

1975
June 17

MICHAEL
ZINIERIS
(No. 2)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

MICHAEL ZINIERIS (NO. 2),

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 155).

Public Officers—Promotions—Head of Department—Recommendations—Head of Department placing before Public Service Commission oral complaints about applicant's past performance—And failing to place a letter from the same source, making favourable comments on the same matter—Commission deprived of the opportunity of having the full facts before it and of reaching its own conclusion regarding a very material aspect of the matter under consideration by it—Exercise of Commission's discretionary powers vitiated—Sub judice promotion annulled.

Administrative Law—Discretionary powers—Public Officers—Promotions—Head of Department failing to place before Public Service Commission all facts within his knowledge concerning past performance of applicant—Exercise of the Commission's discretionary powers vitiated because it acted, to a material extent, in ignorance of the full facts, and labouring, consequently, under a material misconception about the past performance of the applicant—Sub judice promotion annulled on this ground.

When the Public Service Commission met to decide on the filling of the vacant post in this case the Head of Department described the interested party as "the best officer of his grade" and recommended him for promotion; as regards the appellant he stated the following: "Although he is the most senior officer of his grade, yet he is slow in his work; recently he has been attached to the Higher Technical Institute, but there had been complaints about his work and also a request that he might be transferred elsewhere; he does not show interest in his work; he lacks in his performance of work"; and he added that there were other officers who were better than the appellant.

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During the proceedings at the trial it transpired that a letter was written by the Principal of the Institute to the said Head of Department, after the said oral complaints had been made. This letter was not placed before the respondent Commission. Its contents were, to substantial extent, inconsistent with the picture given by the Head of Department at the meeting of the Commission, on the basis only of the oral complaints made to him by the Principal of the Institute; the contents of the letter not only were not derogatory, but they amounted, to favourable comments about the performance of the duties of the appellant at the Institute.

Held, (1) By not placing before the Commission the letter in question the Head of Department deprived the Commission of the opportunity of having the full facts before it and of reaching its own conclusion regarding a very material aspect of the matter under consideration by it.

(2) The inevitable result is that the exercise of the Commission's discretionary powers is vitiated, because it acted, to a material extent in ignorance of the full facts, and labouring, consequently, under a material misconception about the past performance of the appellant.

Appeal allowed. Promotion of interested party annulled.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 18th January, 1975 (Case No. 576/73) whereby Applicant's recourse against the decision of the respondent to promote the interested party to the permanent post of Accounting Officer 1st Grade in preference and instead of the applicant, was dismissed.

A. Eftychiou, for the appellant.

A. Frangos, Senior Counsel of the Republic with *G. Constantinou (Miss)*, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:—

TRANTAFYLLIDES, P.: This is an appeal against the first instance judgment* of a Judge of this Court by means of which

* Reported in this Part at p. 13, *ante*.

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there was dismissed a recourse of the appellant against a decision of the respondent for the promotion to the post of Accounting Officer, 1st Grade, of Chr. Bellapaisiotis (who is an “interested party” in the present proceedings).

A cardinal feature of this case are the recommendations about the candidates for promotion, which were made orally by the Accountant-General, as Head of the Department concerned, at the meeting of the respondent Public Service Commission, on the 10th July, 1973; at that meeting the Accountant-General described the interested party as “the best officer of his grade” and recommended him for promotion; as regards the appellant he stated the following: “Although he is the most senior officer of his grade, yet he is slow in his work; recently he has been attached to the Higher Technical Institute but there had been complaints about his work and also a request that he might be transferred elsewhere; he does not show interest in his work; he lacks in his performance of work”; and the Accountant-General added that there were other officers who were better than the appellant.

As it was disputed at the trial, by the appellant, that complaints had been made about his performance while being posted at the Higher Technical Institute, the learned trial Judge, very properly, investigated this aspect of the case. The Accountant-General gave evidence which was accepted by the trial Judge; it was to the effect that complaints about the work of the appellant and a request for his transfer away from the Institute had been made orally by its Principal.

During, however, the proceedings at the trial it transpired that a letter dated 28th June, 1973, was written by the Principal of the Institute to the Accountant-General, after the said oral complaints had been made; the letter was written at the time when the transfer of the appellant from the Institute, to another post, was effected.

This letter was not placed before the respondent Commission at the material time. Its contents are, to a substantial extent, inconsistent with the picture given by the Accountant-General to the respondent Commission, on the 10th July, 1973, concerning the appellant, on the basis only of the oral complaints made to him by the Principal of the Institute; the contents of the letter not only are not derogatory, but they amount, on the contrary, to favourable comments about the performance of the duties of the appellant at the Institute.

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We have no reason to disagree with the trial Judge's view that it was for the Accountant-General to decide what weight he should have given to the oral complaints and to the subsequent written letter of the Principal of the Institute, but, that being so, is was, in our view, still the duty of the Accountant-General, as the Head of the Department concerned, to place before the respondent Commission the aforementioned letter of the Principal, once he had deemed it fit to mention to the Commission, on the 10th July, 1973, the oral complaints which were made regarding the work of the appellant at the Institute; it was not up to the Accountant-General to decide what the Commission should know; the Commission was entitled to have the whole picture before it and to decide itself what weight to give to the aforesaid oral complaints of, and to the letter written subsequently by, the Principal of the Institute. Only in this way would the Commission have been able, having all material facts before it, to evaluate correctly the recommendations made to it by the Accountant-General, as regards the various candidates for promotion, including, particularly, the appellant.

By not placing before the Commission the letter in question the Accountant-General deprived the Commission of the opportunity of having the full facts before it and of reaching its own conclusion regarding a very material aspect of the matter under consideration by it; the inevitable result is that the exercise of the Commission's discretionary powers is vitiated, because it acted, to a material extent, in ignorance of the full facts, and labouring, consequently, under a material misconception about the past performance of the appellant.

In all the circumstances of this case we, therefore, feel bound to allow this appeal and to annul the promotion of the interested party.

Appeal allowed.