

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
NIKI IOANNOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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(Case No. 216/72).

5 *Public Officers—Promotions—Post of Clerk 2nd Grade—Statement by Head of Department before the respondent Public Service Commission that the interested parties were the best candidates—And finding by Commission that this statement was consistent with the relevant annual confidential reports—Both inconsistent with the overall picture presented by the confidential reports of the applicant and the interested parties—Promotions annulled as the Commission acted under a misconception of fact—And as the sub judice decision is not duly reasoned.*

10 *Administrative Law—Collective organ—Need to keep proper minutes—Non clarity of minutes deprives the decision of a collective organ of due reasoning.*

15 *Public Officers—Promotions—Confidential reports—Should be regarded as constituting part of the overall picture of the merits of each candidate which the Commission has to weigh as a whole.*

20 *Administrative Law—Misconception of fact—Promotions—Public Service Commission relying on statement by Head of Department that the interested parties were better than the applicant—Such statement not consistent with the confidential reports which were before the Commission—Sub-judice decision annulled as the Commission has acted under a misconception of fact.*

25 *Administrative Law—Due reasoning—Vague reasoning—Annulment of decision of Public Service Commission for lack of due reasoning because its vague reasoning recorded in the minutes is contradicted by the relevant administrative records.*

The applicant, a Clerical Assistant General Clerical Staff, was a candidate for promotion to the post of Clerk 2nd Grade.

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In making the promotions to this post the respondent Commission took into consideration (see its minutes at pp. 64-65 *post*), *inter alia*, "the views expressed by the Director of the Department of Personnel as regards the candidates actual merit and abilities". In the course of the hearing of this recourse, against the promotion of the interested parties to the said post in preference and instead of the applicant, there arose the question as to what were the views expressed by the Director of Personnel; and as a result counsel for the respondent wrote to the Commission asking them what were the said views. The Commission replied (see their letter at p. 66 *post*) that though they were unable to recall the exact words used by the Director they remembered that in giving his reasons, he "recommended the interested parties for promotion having previously said that they were the best of the candidates"; and that "the Commission accepted the recommendations of the Director which were consistent with the contents of the relevant annual confidential reports, and decided not to promote the applicant who in any event, was not recommended for promotion".

Counsel for the applicant contended that neither the minutes of the Commission nor their subsequent letter amounted to due reasoning of the *sub judice* decision and that, moreover, the Commission acted under a misconception of fact.

Held (after comparing the annual confidential reports of applicant and the interested parties and finding that the overall picture of the applicant as presented in the confidential reports was better than that of 12 of the interested parties) that though it is true that confidential reports should be regarded as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole (see *Evangelou v. Republic* (1965) 3 C.L.R. 292 at p. 297), in the present case comparison of their respective confidential reports was necessary in view of what was stated by the Commission in their said letter namely that the Director stated that the interested parties were the best and that the Commission found that that statement was in agreement with their respective annual confidential reports; that this statement was inconsistent with the overall picture presented by the confidential reports of the applicant and 12 of the interested parties; and that, therefore, the recourse of the applicant against these interested parties succeeds, as the Commission acted under a misconception of fact.

5 (2) That lack of clarity in the minutes of a collective organ
may deprive the decision reached of due reasoning (see *Ky-*
prianou and Others (No. 2) v. Republic (1975) 3 C.L.R. 187
at pp. 193-194); that the reasoning in the said letter of the
Commission that the interested parties were the best, cannot
be supplemented from the annual confidential reports of 12
of the interested parties; that having in mind the minutes of
the Commission, the said letter and the annual confidential re-
ports of the parties, the decision of the Commission was also
10 not duly reasoned; that the vague reasoning which has been
recorded in an omnibus manner in the minutes and in the said
letter appear to be contradicted by the relevant administrative
records in the cases of 12 of the interested parties; and that,
accordingly, the recourse of the applicant against these interest-
15 ed parties succeeds for this reason too.

*Sub judice decision
partly annulled.*

Cases referred to:

Hji Gregoriou v. The Republic (1975) 3 C.L.R. 477;

20 *Aristocleous v. The Republic* (1974) 3 C.L.R. 321 at p. 326;

Evangelou v. The Republic (1965) 3 C.L.R. 292 at p. 297;

Petrondas v. The Attorney-General (1969) 3 C.L.R. 214;

Kyprianou and Others (No. 2) v. The Republic (1975) 3
C.L.R. 187 at pp. 193-194.

25 **Recourse.**

Recourse against the decision of the respondent Public
Service Commission to promote the interested parties to
the post of Clerk 2nd Grade in preference and instead of
the applicant.

30 *P. Theodorou*, for the applicant.

Cl. Antoniadis, Counsel of the Republic, for the re-
spondent.

Cur. adv. vult.

The following judgment was delivered by:-

35 HADJIANASTASSIOU, J.: By the present recourse the
applicant seeks a declaration that the decision of the Pub-
lic Service Commission to promote 23 officers listed in
Schedule "A" attached to the application to the post of
Clerk Grade B, General Clerical Staff, in preference to
30 and instead of the applicant is null and void and of no
effect whatsoever.

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It is convenient to state at this early stage that during the hearing of the case, the recourse against six of the interested parties, namely O. Hadjipanayiotou, S. Myriantithi, I. Karaniki, E. Philippou, E. Selipa and L. Michael was withdrawn and therefore, the recourse stands against the remaining 17 officers only.

From the comparative table showing particulars of Government Service and qualifications of the applicant and the interested parties it appears that the applicant was first appointed in the Public Service as Assistant School Clerk and served as such from 1957 to 13.8.63. Between 14.8.63 and 31.3.65, she served as Clerical Assistant on an unestablished basis and from 1.4.65 until today on an established basis.

As it appears from the application, when the applicant was first appointed in 1957, she was posted in the Department of Education. After independence, *i.e.* after the 16th August, 1960, that post came under the Greek Communal Chamber. In 1964 because the functions of the Greek Communal Chamber were taken over by the Ministry of Education, the applicant continued serving under the said Ministry. On October 25, 1971, she was transferred to the District Office of Nicosia where she is still serving until today.

Under the relevant scheme of service, the post of Clerk, 2nd Grade, is a promotion post from the lower post of Clerical Assistant. Officers should have a minimum of 6 years' service in the post of Clerical Assistant of which at least two in an established capacity and should have passed the exams in General Orders or Financial Instructions in the case of officers employed mainly on accounting duties.

On April 20, 1972, the Commission met in order to fill the existing vacancies in the post of Clerk 2nd Grade—approval for such filling having previously been obtained from the Minister of Finance, and the said minute of the Public Service Commission reads as follows:-

“ . . . The Commission considered thoroughly the merits, qualifications, experience and length of service of all eligible Clerical Assistants as reflected in their

personal files and in their annual confidential reports.

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5 Bearing in mind all the above, as well as the views expressed by the Director of the Department of Personnel as regards the candidates' actual merit and abilities, and having regard to the totality of circumstances pertaining to each candidate, the Commission decided that the following officers were on the whole the best and that they be promoted to the permanent post of Clerk 2nd Grade w.e.f. 1.5.72. . .".

10 Then the names of the 29 officers, including those of the interested parties who had been selected for appointment were given; and the minute further reads:-

15 "The claims of the remaining candidates were considered by the Commission but they were not found to be so strong as those of the officers selected for promotion".

20 The applicant, feeling aggrieved, claims that (a) having regard to the totality of circumstances and especially the superior seniority, experience, merit and qualifications of applicants *vis-a-vis* the interested parties, the said decision was taken in excess and/or abuse of powers; and (b) the decision of the Public Service Commission was not duly reasoned. The ground of seniority was abandoned by

25 counsel during the hearing of the case.

I think I should state at this stage that the point that the decision was not duly reasoned arose during the second hearing of the case. Counsel for the applicant admitted that he did not specifically plead it, but he argued that the ground of law that the decision was taken in excess or in abuse of power included lack of due reasoning. This contention of counsel was not challenged by the other side. During the same hearing, the question arose also as to what were the views expressed by the Director of Personnel as regards "the candidates' actual merits and abilities" as stated in the minutes of the Public Service Commission (*exhibit* 19). As a result of this, counsel for the respondent wrote to the Public Service Commission asking them what were the views of the Director of the Department of Personnel. The answer of the Commission, dated February 1,

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1974 (marked *exhibit* 1) was in these terms:-

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“I refer to your letter regarding Recourse No. 216/72, and inform you as follows:-

(a) The Public Service Commission at its meeting dated 20.4.72 examined the application of the 74 candidates, including that of the applicant, for appointment to the post of Clerk, 2nd Grade, General Clerical Staff.

(b) The President and the members of the Commission regret that they are unable to recall the exact words which the Director of the Department of the Personnel used during the meeting of the Commission dated 20.4.72 in relation to the applicant and the interested parties. However, they remember that the said Director, in giving reasons, recommended the interested parties for promotion having previously said that they were the best of the candidates. The Commission accepted the recommendations of the Director which were consistent with the contents of the relevant annual confidential reports, and decided not to promote the applicant who in any event, was not recommended for promotion”.

Counsel for the applicant argued that neither the minutes of the Public Service Commission (*exhibit 19*) nor the aforementioned letter (*exhibit 1*) amounts to due reasoning of the said decision. Moreover, counsel argued that *exhibit 1* stresses more the point that the said decision was not duly reasoned, and that the Commission acted under a misconception of fact.

Counsel for the respondent, on the other hand, conceded that the minutes of the Public Service Commission alone (*exh. 19*) do not provide sufficient reasoning, but argued that since *exhibit 19* refers to the views of the Director of the Department of Personnel, this reference links *exhibit 1*, which *exhibit* provides the reasoning to the said decision.

In the recent case of *HjiGregoriou v. The Republic*, (1975) 3 C.L.R. 477, it was stated in relation to the annual confidential reports at p. 483 that “it is necessary, in deciding on the merits of candidates, to look at past annual confidential reports, and especially at the most recent ones, in order to evaluate the performance of the

5 candidates during their careers as a whole". And in the
case of *Aristocleous v. The Republic*, (1974) 3 C.L.R.
321 at p. 326, it was stated that "different reporting offi-
cers inevitably use different standards in their evaluation
of the performance of the various officers serving under
10 them". It is a fact that applicant and interested parties
were posted at various departments and had different re-
porting officers. But it is necessary in this particular case
in order to examine whether the Commission acted under
a misconception of fact in view of its statement contained
in *exh. 1*, i.e. that the view of the Director that the inte-
rested parties were better than the applicant was in agree-
ment with their respective annual confidential reports, to
15 make a comparison between their annual confidential re-
ports and that of the applicant.

Starting with the applicant, it appears that for the year
1966-1967, she was given a special confidential report
(commonly known as a blue report) containing favourable
20 comments with regard to her work by her reporting offi-
cer Mr. Georghiades. Her general assessment appears on
the high side and she has a recommendation for promo-
tion. The countersigning officer Mr. Adamides, however,
was of the view that the grading was too generous.

25 In 1967-1968 the applicant again has a blue report by
the same reporting officer with favourable comments
about her work and a recommendation for promotion, but
Mr. Adamides again states that he was not convinced that
a blue report was warranted.

30 For 1968-1969 the applicant has another blue report
by the same reporting officer with a recommendation for
promotion and favourable comments, but again Mr. Ada-
mides stated that in his opinion the grading was too gene-
rous. In 1969 the reporting officer Mr. Georghiades stres-
35 sed that "this officer is qualified to handle and carry out
duties bigger than her present post. She is rather difficult
to co-operate with her colleagues but this is partly due to
her feeling of doing work lower to her capabilities". Then
under the heading "General Assessment" she is rated as
40 "very good" in four items, "very thorough" in one, "sa-
tisfactory" in two items, "excellent" in one, very devoted
to duty, and her general intelligence is described as "very

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high". The counter-signing officer agrees, and no recommendation for promotion appears in that year.

In 1970 again the same reporting officer states that "she is a very competent officer undertaking duties beyond her post as Clerical Assistant 3rd grade. I suggest she be promoted to a higher grade". Her reliability is described as "very reliable", her thoroughness as "very good", adaptability as "satisfactory", accuracy as "very good", her initiative as "very good", courtesy in dealing with the public "very good", competence in present work "very high", devotion to duty "very good", ability to co-operate with colleagues "good", and general intelligence "very high". The counter-signing officer agrees with this assessment.

There is no report in her file for the year 1971. In 1972 after she was transferred to the District Office of Nicosia, Mr. Kythreotis, the reporting officer, states in her report that "during the short time she has been in this office she has done good work. She is anxious to be promoted either in the clerical staff or in another post. I have not, however, during the short time I have known her, been able to assess her abilities and express a considered opinion".

Therefore, from 1967-1969 the applicant has three special reports with recommendation for promotion; no recommendation for promotion appears in 1969; in 1970 she is again recommended for promotion; and no report appears in 1971.

Looking at the confidential reports of interested party No. 4, Nitsa Kyza (*exh.* 7) it appears that from the year 1967 to the year 1971 her general assessment appears to be very good, but she has neither a recommendation for promotion nor a blue report.

Interested party No. 6, Iro Kontolemi (*exh.* 8) has no blue report, and from 1967-1971 has one recommendation for promotion only, in 1971.

Interested party No. 11, Lenia Alkiadou again has no blue report or any recommendation for promotion in any year. From the general assessment it appears that she is a very good officer, but nevertheless, the overall picture of the applicant appears to be better.

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Interested party No. 12, Aphrodite Phylactidou, has no blue report or recommendation for promotion in her file.

Interested party No. 13 (*exhibit 12*) Alexandra Kyriacou has no blue report in any of the years of her service or recommendation for promotion. Before the promotion in question, *i.e.* in the year 1971, she was rated as "excellent" in five ratable items, "very good" in three items, she is described as "adaptable" and her general intelligence is "above average". In 1970, her reporting officer Mr. Savvides stated that she is "a competent, hardworking and reliable officer".

Interested party No. 16, Irene Philippidou (*exhibit 13*) before the promotion in question was attached to the Ministry of Education. From the year 1968 till 1971 her reporting officer was Mr. Michaelides, who states in 1969 and 1970 that "she is a very good officer in all respects". In the year before the promotion, she is rated under the general assessment as "excellent" or "very good", and her general intelligence "above average".

Interested party No. 19, Stavroulla Riga (*exhibit 15*) from 1964 until just before the promotion in question was attached to the Nicosia General Hospital. In the year before the promotion she is rated under general assessment as "very good" and "excellent" and "intelligent". Dr. Fessas stated in her report that "Miss Riga is an efficient and conscientious officer". The countersigning officer states "I agree with the above". No recommendation for promotion and no blue report appears in the file of this interested party.

Interested Party No. 22 (*exhibit 17*) is Andreas Kouis. Before the promotion in question, that is in 1971 he was rated as "very good" in eight ratable items and "excellent" in two. His reporting officer states that "he is a very good and active employee. He is reliable and progressive". Going though his confidential report and comparing it with that of the applicant, I observe that no recommendation for promotion or a blue report appear therein.

Interested Party No. 23, Andreas Aristides, (*exhibit 18*) has been described by his reporting officer Mr. Kythreotis for the years 1965 to 1970 as "an average offi-

cer". For 1971 he has a different reporting officer, Mr. Papadopoulos, who states that "the officer is always trying his best, to the maximum of his abilities to carry out the work assigned to him in a satisfactory manner". No recommendation for promotion and no blue report appears.

Interested Party No. 17, Andreas Georghiou (*exhibit 14*) does not appear to be better than the applicant having regard to their respective confidential reports for the following reasons: In 1968 the applicant obtained a blue report whilst the interested party's assessment is "very good" in four items, "good" in three, accuracy "excellent", initiative "fair" and general intelligence "average". In 1969 the applicant's general assessment appears to be better. In 1970 no report appears for this interested party. Applicant has a very good report in respect of 1970 with a recommendation for promotion. Applicant does not have a report in respect of 1971 in her file whilst the interested party's report for this year appears to be a good one, with a recommendation for promotion by his countersigning officer.

It is true that in the case of *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 297, it was stated that such confidential reports should be regarded as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole; but in the present case comparison of their respective confidential report was necessary in view of what was stated by the Public Service Commission in their letter dated 1st January, 1974, that is to say that the Director stated that the interested parties were the best and that the Commission found that that statement was in agreement with their respective annual confidential reports. Having in mind the above, I have reached the conclusion that this statement was inconsistent with the overall picture presented by the confidential report of the applicant and these interested parties and, therefore, the recourse of the applicant against the above interested party succeeds, as the Commission acted under a misconception of fact.

Anna Georghiou, interested party No. 9 (*exhibit 9*) appears to be a very good officer. For the year 1971 she has

5 an excellent report, under general assessment she is rated
as "excellent" under all items, whilst her countersigning
officer states that "she definitely deserves promotion".
In her report dated January 20, 1970, to January 20,
10 1971, her reporting officer states "I suggest that since she
is a very efficient officer her case should be considered
with the utmost consideration"; and under all items of the
general assessment she is again rated as "excellent". In
her reports for previous years she appears again to be a
15 very good officer, her rating being on the high side. So,
in spite of the fact that this officer does not have a blue re-
port, nevertheless, because her overall picture is such that
one finds it difficult to state that the Public Service Com-
mission acted under a misconception of fact when it pre-
ferred this interested party to the applicant.

Interested party No. 20, Maria Georghiou (*exhibit 16*),
before the promotion in question, was attached to the De-
partment of the Ministry of Agriculture. Her reporting
officer Mr. Michaelides recommended her in the year
20 1971 for promotion and she is rated as "excellent" in all
items. For the year 1970 she is rated as "very good" in all
items, and the same reporting officer comments that she
is "very good"; for the year 1969, and under general as-
25 sessment she is rated as "excellent" in all items. Further-
more, very good comments and rating on the high side
appears also in her confidential reports of previous years.

I shall now deal with interested parties T. Boyadjian,
(*exhibit 4*), I. Partaki (*exhibit 6*) and Liza Kalogery (*ex-*
hibit 5) together. These interested parties have a blue re-
30 port for accelerated promotion for the year 1971, *i.e.* ex-
actly the year previous to the promotion. They are posted
at different departments and had different reporting offi-
cers. Their performance in the previous years was very
good. So regarding the last five interested parties, it does
35 not appear that the Public Service Commission acted un-
der a misconception of fact, and, therefore, the recourse
against these interested parties fails.

Having had the opportunity of going through the an-
40 nual confidential reports of the candidates, I observe that
the reasoning in the letter of the P.S.C. (*exh. 1*) that the
interested parties were the best, cannot be supplemented
from the annual confidential reports of the interested par-

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ties in the cases where the recourse of the applicant succeeds. Having in mind *exhibit 19* and *exhibit 1* and the annual confidential reports of the parties, I hold that the decision of the Public Service Commission was also not duly reasoned, and that the vague reasoning which has been recorded in an omnibus manner in the minutes of 20.4.72 (*exhibit 19*) and in *exhibit 1* appear to be contradicted by the relevant administrative records in the cases where the recourse succeeds. (*Vide Christos Petronidas v. Attorney-General*, (1969) 3 C.L.R. p. 214).

Furthermore, this very point was touched in the case of *Kyprianou and Others (No. 2) v. The Republic (P.S.C.)*, (1975) 3 C.L.R. 187, in which I said at pp. 193-194:-

“That clarity in the minutes of proceedings of an administrative organ is of the utmost importance, it has been stated time after time, and I need only repeat that lack of clarity of such minutes and records of proceedings may deprive the decision reached of due reasoning as claimed by counsel. Of course, the absence of clarity, on judicial review, makes the task of this Court very difficult indeed, particularly so when another Court has lucidly said so over the same topic. I am aware, of course, that the absence of proper records of proceedings is not necessarily by itself a ground for annulment, and the Court may proceed to examine the nature of the inquiry carried out by the administration before the taking of its relevant decision.

It seems that in the absence of any legislative provision regulating the matter, the non-keeping of minutes by a collective organ does not always (a question to be decided on the merits of each case) vitiate a particular administrative decision, except, I repeat, if the absence of such minutes or clarity in the minutes tends to deprive the decision of due reasoning. Having gone into the decided cases, it appears that mainly the requirement of keeping written records is primarily for purposes of good administration. (See *HadjiLouca v. The Republic*, (1969) 3 C.L.R. 570 at p. 574; and *Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546 at pp. 564-565; also *Kyriakopoulos* on

5 Greek Administrative Law, 4th edn. Vol. 2 p. 26 and Stassinopoulos on the Law of Administrative Acts, (1951) 223, as well as the Decisions of the Greek Council of State, in Cases 166(29) and 107 (36).

10 From the totality of the material before me, including the observations of the trial Court in the cases to which I have referred to earlier in this judgment, I have reached the conclusion that non-clarity of the minutes deprives the decision of the Commission of due reasoning and I find myself in agreement with counsel that the Commission has failed to consider the applicant.

15 Having reached this conclusion that the Commission has acted in abuse of their powers, I am also inclined to state for the guidance of the administration that although there is a presumption in favour of the correctness of the findings of fact by the administration, in this case, once counsel has succeeded in rendering possible the existence of misconception of fact on the part of the Commission, I have a doubt in my mind even about the correctness of the findings of fact by the administration. Therefore, as I have already indicated earlier, I feel that the proper way was to direct production of further evidence, but because counsel on behalf of the respondent assured me that the Commission, because of lapse of time were unable to add anything further, I decided to annul the *sub judice* decision so that the administration may ascertain the actual circumstances in a way not leaving doubts. (*Pierides v. The Republic*, (1969) 3 C.L.R. 274 at p. 290; also Stassinopoulos on the Law of Administrative Acts, 1951 ed. at p. 305)".

35 Before concluding this case, it is necessary to state that although this case was reserved on October 27, 1975, nevertheless, the case was re-opened on March 15, 1977, because counsel for the Republic expressed the view that by inadvertence two confidential reports, that of interested parties Androulla Loiza, and Evanthia Christodoulou, exhibits 20 and 21, were not produced before the Court. The Court, having re-opened the case heard further argument.

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Having gone through the confidential reports of these two interested parties, I have reached the conclusion that as in their files there was neither a recommendation for promotion nor a special confidential report, the recommendations of the Head of the Department were not consistent with their administrative reports and, therefore, the recourse succeeds in relation to these two interested parties also.

For the reasons I have given at length, I have come to the conclusion that the recourse succeeds with regard to the interested parties already referred to in this judgment, and it is dismissed against interested parties A. Georghiou, M. Georghiou, T. Boyadjian, I. Partaki, L. Kalogery.

In the circumstances of this case, I am not prepared to make an order for costs in favour of the applicant.

*Sub judice decision partly annulled.
No order as to costs.*