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[TRIANTAFYLIDIS, J.]

DR YIANGOS
FRANGIDES AND
ANOTHER
v
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

DR. YIANGOS FRANGIDES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases No. 141/67, 164/67)

Public Officers—Appointments and Promotions—Promotions to the posts of District Medical Officers—Validity—Effect of a letter of the Minister of Health to the Respondent Public Service Commission on the prospects of promotion of one of the Applicants—Letter containing serious accusations against that Applicant—Contents of the said letter acted upon by the Respondent Commission without prior departmental inquiry—And without the Applicant so affected having been afforded the chance of replying to, and dealing with, those accusations—In the circumstances the Respondent Commission has acted in a manner which amounted to assessing the merits of the said Applicant in Case No. 141/67 as a candidate without a reasonably sufficient inquiry into, and knowledge of, all material facts—Respondent, thus, has exercised its discretionary powers in a defective manner—Which resulted in abuse and excess of powers by the Respondent Commission—Therefore, the sub judice decision in Case No 141/67 has to be annulled in respect of the promotions of both the Interested Parties—Regarding the other Applicant—candidate, his recourse fails—Because he failed to discharge the onus which lay on him to satisfy the Court that in his case there had been any abuse or excess of power.

Discretionary Powers—Exercise of discretionary powers in a defective manner, resulting in abuse and excess of powers—No sufficient inquiry into, or knowledge of, all material facts—See above

Abuse and excess of powers—See above

Excess and abuse of powers—See above.

Administrative Law—Discretionary Powers—Exercise thereof in a defective manner etc. etc.—See above.

Appointments and Promotions of Public Officers—See above.

Promotions—See above.

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By these recourses, heard together as they involve common issues, the Applicants challenge the validity of the decision of the Respondent Public Service Commission dated the 13th June, 1967, whereby the two Interested Parties were promoted to the post of District Medical Officers, which is a promotion post. In making the promotions in question the Commission treated as candidates all Medical Officers, Class I. The two Applicants as well as the two Interested Parties were, at the material time, such Medical Officers, Class I: Dr. Frangides, the first Applicant, held such post since the 1st January, 1955, Dr. Stamatiades the second Applicant since the 1st May, 1958, and Dr. Symeonides and Dr. Markides, the two Interested Parties, since the 1st May 1958 and 1st November, 1959, respectively. It appears that the Commission, after considering the merits of all candidates, decided to appoint Dr. Symeonides (The first Interested Party) and then, as between Dr. Markides (the second Interested Party) and Dr. Frangides (the first Applicant), it decided to appoint the former. What no doubt has really prejudiced the promotion prospects of Dr. Frangides (first Applicant) was a letter of the Minister of Health dated the 11th May, 1967, whereby a most serious list of accusations against the said Doctor were placed before the Respondent Commission, about a month before its *sub judice* decision. The serious allegations made against Dr. Frangides by the Minister had not been investigated departmentally at any time prior to the date of the decision complained of. Furthermore, most of those specific complaints made by the Minister against Dr. Frangides had not been brought to the knowledge of the latter before the day when the *sub-judice* decision was taken on the 13th June, 1967; so, Dr. Frangides (the first Applicant) never had a chance of replying thereto or dealing therewith.

In dismissing the recourse made by Dr. Stamatiades in case No 164/67, but in allowing that of Dr. Frangides in

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Case No. 141/67 and annulling the *sub judice* decision in respect of both promotions, the Court:-

Held, I. Regarding the recourse made by Dr. Stamatiades in Case No. 164/67:-

The Applicant in this case has equal seniority to Dr. Symeonides, the first Interested Party, and he is only slightly senior to the second Interested Party, Dr. Markides, who has, however, better qualifications than Dr. Stamatiades. Confidential Reports on all three are more or less of equal merit. On all the relevant material I have not been satisfied by Dr. Stamatiades—on whom the onus lay to satisfy me—that the promotion of the Interested Parties, instead of him, has been decided upon by the Respondent Commission in excess or abuse of powers. His recourse, therefore, fails.

Held, II. Regarding the recourse of Dr. Frangides (Applicant in Case No. 141/67):-

(1) There can be no doubt that Dr. Frangides was the most senior Medical Officer, Class I, from among the applicants and the Interested Parties; and had been acting as a District Medical Officer, at Larnaca, from the 1st May, 1965, until the time the *sub judice* decision was taken.

(2) What no doubt has really prejudiced the promotion prospects of Dr. Frangides is the letter of the Minister of Health of the 11th May, 1967, (*supra*) whereby a most serious list of accusations against this Applicant were placed before the Commission, about a month before its *sub judice* decision.

(3)(a) On the basis of the material before the Court, it appears that most of the specific complaints made against Dr. Frangides by the Minister of Health, had not been brought to the notice of Dr. Frangides, by his superiors, before the 13th June, 1967, when the decision complained of was taken. So, Dr. Frangides never had a chance of replying to the aforesaid complaints.

(b) Had those complaints made by the Minister been investigated departmentally prior to being placed before the Respondent Commission, then no doubt the Commission would have had before it all necessary material—in-

cluding, of course, the explanations of Dr. Frangides—in order to decide properly; as things have turned out such material was not before the Commission.

(4) In the light of the foregoing, I have no difficulty in holding that the Commission, by relying on such complaints, in the circumstances in which it did, has acted in a manner which amounted to assessing the merits of Dr. Frangides, as a candidate, without a reasonably sufficient inquiry into, or knowledge of, all material facts; it has thus, exercised its relevant discretionary powers in a defective manner which resulted in abuse and excess of powers by the Respondent (See *Iordanou and The Republic* (1967) 3 C.L.R. 245).

(5) A proper course for the Respondent Commission was to adjourn its deliberations on the 13th June, 1967, and require Dr. Panos, the Head of Department of Dr. Frangides, to investigate the complaints contained in the letter of the Minister of Health and report back. This was not a question of doubting the word of the Minister that he had come to know of certain complaints against Dr. Frangides, but it was a question of ensuring that the Commission had all the material before it, including what Dr. Frangides might have to say about such complaints; the Commission would then be in a position to decide how far they could or could not effect the promotion prospects of Dr. Frangides.

(6)(a) What has to be decided next is whether or not Dr. Frangides has been materially prejudiced—by the aforesaid letter of the Minister of Health—in relation to both the promotions which are under attack in these proceedings, or only in relation to the appointment of Dr. Markides. In my opinion the former view is the correct.

(b) Thus, the *sub judice* decision is hereby declared *null* and *void* and of no effect whatsoever in respect of the promotions of both Interested Parties.

(c) It is open to the Respondent Commission to reconsider the matter and decide afresh thereon, in the light of this Judgment.

*Sub judice decision annulled.
No order for costs.*

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Cases referred to:

Georgiades (No. 2) and The Republic (1965) 3 C.L.R. 473;

Iordanou and the Republic (1967) 3 C.L.R. 245;

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

Recourse.

Recourse against the validity of the appointments of the Interested Parties, Dr. C. Symeonides and Dr. A. Markides as District Medical Officers, in preference and instead of the Applicants.

L. Clerides, for the Applicant in Case 141/67.

A. Emilianides, for the Applicant in Case 164/67.

L. Loucaides, Counsel of the Republic, for the Respondent.

P. Michaelides, for the Interested Party Markides.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By these two recourses, which were heard together as they involve common issues, the Applicants — Dr. Y. Frangides (Applicant in 141/67) and Dr. Ch. Stamatiades (Applicant in 164/67) — challenge the validity of the appointments of the Interested Parties, Dr. C. Symeonides and Dr. A. Markides, as District Medical Officers, which were decided upon by the Respondent Public Service Commission on the 13th June, 1967, (see its minutes *exhibit 3*) and were published in the official Gazette on the 14th July, 1967.

The post of District Medical Officer is a promotion post; the relevant scheme of service is *exhibit 22* in these proceedings.

In making the appointments in question the Commission treated as candidates all Medical Officers, Class I. The Applicants (to be referred to in this judgment as Dr. Frangides and Dr. Stamatiades) and the Interested Parties (to be referred to in this judgment as Dr. Symeonides and Dr. Markides) were, at the material time, Medical Officers,

Class I; Dr. Frangides has held such post since the 1st January, 1955, Dr. Stamatiades and Dr. Symeonides since the 1st May, 1958 and Dr. Markides since the 1st November, 1959.

The service data and the qualifications of the Applicants and the Interested Parties are set out in *exhibits 10 and 21* in these proceedings. It appears therefrom that all four of them qualified in medicine at the University of Athens, but Dr. Markides has subsequently obtained further qualifications in public health matters, in Lebanon and in the U.S.A.

In determining these Cases it is necessary to have clearly in mind the reasons given by the Commission for its *sub judice* decision; I think, therefore, that it is useful, notwithstanding their length, to quote in full the minutes of the Commission for its relevant meeting of the 13th June, 1967 (*exhibit 3*):

“District Medical Officer.

Two vacancies one of which is against a post held by a Turk.

Dr. Vassilopoulos stated that he was related to one of the candidates for this post and sought permission to withdraw. The Commission decided that Dr. Vassilopoulos should remain as an observer but that he should express no views on the merits of each candidate.

The post of District Medical Officer is a Promotion Post under the scheme of service and, *inter alia*, administrative experience and organizing ability are required of candidates. Dr. Panos explained that a medical officer may be a very good doctor in his field of activity in an Institution, a rural area or in his speciality, but may not be a good administrator or organizer. He may be excellent in disease control or the curative and preventive fields but not suitable for managing or directing an institution. He may be a good pathologist, histopathologist, anaesthetist, paediatrician, ophthalmologist, etc. but lack the aptitude for administrative control and management of staff as well as organization of the services he will be entrusted with. In other words the District Medical Officer should have proved his administrative and organizing abilities in addition to

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being a very good medical officer in his sphere of activities.

The Commission then considered the merits, qualifications, experience and abilities of each Medical Officer, Class I, as reflected in their Annual Confidential Reports and as expounded orally by the Director of the Dept. of Medical Services. In the light of the requirements of the scheme of service and the Director's views as described in the preceding paragraph, the Commission decided, having regard to the totality of circumstances pertaining to each Medical Officer, Class I, that the following officers were by far the best and that they be promoted to the post of District Medical Officer w.e.f. 1.7.67:-

Dr. C. P. Symeonides — permanent appointment.

Dr. A. Markides — on secondment against the post held by a Turk.

Dr. C. P. Symeonides has had consistently excellent reports and since September 1966 he has been performing the duties of a District Medical Officer in an excellent manner, has proved his abilities and is most strongly recommended by the Director.

Dr. A. Markides has received very good reports, he is described as an efficient, conscientious and reliable officer, and in addition has got the Diploma in Public Health Administration. He has recently been entrusted with the re-organization of the out-patients department of the Nicosia General Hospital and has proved his administrative and organizing abilities.

As stated above, the Commission considered the merits, qualifications, experience and abilities of each Medical Officer, Class I. The Commission paid particular attention to the claims of Dr. Y. Chr. Frangides who has been acting as District Medical Officer at Larnaca since May, 1965. The last Annual Confidential Report on him was for the year 1962 and he is described as a very good worker and an able Medical Officer. Dr. Panos stated that any appraisal of his subsequent work would again be the same as far as his abilities as a Medical Officer are concerned. The Commission took notice of the Minister of Health's letter to the Chairman

No. 388/65, dated 11.5.67 in which the position at Larnaca Hospital is described, viz, that it is the general impression that there is a paralysis of the service, lack of interest by the Acting District Medical Officer, conflicts and incidents between members of the staff and worst labour relations, slackening of discipline and complaints from the public. Dr. Vassilopoulos after being asked by the Commission to state his opinion as to the state of affairs in the Larnaca Hospital, agreed that the position was not satisfactory. Dr. Panos did not wish to confirm or deny the report and sought permission not to reply to a question whether the position was satisfactory or not. He stated however that it is a fact that on occasions there have been incidents among members of the staff, the District Medical Officer blaming the Matron and vice-versa”.

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A member of the Commission, Mr. D. Protestos, has given evidence to complete the picture of the proceedings before the Commission on the 13th June, 1967 (see in this respect *Georgiades (No. 2) and The Republic*, (1965) 3 C.L.R. p. 473). He has told the Court that, after the Commission had considered the merits of all Medical Officers, Class I, it, was decided to appoint Dr. Symeonides and then, as between Dr. Markides and Dr. Frangides, it was decided to appoint the former.

Dr. V. Vassilopoulos, the Director-General of the Ministry of Health, who was present at the relevant meeting of the Commission, has said in evidence that the Interested Parties and Dr. Frangides were, in fact, picked out of all the other candidates and placed on a “short list” prior to the final decision of the Commission in the matter.

Dr. Z. Panos, the Director of the Department of Medical Services, who was also present at the said meeting of the Commission, has not said anything to the contrary while giving evidence.

I have, thus, really no doubt that, out of all eligible candidates, the Interested Parties and Dr. Frangides were those who, eventually, made it to the final selection; this is fully borne out, too, by the fact that the Commission in its minutes (*exhibit 3*) deals specifically with only these three candidates.

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It is convenient to deal first with the case of Applicant in 164/67, Dr. Stamatiades:

He complained, mainly, that his seniority, experience and abilities were unjustifiably overlooked by the Commission; in this respect it has been particularly stressed that from 1958 to 1960 he was in charge of the Athienou Rural Health Centre, which was a prototype unit, run like a small District Hospital

It has, also, been complained of that Dr Stamatiades has been prejudiced by a letter addressed to the Commission by the Minister of Health, on the 11th May, 1967 (see *exhibit 9*), which, allegedly, appears to recommend, by implication, the appointment of Dr Symeonides

Regarding Dr. Symeonides it has, further, been contended by Dr. Stamatiades that Dr Vassilopoulos, the Director-General of the Ministry of Health, who is very closely related to Dr. Symeonides (being his brother-in-law), should not have attended the relevant meeting of the Commission, also, that the recent Confidential Report on Dr. Stamatiades was signed, in the capacity of a Reporting Officer, by none other than Dr. Symeonides, a co-candidate

Dr. Stamatiades has equal seniority to Dr. Symeonides and he is only slightly senior to Dr Markides, who has, however, better qualifications than Dr Stamatiades. The Confidential Reports on all three are more or less of equal merit. On the basis of all the relevant material I have not been satisfied by Dr. Stamatiades — on whom the onus lay to satisfy me — that the appointment of the Interested Parties, instead of him, has been decided upon by the Commission in excess or abuse of powers

The Commission has reached a decision in the matter in the proper exercise of its discretionary powers; and it had before it, as testified to by Mr. Proestos, all the service data of the candidates; such data no doubt included the past service of Dr. Stamatiades at the aforementioned Athienou post. I do not think that the Commission was bound to treat the service of Dr. Stamatiades at Athienou, about seven years before its *sub judice* decision, as a decisive factor, that should have turned the scales in his favour, in any event, rendering thus the Commission's decision, not to select him for appointment, one not reasonably open to it

and, consequently, in abuse and excess of powers.

I find nothing vitiating the *sub judice* decision of the Commission in the fact that the last Confidential Report on Dr. Stamatiades was signed by Dr. Symeonides, because such Report is a favourable one and it was signed properly in the ordinary course of administration and not for the particular purpose of the appointments in question.

I, also, do not think that Dr. Stamatiades has, in any way, been prejudiced by the aforesaid letter of the Minister of Health (*exhibit 9*); it is clear from the relevant minutes of the Commission (*exhibit 3*) that this letter was given weight only in relation to Dr. Frangides, the other one of the Applicants.

Likewise, I do not think that the presence of Dr. Vassilopoulos at the meeting of the Commission on the 13th June, 1967, has prejudiced in any way the chances of Dr. Stamatiades to be selected for promotion; Dr. Vassilopoulos did disclose to the Commission that he was related to one of the candidates and he did not take any part at all in the matter, except in order to answer a question regarding the situation at Larnaca Hospital, which had no connection whatsoever with the case of Dr. Stamatiades.

For all the foregoing reasons, I find that the recourse of Applicant Stamatiades fails and should be dismissed accordingly.

I now come to deal with the case of the Applicant in 141/67, Dr. Frangides:-

There can be no doubt that he was the most senior Medical Officer, Class I, from among the Applicants and the Interested Parties; and had been acting as a District Medical Officer, at Larnaca, from the 1st May, 1965, until the time when the *sub judice* decision was taken.

One of the Interested Parties, Dr. Symeonides, had also acted in the past as a District Medical Officer, at Nicosia, from the 13th September, 1966, until the date of the *sub judice* decision; thus, he had so acted for a shorter period than Dr. Frangides.

No Confidential Reports regarding Dr. Frangides were, on the 13th June, 1967, before the Commission, in respect of the period after 1962. It seems that such Reports, in relation to later years, were never filed in the relevant file

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kept by the Commission, either because they were never made, or if made, they were not forwarded to the Commission. I do not attribute any sinister importance to this aspect of the matter; there is nothing to lead me to the conclusion that they were intentionally suppressed and not brought to the notice of the Commission in order to prejudice the promotion prospects of Dr. Frangides. Nor were his said prospects in fact prejudiced by the absence of Confidential Reports on him for the year 1963 and subsequent years, because, as it appears from the relevant minutes of the Commission, the Director of the Department of Medical Services, Dr. Panos, who signed the Confidential Report on Dr. Frangides in relation to the year 1962, told the Commission that any appraisal of the subsequent work of Dr. Frangides would again be the same.

What no doubt has really prejudiced the promotion prospects of Dr. Frangides is a letter of the Minister of Health, dated the 11th May, 1967 (*exhibit 9*); it is not in dispute that due weight was given to its contents by the Commission, and this is clear, too, from the manner in which this letter was dealt with in the relevant minutes of the Commission.

By his said letter the Minister of Health informed the Commission that the functioning of the Hospital at Larnaca and, in general, the health administration in the Larnaca District were not satisfactory; that from repeated contacts of his with members of the staff of the Hospital, and other responsible persons, he formed the view that there was a general impression of paralysis of the medical services and of lack of interest on the part of the person acting as District Medical Officer: that he was faced all the time with friction among the staff concerned and labour relations were of the worst kind, and that such things were a reflection against the person responsible for the District Medical services; that discipline was dangerously slack and that he was receiving complaints about lack of courtesy and absence of interest; that no effort was being made for the training of personnel, and particularly of the administrative personnel; that repeated recommendations and observations made by him to the District Medical Officer, both orally (through the appropriate officers of the Ministry) and in writing, with copies to the Commission, had brought about no improvement.

Thus, a most serious list of accusations, against Dr. Frangides, were placed before the Commission, about a month before its *sub judice* decision.

It is in evidence that the Minister's letter was written to the Commission without the knowledge of Dr. Panos, the Director of the Department of Medical Services; Dr. Panos told the Court, in evidence, that he was never asked to investigate any complaints against Dr. Frangides, except once, to the effect that he was not residing at Larnaca, and that he found such complaint not to be well-founded (see *exhibits 18 and 19*).

The Director-General of the Ministry of Health, Dr. Vassilopoulos, told the Court that he was never asked to investigate any complaints against Dr. Frangides, or to entrust such an investigation to Dr. Panos, but that the Minister informed him of such complaints and told him that he — the Minister — was going to write about them to the Commission.

On the basis of the material before the Court it appears that most of the specific complaints made against Dr. Frangides by the Minister of Health, in his said letter, had not been brought to the notice of Dr. Frangides, by his superiors, before the 13th June, 1967; so he never had a chance of replying thereto.

From the side of the Commission it has been ascertained that the only things which the Commission had come to know of — by way of complaints regarding Dr. Frangides — were, first, that, though he rightly did not allow a leper to remain in the surgical ward of the Larnaca Hospital after an operation, nevertheless, he did not handle the situation correctly in dealing with a grievance on the point by the wife of this patient, and, secondly, the already-mentioned complaint about his non-residing at Larnaca.

On neither of these two occasions was the Commission moved by the Ministry of Health to take action against the Applicant, or at least to terminate his acting appointment as District Medical Officer, Larnaca.

At the meeting of the Commission, on the 13th June, 1967, after the letter in question of the Minister of Health (*exhibit 9*) was read, Dr. Vassilopoulos, when asked to express an opinion regarding the state of affairs at the Larnaca Hospital, stated "that the position was not satisfactory". On the

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other hand, Dr. Panos “did not wish to confirm or deny the report and sought permission not to reply to a question whether the position was satisfactory or not”; but he added that “on occasions there have been incidents among the members of the staff, the District Medical Officer blaming the Matron and vice-versa” (see the minutes of the Commission, *exhibit 3*); as Dr. Panos explained in evidence before this Court he attributed no importance to such incidents.

Had the complaints made against Dr. Frangides, by the Minister of Health, been investigated departmentally prior to being placed before the Commission, then no doubt Dr. Vassilopoulos and Dr. Panos would know all relevant facts and Dr. Frangides could have had an opportunity to give his own version; so, the Commission would then have had before it all necessary material in order to decide to what extent the complaints concerned could have operated against Dr. Frangides when being considered for promotion on the 13th June, 1967; as things have turned out such material was not before the Commission at the time.

In the light of the foregoing, I have no difficulty in holding that the Commission, by relying on such complaints, in the circumstances in which it did, has acted in a manner which amounted to assessing the merits of Dr. Frangides, as a candidate, without a reasonably sufficient inquiry into, and knowledge of, all material facts; it has, thus, exercised its relevant discretionary powers in a defective manner which resulted in abuse and excess of powers by the Commission (see *Iordanou and The Republic*, (1967) 3 C.L.R. 245).

A proper course for the Commission was to adjourn its deliberations on the 13th June, 1967 and require Dr. Panos, the Head of Department of Dr. Frangides, to investigate the complaints contained in the letter of the Minister of Health (*exhibit 9*) and report back. It was not a question of doubting the word of the Minister of Health, that he had come to know of complaints against Dr. Frangides, but it was a question of ensuring that the Commission had all the material facts before it, including what Dr. Frangides might have to say about such complaints; the Commission would then be in a position to decide how far they could or could not affect the promotion prospects of Dr. Frangides.

What has to be decided next is whether or not Dr. Fran-

gides has been materially prejudiced — by the aforesaid letter of the Minister of Health — in relation to both the appointments which are under attack in these proceedings, or only in relation to the appointment of Dr. Markides.

In my opinion the former view is the correct one. The possibility cannot be reasonably excluded that, had the letter of the Minister of Health not been addressed to the Commission, Dr. Frangides might not have been found to be less suitable for promotion, when compared to Dr. Markides, only — and I leave the issue of their respective merits entirely open — but, also, that, due to his seniority and longer service as acting District Medical Officer, he might not have been found to be less suitable for promotion when compared to Dr. Symeonides, too — and again I do leave the issue of their respective merits entirely open.

Thus, for the reasons already given in this judgment, the *sub judice* decision of the Commission is declared to be *null* and *void* and of no effect whatsoever in respect of the appointments of both Interested Parties. It is open to the Commission to reconsider, and decide afresh on, the matter, in the light of this judgment.

I would like to conclude by referring to the question of whether or not it was within the powers of the Minister of Health to write the letter, *exhibit 9*, to the Commission:

As it appears from his said letter the Minister had some doubt as to whether he could or could not do so, in view — as he stated — of a judgment of this Court.

He had apparently in mind the judgment given in *Fran-goulides (No. 2)* and *The Republic* (1966) 3 C.L.R. 676; that case has primarily decided that a Minister cannot act in the place of a Head of Department for the purpose of preparing Confidential Reports on officers of such Department; it has not laid down any hard and fast rule for all possible situations in which a Minister may find it necessary to communicate with the Commission; but it does indicate the need to keep matters, pertaining to the competence of the Commission, on the public service level and avoid, as far as possible, the Ministerial i.e. political level.

In the present instance it has not been ever suggested that the Minister of Health in addressing his letter in question to the Commission was acting with political motives; nor,

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having decided these Cases on other grounds, is it necessary for me to hold to what extent the personal involvement of the Minister himself could vitiate the validity of the appointments of the Interested Parties; but it would, in any case, have been much more advisable if he had acted through the Departmental Head of the candidates.

In all the circumstances of these Cases I have decided to make no order as to costs against the Applicant in 164/67; and to make no order as to costs as between the Applicant in 141/67 and Respondent, in view, *inter alia*, of the fact that there were costs incurred through the abortive attempt of such Applicant to secure a Provisional Order earlier on in the proceedings; but the Order for costs made against Respondent on the 17th November, 1967, remains unaffected.

*Sub judice decision annulled.
Order for costs as aforesaid.*