — “in which I specifically requested you, if possible, to

reconsider your decision for appointing Mr. Artemiou to the post of Assistant Veterinary Officer and appoint him to the post of Veterinary Officer.

3. My reasons for doing so may be summarized as follows:

- (a) Mr. Artemiou has been in the Department of Veterinary Services for 17 years and he is naturally in an advanced age;
- (b) While in the service and with his previous practical experience he has acquired the necessary academic qualifications to qualify for the post of Veterinary Officer;
- (c) If placed at the same level with the newly arrived Veterinarians, he is placed at a disadvantage having regard to his previous practical experience, his academic qualifications and his age.

4. Since Mr. Artemiou's arrival in Cyprus a certain amount of friction has generated in the Department and this has partly resulted from uncertainty of Mr. Artemiou's position in the Department, and partly from the reaction of his colleagues at the prospect of his promotion or *vice versa*. It is natural that this state of affairs seriously impairs the performance of Mr. Artemiou and erroneous impressions may be created. Mr. Artemiou is a very hard-working officer, devoted to his work and his integrity is unquestionable.

5. I am confident that if Mr. Artemiou were to be appointed to the post of Veterinary Officer he will eventually feel content and he will devote his energies and knowledge to the service of the country. For the above reasons I still feel that his case merits sympathetic consideration for appointment to the post of Veterinary Officer".

On the 28th September, 1965, the Interested Party himself applied to the Commission (see *exhibit 14*) for a re-examination of his case and an appointment to the post of Veterinary Officer, Class II; he requested that his seventeen years' service in Government be taken into account in his favour.

On the 11th October, 1965, the Commission met to consider the matter once again and took the following decision (see the minutes *exhibit 15*):

1967  
Feb. 25  
—  
THEOFANIS  
HHSAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

“Ref. paragraph 2 of the minutes of 12.5.65” — *i.e. exhibit 7*, above, — “and paragraph 14 of the minutes of 28.7.65” — *i.e. exhibit 12* above,—“regarding the filling of the vacancy in the post of Veterinary Officer, Class II.

The Commission on an application by Mr. Artemiou reconsidered its decisions recorded in the minutes referred to above, in the light of the contents of the letter No. P.V.41 of 15.9.65 from the Ag. Minister of Agriculture and Natural Resources” — *i.e. exhibit 13* above, — “The Commission having regard to the Ag. Minister’s recommendations made in his aforesaid letter in which he stated clearly that Mr. Artemiou is very hard-working officer, devoted to his duties and that his integrity is unquestionable, decided by majority of 3 to 2 that Mr. Artemiou be appointed to the post of Veterinary Officer, Class II, w.e.f. 1.11.65”.

As a result the Interested Party was appointed to the post of Veterinary Officer, Class II, and his appointment was published in the official *Gazette* of the 4th November, 1965. These recourses were filed on the 18th January, 1966. In accordance with the method adopted in *The Holy See of Kitium and Municipal Council Limassol* (1 R.S.C.C. p. 15) for the purpose of computing the period under Article 146.3 of the Constitution, these recourses were filed on the last date of such period and are, therefore, within time.

It is convenient to deal, first, with the objection taken by counsel for the Interested Party to the effect that the Applicants do not satisfy the requirements of legitimate interest — as laid down by Article 146.2 of the Constitution — so as to be entitled to institute these proceedings.

He has argued, in support of such objection, that the Applicants were not legitimated in making these recourses because they did not challenge the decision of the Commission not to appoint them, which was taken on the 12th May, 1965, (see *exhibit 7*) and because they subsequently accepted appointments as Assistant Veterinary Officers; moreover, he has argued that the Applicants were not, themselves, qualified for appointment to the post of Veterinary Officer, Class II, in view of the aforementioned policy, laid down by the Ministry of Agriculture, regarding the making of appointments to such post, namely, that those to be appointed ought to possess post-graduate experience; and, further,

that the Applicants were not qualified for appointment to the post concerned because they did not satisfy the requirements of the relevant Scheme of Service (see *exhibit 1*) in that they did not possess ability to control subordinate staff.

I am of the opinion, in the light of *Papapetrou and The Republic* (2 R.S.C.C. p. 61), that once the Applicants had applied for appointment to the post of Veterinary Officer, Class II, their existing legitimate interest, as candidates, was adversely and directly affected, in the sense of Article 146.2, by the appointment of the Interested Party, which was made by the Public Service Commission on further and final consideration of the matter of the vacancy in question; and it has been, indeed, the case for both the Respondent and the Interested Party that the Commission on the 11th October, 1965 (see its minutes, *exhibit 15*) reconsidered such matter once again, and decided to appoint to the post concerned the Interested Party. Nor was the legitimate interest of the Applicants extinguished by their acceptance of appointments to the post of Assistant Veterinary Officer, because it is obvious that they were so appointed by way of an intermediary stage towards becoming eventually Veterinary Officers, Class II; so they continued possessing an interest in the existing vacancy in such post and the *sub judice* appointment of the Interested Party has prejudiced their own advancement (see *Papasavvas and The Republic*, Case 185/66)\*.

The aforementioned policy of the Ministry of Agriculture, regarding appointments to the post of Veterinary Officer, Class II, does not amount to a consideration which refers to the essential qualifications of candidates for such a post, but it relates only to the suitability for appointment of candidates who appear to be qualified under the relevant Scheme of Service; therefore, such policy could not operate so as to disqualify the Applicants from being candidates for the post in question and, consequently, from being entitled, under Article 146.2 to file the present recourses.

Regarding the ability to control staff, which is required as a qualification under the relevant Scheme of Service, I cannot find, on the basis of the material before me, that the Applicants did not possess such qualification, especially as they had been

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

---

\*Reported *ante* at p. 111.

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER

v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

working in the Department of Veterinary Services for some time prior to their applications for appointment; it was up to the Commission, however, to examine whether or not they did possess such ability to a degree sufficient to enable them to be selected for appointment.

Having found, as above, that the Applicants were entitled under Article 146.2 to make the present recourses, against the appointment of the Interested Party, I shall proceed now to examine the validity of such appointment.

Counsel for Respondent, who has acted in the fair and detached manner befitting counsel appearing on behalf of the State in proceedings of the present nature, has conceded that the Commission, although acting *bona fide*, has exceeded, to some extent, the proper limits of its discretion, by not asking — before reaching a new decision on the 11th October, 1965 — for supplementary information concerning the Applicants as well, and by not reconsidering afresh all three of them, the Applicants and the Interested Party, as candidates for the post in question.

Counsel for the Interested Party, on the other hand, has submitted that, though the procedure which led to the decision of the 11th October, 1965, may have left something to be desired, no abuse or excess of powers of the Commission has been established or has, indeed, taken place at all.

In a recourse under Article 146, this Court, as an Administrative Court, cannot proceed to annul the *sub judice* decision on the strength of an admission — such as the one made by counsel for the Respondent in the present proceedings; it has to be satisfied itself about the validity or invalidity of the *sud judice* decision (see *Dafnides and The Republic*, 1964 C.L.R. 180). So, though what counsel for Respondent has conceded is, indeed, a consideration to be borne duly in mind, I have still to decide myself on the validity or otherwise of the appointment of the Interested Party, on the basis of all the material before the Court. In doing so it would be very useful to examine, first, what conclusions are to be drawn about the essential nature of the relevant action of the Respondent Commission:

It is quite clear that on the 11th October, 1965, when its *sub judice* decision was taken, the Commission reverted to its previous decisions on the matter; this is obvious from the

reference made in the relevant minutes (*exhibit 15*) to the past decisions of the Commission, of the 12th May, 1965, and the 28th July, 1965 (*exhibits 7 and 12*).

But, I cannot agree with the view, which has been advanced in these proceedings, that on the 11th October, 1965, the Commission was reconsidering fully, *ab initio*, the matter of the candidatures of the Applicants and the Interested Party with a view to appointing the most suitable out of them to the post of Veterinary Officer, Class II. When the sequence of relevant events is viewed as a whole, from the time when the post concerned was advertised down to the appointment of the Interested Party, one cannot but reach the conclusion that, after the Interested Party had not accepted appointment to the post of Assistant Veterinary Officer, and the Minister of Agriculture had intervened in his favour, the Commission was primarily concerned with the issue of whether or not it could see its way to appointing him directly to the post of Veterinary Officer, Class II, in view of special considerations personal to him, as they were put forward by the said Minister.

On the material before the Court, I find myself quite unable to accept that on the 11th October, 1965, the Commission was, in fact, examining, in the usual course and in the proper manner, the question of the filling of the vacancy in the post of Veterinary Officer, Class II, and was trying to reach a decision as to who out of the three candidates before it was the most suitable for appointment to such post, as it was its duty to do (*see Theodosiou and The Republic*, 2 R.S.C.C. p. 44, at p. 47).

In the Commission's minutes of the 11th October, 1965, there is not to be found even a single word to the effect that the Interested Party was considered to be the most suitable, in the interests of the service, out of the three candidates before the Commission, or that any comparison, for the purpose, of such candidates was made at all; on the contrary, the grounds on which relied the majority of the Commission — (and it is the decision of this majority which is the subject-matter of this recourse as constituting, in law, the decision of the Commission) — indicate that the decision to appoint the Interested Party was reached, only, in recognition of the personal qualities of the Interested Party.

Had such personal qualities been relied upon in order to select the Interested Party as the most suitable out of the

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

candidates before the Commission this would have been quite a proper course for the Commission to have followed. But this was not so in the present instance; the Interested Party had been found twice already, by the Commission, on the 12th May and 28th July, 1965 (see *exhibits 7 and 12*) not to be a suitable candidate for appointment to the post of Veterinary Officer, Class II; he was found to be unsuitable not due to absence of the character qualities on the strength of which it was decided to appoint him to the said post on the 11th October, 1965, but due to his not possessing post-graduate experience as a Veterinarian. Such experience was deemed necessary because of the relevant, already-mentioned, policy of the Ministry of Agriculture in the matter.

The aforesaid policy was obviously laid down in order to serve the best interests of the service, and of the public, and it appears that the Commission adopted it as a guide to suitability for appointment to the post of Veterinary Officer, Class II, as it was, indeed, properly entitled to do. In doing so the Commission acted, also, in accordance with the views—to the same effect as the said policy—of the Head of the Department of Veterinary Services, as expressed in his letter dated the 13th May, 1965 (see *exhibit 16*).

As a result, the Ministry of Agriculture proposed to the Council of Ministers the filling of existing vacancies in the post of Assistant Veterinary Officer, so that recently graduated Veterinarians, such as the Applicants and the Interested Party, could gain post-graduate experience before becoming Veterinary Officers; and the Council of Ministers, as the supreme Executive Organ in the State, agreed to this, thus endorsing, also, the policy concerned.

It appears that at the previous meetings of the Commission, of the 12th May and 28th July, 1965, the service of the Interested Party, in the Department of Veterinary Services, before he qualified as a Veterinarian at the end of December, 1964, had not been considered by the Commission as being experience of such a nature as to do away with the need for post-graduate experience after qualification; and in the *sub judice* decision, itself, of the Commission, dated the 11th October, 1965, there is nothing being mentioned to the effect that, on further consideration of the matter, it was found that the experience of the Interested Party before he qualified as a Veterinarian was such as would enable the Commission to



deem him suitable for appointment as Veterinary Officer, Class II, without the post-graduate experience required in the interests of the service by the relevant, above-referred to, policy.

Yet the Interested Party, though not possessing the desirable for suitability post-graduate experience, and having refused to serve first in the post of Assistant Veterinary Officer, like the Applicants, with a view to his becoming suitable for appointment to Veterinary Officer, Class II, was in the end, on the 11th October, 1965, appointed to the latter post, on the ground — see *exhibit* 15 — that the Minister of Agriculture had, in his letter of the 15th September, 1965, (*exhibit* 13) “stated clearly that Mr. Artemiou is a very hard-working officer, devoted to his duties and that his integrity is unquestionable”. This, however, was a case not of character unsuitability but of professional unsuitability, from the point of view of the lack of the necessary post-graduate professional experience. The said personal qualities of the Interested Party — most important though they could have been for his selection for appointment had he been suitable for such appointment from the point of view of post-graduate experience — could not do away with the lack of the relevant experience which was required in the interests of the service.

The proper conclusion to be reached from the above analysis of the essential nature of the relevant action of the Respondent Commission, is, in my opinion, that the Commission in appointing the Interested Party veered off the course of its paramount duty, under Article 125 of the Constitution, of appointing to the public office concerned the most suitable candidate (see *Theodossiou and The Republic*, supra; *Georghiades and The Republic*, (1966) 3 C.L.R. 252) and appointed thereto, for considerations personal to him, a candidate, whose relevant meritorious character traits were clearly not such as to render him professionally *suitable*, at the material time, for appointment to such post. In doing so the Commission has, also, acted contrary to one of the objects of the exercise of its powers under Article 125, namely, the safeguarding of the efficiency and proper functioning of the public service (see *Nedjati and The Republic*, 2 R.S.C.C., p. 78 at p. 82). It follows, therefore, that the *sub judice* appointment of the Interested Party has to be annulled.

Moreover, I am of the view that the Commission, in the

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER

v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

manner in which it has appointed the Interested Party, has proceeded to act contrary to another of the objects of its relevant powers, namely, the protection of the legitimate interests of individual holders of public offices, (see *Nedjati and The Republic*, supra); such holders being in the present instance the Applicants. Though both they and the Interested Party had been found, originally, by the Commission, as unsuitable for appointment to the post of Veterinary Officer, Class II, in view of their not possessing professional post-graduate experience, and though the two Applicants were led, as a result, to accept appointments as Assistant Veterinary Officers, in order to acquire, first, the necessary professional experience, the Commission, after the Interested Party had not even replied to an offer for appointment to the post of Assistant Veterinary Officer, proceeded to disregard his non-possession of post-graduate experience, on the ground of character qualifications totally unconnected with such experience, and to appoint him over the heads of the Applicants.

In doing so, the Commission has also contravened Article 28 of the Constitution, by not affording equal treatment to the Applicants and the Interested Party and by treating the Interested Party more favourably without sufficient grounds justifying such a course.

Thus, once again I have been led to the conclusion that the *sub judice* appointment of the Interested Party has to be annulled.

A further reason making it necessary to annul the said appointment is the fact that the recommendations of the Head of Department, *i.e.* of the Director of the Department of Veterinary Services, were not followed, and in adopting such a course the Commission has not recorded in its relevant minutes any adequate reasoning in support thereof.

The said Head of Department had advised against the appointment of a Veterinary Officer, Class II, without post-graduate experience, (see his letter of the 13th May, 1965, *exhibit 16*); yet the Commission proceeded to do so by appointing the Interested Party, merely on the ground of his character qualities, which were irrelevant to the issue of post-graduate experience. Furthermore, the Head of Department had made a favourable report in relation to the Applicants (see *exhibit 17*) and a non-favourable one in relation to the

Interested Party (see *exhibit 16*). Yet, the Commission, without recording any adequate reason, disregarded the recommendations of the Head of Department and appointed the Interested Party. The need for the Commission to follow the recommendations of Heads of Departments, and the consequences of not doing so and not giving adequate reasons therefor, have been gone into recently in the case of *Lardis and The Republic* (Case 144/65, not reported yet)\*; and what has been stated in the Judgment in that Case need not be repeated all over once again. In the light thereof I have no doubt that the *sub judice* decision has been reached in a manner leading to the inevitable conclusion that it has to be annulled as being in abuse and excess of powers.

Also, the Commission, when deciding to appoint the Interested Party, has failed to pay any regard to a most material consideration in not inviting the Head of the Department concerned to express his views in relation to the developments which supervened since the 12th May, 1965, when it was decided that all three candidates — the Applicant and the Interested Party — were not suitable, then, for appointment to the post of Veterinary Officer, Class II. That the said views were not requested has been frankly admitted by Mr. Y. Louca, a member of the Commission, who has given evidence in this Case. Such views would have constituted a most material consideration, to be given due weight by the Commission. The Head of Department would have reported, *inter alia*, on the performance of the two Applicants, in the meantime, as Assistant Veterinary Officers, as well as regarding the services, during the same period, of the Interested Party; also he would express his views on the matters raised by the Minister of Agriculture in relation to the Interested Party. In my opinion no proper reconsideration of the matter was possible on the 11th October, 1965, without seeking first the views of the Head of the Department concerned.

It has been repeatedly laid down in past cases that an administrative organ, in reaching a decision has to pay due regard to all relevant considerations (see, *inter alia*, *Saruhan and The Republic*, 2 R.S.C.C. p. 133; *Constantinou and The Greek Communal Chamber*, (1965) 3 C.L.R. p. 96) and to ascertain all relevant facts after due inquiry (see, *inter alia*, *Photiades & Co. and The Republic*, 1964 C.L.R. 102). Failure

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\*Now reported in this Part at p. 64 *ante*.

1967  
Feb. 25

—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

to do so leads to a defective exercise of the relevant discretion and the annulment of the decision which is the product of such exercise.

In the present instance, therefore, the total failure of the Commission to seek the views of the Director of the Department of Veterinary Services, before reaching its *sub judice* decision on the 11th October, 1965, has resulted in a defective exercise of the Commission's relevant discretion and can only lead to the annulment, for this reason too, of the appointment of the Interested Party.

I might make it clear, at this stage, that I cannot accept the suggestion — which has been made — that the Commission was properly entitled to disregard, or not to seek, the views of the Head of Department because there was friction between him and the Interested Party; on the material before the Court there is nothing to indicate that any friction that might have been arisen, from time to time, between the Interested Party and his Head of Department was due to, or had resulted in, any prejudice of such Head of Department against the Interested Party; on the contrary, the causation of such friction appears to have been attributable to the Interested Party.

Nor can the recommendations emanating from the Minister of Agriculture be said to have done away with the need to attribute the proper weight to the recommendations of the Head of Department, or to seek his views again at the proper time.

As it is clearly to be derived from the case of *Frangoulides (No. 2) and The Republic*, (1966) 3 C.L.R. 676 the recommendations of a Minister, who is the political Head of a Ministry, cannot be substituted for the recommendations of the public officer who is the Head of a particular Department, and who is the person primarily responsible for the proper functioning of the branch of public service under him and for making recommendations about those serving in such branch.

The relevant communications of the Minister of Agriculture were addressed by him to the Commission for the purpose of drawing attention to certain special personal considerations affecting the Interested Party, who was a member of the staff of a Department coming under his Ministry. But such communications did not, also, entitle the Commission to take

consequent action beyond, or inconsistent with, the proper exercise of its powers, as it has done. The views of the Minister, which he, obviously, felt that he had to place before the Commission, in order to inform it fully of the position as he saw it, could only be acted upon to the extent to which it was possible to do so within the proper limits of the exercise of the relevant competence of the Commission. They could not be taken — and no doubt they were never intended — to be a licence to the Commission to exceed such limits.

1967  
Feb. 25  
—  
THEOFANIS  
HJISAVVA  
& ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

For all the foregoing reasons in this Judgment, I am of the opinion that the appointment of the Interested Party has to be declared to be null and void and of no effect whatsoever, as made contrary to law (*i.e.* not in the proper exercise of the powers under Article 125 of the Constitution, contrary to Article 28 of the Constitution, and contrary to the relevant principles of Administrative Law) and in excess and abuse of powers.

It is up to the Commission to consider, again, if need be, the filling of the vacancy, thus created, in the post concerned, in the light of this Judgment and in the light of all considerations of law and fact properly applicable to such matter.

Regarding costs, I have reached the conclusion that the Applicants are entitled to a sum of £40. — against their costs, for both Cases, including the costs awarded on the 11th July, 1966, against the Interested Party, which I assess at £10; so he will pay £10 costs to Applicants and the remainder, £30, will be borne by Respondent.

*Decision complained of  
declared null and void.  
Order for costs as  
aforesaid.*