

[A. LOIZOU, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
COSTAS HADJICONSTANTINOU AND OTHERS,

Applicant's,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 378/72).

1973
Jan 31
—

COSTAS
HADJICONSTA-
NTINOU AND
OTHERS

v

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

Public Officers—Promotions and appointments—Post of Planning Officer, 1st Grade, in the Planning Bureau—First Entry and Promotion Post—Appointment of an outsider in preference to officers recommended for the post by their Head of Department—An exceptional course because the promotion prospects of recommended officers were thereby affected—Necessary that such adverse decision should be fully and completely reasoned—Appointment annulled for lack of due reasoning.

Administrative decisions—Need for due reasoning—What is a due reasoning.

Collective organs—Decisions taken by—Need for due reasoning—Need for keeping proper records.

Head of Department—Senior Officers—Recommendations by a Head of Department (or Senior Officer) may not lightly be ignored—And if ignored then the reasons for taking such an exceptional course should be clearly recorded in the relevant minute.

Outsider—Appointed in preference to recommended officers—Need of full, clear and complete reasons for such course—See supra.

Reasoning—Due reasoning of administrative decisions—What is a due reasoning—Clear, full and complete.

This is a recourse challenging the validity of the decision of the respondent Public Service Commission by which the

1973
Jan. 31

COSTAS
HADJICONSTA-
NTINOU AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

interested party, Th. I., was appointed to the post of Planning Officer, 1st Grade, in the Planning Bureau. The post of Planning Officer 1st Grade is a First Entry and Promotion post. The applicants are Planning Officers, 2nd Grade, in the Planning Bureau and two of them were recommended for promotion by their Head of Department. The interested party was an outsider.

The learned Judge of the Supreme Court annulled the *sub judice* appointment of the said outsider appointee for lack of due reasoning; and after stating and analysing the facts and referring to the minutes of the particular meeting at which the respondent Commission took the *sub judice* decision, the learned Judge :-

- Held, (1). The reasoning of an administrative decision must be clear, that is to say, the concrete factors upon which the administration based its decision must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does not satisfy these conditions cannot be considered as due reasoning (see *The Republic v. Lefcos Georghiades* (1972) 3 C.L.R. 594, at p. 690, per A. Loizou, J., C.A.).
- (2) Applying the aforesaid principle to the facts of the present case, one finds that the reference by learned counsel for the respondent Commission to the interested party's background knowledge of the Island's economy, *i.e.* to facts which are not on record, shows that there were concrete and relevant factors that constituted the foundation for the *sub judice* decision and which do not appear in their reasoning. The reasoning cannot be supplemented from the material in the relevant file and so the reasoning for the decision is not complete and does not amount to due reasoning.
- (3) In view of the fact that at least two of the four applicants were recommended for promotion to the post in question by their Head of Department, the appointment of an outsider to the said post was an exceptional course, since the promotion

prospects of recommended officers were thereby affected and it was necessary that such adverse decision interfering with their prospects of promotion should be fully and completely reasoned. A similar approach can be found in the case of *Athos Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653, at pp. 666 - 667.

- (4) On the ground, therefore, of lack of due reasoning the *sub judice* decision should and is hereby annulled.
- (5) This proposition is further supported by the principle that the reasons for ignoring the recommendations of a Head of Department (or other Senior Officer) should be clearly recorded in the relevant minute (see *Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 48).

Sub judice decision annulled.

Cases referred to :

The Republic v. Lefcos Georghiades (1972) 3 C.L.R. 594, at p. 690, per A. Loizou, J.;

Athos Georghiades and Others v. The Republic (1967) 3 C.L.R. 653, at pp. 666 - 667;

Theodossiou and The Republic, 2 R.S.C.C. 44, at p. 48;

PEO v. Board of Cinematograph Films Censors and Another (1965) 3 C.L.R. 27.

Recourse.

Recourse against the decision of the respondent Public Service Commission to appoint the interested party to the post of Planning Officer, 1st Grade in the Planning Bureau in preference and instead of the applicants.

K. Talarides with *E. Lemonaris*, for the applicants.

A. Evangelou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : This is a recourse challenging the validity of the decision of the respondent Public Service

1973
Jan. 31

COSTAS
HADJICONSTA-
NTINOU AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

1973
Jan. 31

COSTAS
HADJICONSTA-
NTINOU AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

Commission by which the interested party, Theodoros Ioannou was appointed to the post of Planning Officer, 1st Grade in the Planning Bureau.

The applicants are Planning Officers, 2nd Grade in the Planning Bureau. Applicant 1 was first engaged on daily wages on the 7th November, 1966 and appointed permanently on the 1st August, 1967. Applicant 2 was engaged on daily wages on the 5th March, 1968 and appointed permanently in the said post on the 15th October, 1968. Applicant 3 was appointed permanently on the 15th October, 1968 and applicant 4 on the 1st June, 1970.

On the 16th September, 1971 the Minister of Finance wrote to the Chairman of the Public Service Commission requesting, *inter alia*, the filling of two vacancies in the post of Planning Officer, 1st Grade in the Planning Bureau which were to be created as a result of two promotions to the post of Senior Planning Officer.

The post of Planning Officer, 1st Grade is a First Entry and Promotion post and the schemes of service for this post are the same as the schemes of service for Planning Officer, 2nd Grade. (See Documents attached to the Opposition, Blue 2 and *exhibit* 6). The duties, however, performed are not the same. Planning Officers 1st Grade work by themselves and do more responsible work than Planning Officers 2nd Grade who normally work under a senior officer. Needless to say that the salary scales are also different.

The two vacancies were advertised in the Official Gazette and out of ten applicants, seven candidates, including the present applicants and the interested party, were invited for interview on the 5th September, 1972. The Chief Planning Officer was present. In accordance with the minutes of the respondent Commission (Blue 4) its members, as well as the Chief Planning Officer, put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post, as shown in the relevant scheme of service.

The decision of the respondent Commission was taken on that day and it reads as follows :-

1973
Jan. 31
—

COSTAS
HADJICONSTA-
NTINOU AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

“The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). The Personal Files and the Annual Confidential Reports of the officers in the service were also taken into consideration.

Bearing in mind all the above, the Commission decided unanimously that the following officers were on the whole the best and that they be appointed or promoted to the permanent post of Planning Officer, 1st Grade w.e.f. 2.10.72, as shown opposite their names :

Theodoros Ioannou—to be appointed (on probation) Antonios A. Malaos, to be promoted.”

The confidential reports and personal files of each applicant have been produced as *exhibits*.

Each of the four applicants submitted an application in the prescribed form, *exhibits* 1B, 2B, 3B and 4B respectively, and the comments thereon from their Head of Department, *i.e.* the Chief Planning Officer, are as follows :-

For applicant 1, “Application forwarded and recommended”. The same comment was made for applicant 2. For applicant 3, the comment was, “Application forwarded but not recommended”, likewise the application of applicant 4 was forwarded but not recommended.

Antonios Malaos, the second candidate to be promoted to the post of Planning Officer 1st Grade, has been in the Planning Bureau since August, 1967, having served since 1964 in the Ministry of Justice as a clerk and in the Co-operative Development Department as Co-operative Officer. His application is *exhibit* 7, and the said Head of Department comments thereon by saying, “Application forwarded and very strongly recommended”.

The interested party is the holder of a Degree in B.Sc. (Economics) Hons. and Book-keeping. After completing his studies in England, he got employment with the P - E Consulting Group Ltd., a private firm of management

1973
Jan 31
—

COSTAS
HADJICONSTA-
NTINOUS AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

consultants in England. As it appears from the testimonials attached to his application and which were before the Public Service Commission, he was highly esteemed by his employers.

Counsel for the respondent Commission in the course of his address asserted that the P - E Consulting Group Ltd. deals with market development and specializes in market research, economic, forecasting and feasibility studies and it has also undertaken certain work for the Ministries of Finance and Communications and Works in Cyprus; consequently, the interested party had a background knowledge of the Island's economy, which is one of the required qualifications for the post. Though the said facts did not appear in the documents before the respondent Commission, they were within the knowledge of the Chief Planning Officer who helped the respondent Commission at the interview. Furthermore, it was urged, that the questions asked at the interview, could not but have elicited this information.

Without pronouncing one way or another on the aforesaid issues, in view of the absence of any record to that effect, this state of affairs poses, in my view, a serious question for determination, that is to say, the sufficiency of the reasoning of the *sub judice* decision.

Nothing of the aforesaid is being mentioned in that reasoning, nor is there any indication to that effect. It is only an assertion, a fact which is not in itself sufficient to supplement the reasoning of an administrative organ for the decision that it reached.

It is useful to refer briefly to the principles governing the requirement of due reasoning for administrative decisions. As I said, in the case of *The Republic v. Lefcos Georgiades* (1972) 3 C.L.R. 594, at p. 690,

“The reasoning must be clear, that is to say, the concrete factors upon which the administration based its decision for the occasion under consideration must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does

not satisfy these conditions cannot be considered as due reasoning.”

1973
Jan. 31

Applying the aforesaid principle to the facts of the present case, one finds that the reference by learned counsel for the respondent Commission to facts which are not on record, shows that there were concrete and relevant factors that constituted the foundation for the *sub judice* decision and which do not appear in their reasoning. The reasoning cannot be supplemented from the material in the relevant file and so the reasoning for the decision is not complete and does not amount to due reasoning. In view of the fact that two at least of the applicants were recommended for the post by their Head of Department, the appointment of an outsider to the post was an exceptional course, since the promotion prospects of recommended officers were thereby affected and it was necessary that such adverse decision interfering with their prospects of promotion should be fully and completely reasoned.

COSTAS
HADJICONSTA-
NTINOY AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

A similar approach can be found in the case of *Athos Georghiades & Others v. The Republic* (1967) 3 C.L.R. 653, at p. 666, where Triantafyllides, J. as he then was, after dealing with an appointment of an outsider to a post where there were persons already in the Service, some of whom admittedly suitable to be appointed, he said :-

“Thus, as promotion prospects of suitable officers were being defeated it was most essential that an adverse for them decision, such as the decision to appoint this interested party should set out fully the reasons justifying such a course.”

And at p. 667 —

“... The decision of the Commission regarding the appointment of this interested party must be annulled as not conforming to the minimum, in the circumstances, requirement regarding due reasoning and as being, thus, contrary to law—namely, the relevant principle of Administrative Law (see *Morsis and The Republic* (1965) 3 C.L.R. 1, at p. 9)—and, also, in excess and abuse of powers. It is, therefore, declared to be null and void and of no effect whatsoever.”

1973
Jan 31

COSTAS
HADJICONSTANTINO
AND
OTHERS

v.

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

On the ground, therefore, of lack of due reasoning, the *sub judice* decision should and is hereby annulled. This proposition is further supported by the principle enunciated in the analogous position where the recommendation of a Head of a Department or other Senior Officer, is ignored. In such cases it has been ruled that the reasons for taking such an exceptional course should be clearly recorded in the relevant minute. (See *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 48).

Another ground of law relied upon by the applicants in the present recourse, is the lack of due inquiry.

In the light of what has already been stated in relation to the lack of due reasoning, a ground upon which the *sub judice* decision has been annulled, I need not pronounce on this ground, inasmuch as not all that transpired at the meeting of the respondent Commission appears on the minutes. What I would like, however, to stress, is the need for keeping proper minutes which, like the due reasoning, is a question of degree dependent upon the nature of the decision concerned. (See *PEO v. Board of Cinematograph Films Censors and Another* (1965) 3 C.L.R. 27, *Athos Georghiades & Others v. The Republic* (*supra*) and the authorities therein mentioned).

I leave open the remaining grounds of law relied upon by the applicants, as they refer to questions such as, whether the interested party satisfied or not the required qualifications, and the duty of the respondent Commission to select the best candidate, questions that are primarily within the province of the respondent Commission, and on account of their nature, nothing should be said that might be considered as prejudicing in any way their evaluation by the respondent Commission at the re-examination of the matter.

In the result, the recourse is successful on the ground given and the *sub judice* decision to appoint the interested party Ioannou to the post of Planning Officer 1st Grade in the Planning Bureau, is declared null and void and of no effect whatsoever.

On the question of costs, I award to the applicants £20 towards their costs.

Sub judice decision annulled.
Order for costs as above.