

1975  
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[TRIANTAFYLIDIS, P., STAVRIDES, L. LOIZOU,  
A. LOIZOU, MALACHOS, JJ.]

REPUBLIC  
(EDUCATIONAL  
SERVICE  
COMMITTEE)

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Appellant,*

v.  
PANAYIOTIS  
IOANNOU  
MYRTIOTIS

*and*

PANAYIOTIS IOANNOU MYRTIOTIS,

*Respondent.*

(*Revisional Jurisdiction Appeal No. 156.*)

*Administrative Law—Administrative decision—Due reasoning—Especially in cases of exercise of discretionary powers—Can be derived from the relevant file and from the whole record of the administrative process—Annulment of decision of Educational Service Committee because of lack of due reasoning—Appeal—Committee’s relevant minutes not produced in full before trial Judge and certain essential facts emerged during hearing of the appeal—In the light of all the material before Court of Appeal, not correct to say that there exists lack of due reasoning vitiating sub judice decision.* 5

*Educational Officers—Promotions—Assistant Headmaster in elementary education—Seniority—Interested parties by about a year senior to applicant—Qualifications—Applicant better qualified than interested parties—Merit—Applicant rated higher in confidential reports for 1971 but reverse applies for reports of 1970 and 1969—Reasonably open to the Committee, in the exercise of its discretion, to select for promotion the interested parties instead of the applicant.* 10 15

This was an appeal by the Educational Service Committee against the annulment of promotions, made by the Committee, on the ground that the relevant decision was not duly reasoned. 20

During the hearing of the proceedings before the trial Judge the Committee’s relevant minutes were not produced in full; there were placed before him only extracts therefrom which were not sufficiently complete for the purpose of the case; consequently, certain essential facts emerged only during the hearing of the appeal. 25

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5 The Court of Appeal, also, heard arguments of counsel as regards the propriety of the decision of the appellant Committee, to prefer the interested parties instead of the respondent, as this issue has not been dealt with by the trial Judge in view of the fact that he annulled the *sub judice* decision simply on the ground of lack of due reasoning. The factual position regarding this aspect of the appeal was as follows:—

10 In so far as seniority was concerned the interested parties were by about a year senior to the respondent in the post of school-teacher, grade A. On the other hand, the respondent seems to have had slightly better qualifications than the interested parties. As regards merit, it appears that in the annual confidential reports for 1971 the respondent's performance is rated higher than that of the interested parties, but the reverse applies in respect of the years 1970 and 1969.

*Held, (I) with regard to the issue of due reasoning:*

20 In the light of all the material which is now before us, (see p. 487 of the judgment *post*) and having in mind that, as stated by Dendias in his textbook on Administrative Law, 5th ed., vol. A, p. 151, the reasoning for an administrative decision, especially in cases of exercise of discretionary powers, can be derived from the relevant file and from the whole record of the administrative process (“ἐκ τοῦ φακέλου τῆς ὑποθέσεως καὶ ἐκ τοῦ συνόλου τῆς διοικητικῆς ἐνεργείας”), we are of the view that it would not be correct to say that there exists lack of due reasoning vitiating the decision of the Committee to promote the interested parties.

*Held, (II) with regard to the propriety of the decision:*

30 We have not any doubt that it was reasonably open to the Committee, in the exercise of its discretion, to select for promotion the interested parties instead of the respondent; and, therefore, the recourse of the respondent could not have succeeded, in this respect, before the trial Judge, and cannot succeed before us now.

35 *Appeal allowed.*

### Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 26th February, 1975 (Revisional Jurisdiction Case No. 384/72) whereby the

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promotions of the interested parties to the post of Assistant Headmaster in the Elementary Education were annulled.

*A. S. Angelides*, for the appellant.

*K. Talarides*, for the respondent.

*Cur. adv. vult.* 5

The facts sufficiently appear in the judgment of the Court delivered by:-

TRIANTAFYLLIDES, P.: This is an appeal by the Republic (through the Educational Service Committee) from the judgment\* given by a Judge of this Court in a recourse made by the respondent against the promotions to the post of Assistant Headmaster, in Elementary Education, of S. Nicolaidis and P. Sozou (referred to hereinafter as the "interested parties"); the promotions were annulled by the learned trial Judge on the ground that the relevant decision of the Educational Service Committee was not duly reasoned. 10 15

It is most unfortunate that during the proceedings before the trial Judge the Committee's relevant minutes were not produced in full; there were placed before him only extracts therefrom which were not sufficiently complete for the purpose of the case; consequently certain essential facts, to which we shall refer in the course of our judgment, emerged only during the hearing of this appeal. 20

The administrative process, which led to the promotions in question, commenced on January 10, 1972; on that date, after studying the personal files and confidential reports files of those entitled to promotion in accordance with the relevant scheme of service, and having taken into account the merits, qualifications and seniority of the candidates, as they appeared on the material before it, the appellant Committee decided, on the basis of certain criteria, to call for interviews 239 candidates; all these candidates were school-teachers, grade A. 25 30

Later on, after the interviews, certain representations were made by the School-Teachers Trade Union, and, apparently, as a result, there were interviewed other candidates who had not been selected for the purpose in accordance with the criteria 35

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\* Reported in this Part at p. 58, *ante*.

laid down on January 10, 1972; and it has transpired, during this appeal, after production and examination of the full texts of the relevant minutes of the appellant Committee, that the two interested parties were among those selected for interview as a result of the above representations.

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On May 10, 1972, the Committee met and considered the candidates for the post concerned; as it appears from its minutes, having taken, *inter alia*, into account, first the merits of each candidate (on the basis of the confidential reports made about him by the Inspectors, of the impression he had made when interviewed, and, in general, of the opinion formed by the Committee in the light of all relevant material before it), secondly, the qualifications of the candidates, thirdly, their seniority, and, fourthly, the views of the General Inspector and of the Inspectors of Elementary Education who had been present at the interviews, as well as the views of the Head of the Department of Elementary Education who was present at its meeting, the Committee decided to promote at once some of the candidates, and, also, it prepared a "waiting list", as it was called, with a view to further promotions later; it comprised sixty-five candidates, among whom there were included the respondent and the interested parties.

A perusal of the text of the minutes of the meeting of the Committee on May 10, 1972 (which unfortunately were not set out in full when attached to the Opposition) leaves no doubt that at that meeting there were not actually present the General Inspector and the Inspectors of Elementary Education, but reliance was placed on the views which they had expressed at the interviews.

Later, there followed another meeting of the Committee, on July 4, 1972, at which out of the candidates on the "waiting list" there were selected for promotion thirteen, including the interested parties, but not the respondent.

The relevant part of the minutes of the meeting of July 4, 1972, reads as follows:—

“Εν συνεχεία τῆς ἀπὸ 10/5/72 ἀποφάσεώς της καὶ βάσει τῶν ἐν αὐτῇ καθορισθέντων κριτηρίων ἡ Ἐπιτροπὴ ἀποφασίζει ὅπως εἰς τοὺς κάτωθι διδασκάλους, περιληφθέντας εἰς τὸν καταρτισθέντα κατὰ τὴν ὡς ἄνω ἡμερομηνίαν (βλ. πρακτικὰ) κατάλογον ἀναμονῆς προσφερθῆ προαγωγή εἰς θέσιν Β.Δ., Σχολείων Στοιχειώδους Ἐκπαιδεύσεως ἀπὸ 1/9/72 ———”.

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(“ Pursuant to its decision of 10/5/72, and on the basis of the criteria specified therein, the Committee decides that to the following school-teachers, who were included in the on the said date (see minutes) prepared waiting list, be offered promotion to the post of Assistant Headmaster of Schools of Elementary Education as from 1/9/72.....”).

In the light of all the material which is now before us, and having in mind that, as stated by Dendias in his textbook on Administrative Law, 5th ed., vol. A, p. 151, the reasoning for an administrative decision, especially in cases of exercise of discretionary powers, can be derived from the relevant file and from the whole record of the administrative process (“ἐκ τοῦ φακέλλου τῆς ὑποθέσεως καὶ ἐκ τοῦ συνόλου τῆς διοικητικῆς ἐνεργείας”), we are of the view that it would not be correct to say that there exists lack of due reasoning vitiating the decision of the Committee to promote the interested parties.

We have, also, heard arguments of counsel as regards the propriety of the decision of the appellant Committee to prefer the interested parties instead of the respondent (this issue has not been dealt with by the trial Judge in view of the fact that he annulled the *sub judice* decision simply on the ground of lack of due reasoning):

In so far as seniority was concerned the interested parties were by about a year senior to the respondent in the post of school-teacher, grade A. On the other hand, the respondent seems to have had slightly better qualifications than the interested parties. As regards merit, it appears that in the annual confidential reports for 1971 the respondent’s performance is rated higher than that of the interested parties, but the reverse applies in respect of the years 1970 and 1969.

With all the above in mind we have not any doubt that it was reasonably open to the Committee, in the exercise of its discretion, to select for promotion the interested parties instead of the respondent; and, therefore, the recourse of the respondent could not have succeeded, in this respect, before the trial Judge, and cannot succeed before us now.

As we have come already to the conclusion that it was not right to annul the *sub judice* decision of the Committee, as lacking due reasoning, we have to allow this appeal and to dismiss accordingly the recourse of the respondent against the promotions of the interested parties.

We shall make no order as to the costs of the appeal; and the order for costs made by the trial Judge against the Republic is set aside.

*Appeal allowed. Order for costs as above.*

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