

1981 December 19

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION,

COSTAS PROTOPAPAS AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Cases Nos. 319/80, 320/80, 346/80).

*Public Officers—Promotions—Head of Department—Recommendations—Disregarded without giving reasons for so doing—Sub judice promotions annulled.*

*Public Officers—Promotions—Qualifications—Constituting an advantage under the relevant scheme of service—Need for special reasoning if candidate possessing them is not selected for promotion.* 5

*Administrative law—Administrative acts or decisions—Reasoning—Public Officers—Promotions—Recommendations of Head of Department—Disregarded without giving reasons for so doing—Officer possessing qualifications, which constituted an advantage under the schemes of service, not selected without giving special reasoning—Sub judice promotions annulled for lack of due reasoning.* 10

The applicants, who were Assistant Headmasters in Elementary Education, challenged the validity of the decision of the respondent Committee to promote the interested parties to the post of Headmaster in the Elementary Education. One of the grounds in support of the recourses was that there was lack of due and cogent reasoning in the *sub judice* decision. Counsel for the respondent Committee conceded that the *sub judice* decision was defective for lack of due reasoning inasmuch as in the case of the applicant in recourse No. 320/80 the recommendations 15  
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of the Head of the Department were disregarded and no specific reasons were given for so disregarding them. Moreover this applicant possessed qualifications, which according to the relevant schemes of service constituted an additional qualification and no cogent reasons were given for disregarding them.

*Held*, (1) that the recommendation of a Head of Department, or other senior responsible officer, especially where specialised knowledge and ability are required, is a most vital consideration not lightly to be disregarded; that if the recommendation cannot be acted upon then the Head of Department, or other officer concerned should be invited by the respondent Committee to explain his views before it; that, if, nevertheless, the Committee still feels it cannot act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the committee, for the protection of the legitimate interests of the candidates under Articles 151 and 146 of the Constitution (see, *inter alia*, *Theodosiou v. The Republic* 2 R.S.C.C. 44); that when an applicant possesses qualifications, which in accordance with the relevant scheme of service are considered an additional qualification, there arises the need for special reasoning if the candidate possessing them is not selected for promotion in spite of them (see, *inter alia*, *Vasso Tourpekki v. The Republic* (1973) 3 C.L.R. p. 592); that the legal position being so and in view of the relevant to these issues facts of the case which are not disputed this Court agrees that the *sub judice* decision should be annulled for lack of due reasoning which renders it contrary to the well established principles of administrative law and thus contrary to Law in the sense of Article 146.1 of the Constitution.

(2) That in the light of this result the two other recourses, under No. 319/80 and 346/80 tried together with this one were not proceeded with and with the leave of the Court were withdrawn and dismissed accordingly with no order as to costs.

*Recourse No. 320/80 succeeds;*  
*Recourses 319/80 and 346/80*  
*withdrawn and dismissed.*

Cases referred to:

*Theodosiou v. The Republic*, 2 R.S.C.C. 44;  
*Tourpeki v. The Republic*, (1973) 3 C.L.R. 592.

**Recourses.**

Recourses against the decision of the respondent Educational Service Committee to promote the interested parties to the post of Headmaster in the Elementary Education in preference and instead of the applicants. 5

*A. S. Angelides with Ch. Ierides*, for the applicants in Case Nos. 319/80 and 320/80.

*I. Typographos*, for the applicant in case No. 346/80.

*G. Constantinou (Miss)*, Counsel of the Republic, for the respondent. 10

*L. Kythreotis*, for interested party M. Vrionides.

*X. Syllouris*, for interested party Elli G. Sepou.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicants are all Assistant Headmasters in the Elementary Education and they challenge by these recourses the promotions of Michael Vrionides, Chrysanthos Zographos, Ellie Saranti, Kyriaki Papaleontiou, and Ellie Sepou, (hereinafter to be referred to as the interested parties), to Headmasters in the Elementary Education. 15  
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These three recourses have, by direction of the Court made with the consent of the parties, been heard together as they present common questions of law and fact.

The post of Headmaster in the Elementary Education is a promotion post from that of Assistant Headmaster. The filling of these posts was approved by the Ministry of Finance and its approval was forwarded to the respondent Committee by letter of the Director General of the Ministry of Education, dated 27th March 1980. (See Appendices (D) and (C) respectively attached to the Opposition.) 25  
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The respondent Committee interviewed the candidates on the 5th June 1980 and promoted to the post in question the interested parties. The relevant minutes read as follows:

“Promotions to the post of Headmaster.

The Educational Service Committee having studied the personal and confidential files of all the Assistant Headmasters who are eligible for promotion to the post of Headmaster and taking into consideration the provisions 35

of the Law and the schemes of service and the suggestions of the Head of the Department (See file 365/68/2) decides unanimously that on the basis of the merits, qualifications and seniority of the candidates, the aforementioned recommendations of the Head of the Department, the service reports and the opinion which its members formed for each one of the candidates during the personal interviews, the following Assistant Headmasters are the more suitable for promotion to the post of Headmaster, hence it decides to offer them promotion to the post of Headmaster in the Elementary Education as from the 1st September 1980..."

Counsel for the applicants have argued the cases of their respective clients on a number of grounds. One of them being the lack of due and cogent reasoning.

With regard to this ground counsel for the respondent Committee had conceded that the *sub judice* decision is indeed defective for lack of due reasoning inasmuch as in the case of Christos Theophilides, applicant in Recourse Number 320/80, the recommendations of the Head of the Department were disregarded and no specific reasons were given for so disregarding them. Moreover this applicant possessed qualifications, which according to the relevant Scheme of Service constituted an additional qualification and yet no cogent reasons were given for disregarding them.

Counsel for the interested parties have not disagreed with this stand taken on behalf of the respondent Committee.

The aforesaid approach is a correct one and is born out from what was held in a number of cases by this Court. As far as the disregarding of the recommendations of the Head of the Department and the failure to give reasons for doing so, we have the case of *Michael Theodosiou and The Republic*, 2 R.S.C.C. p. 44 where it was held that the recommendation of a Head of Department, or other senior responsible officer, especially where specialised knowledge and ability were required, was a most vital consideration not lightly to be disregarded. If the recommendation could not be acted upon then the Head of Department, or other officer concerned should be invited by the Public Service Commission to explain his views before it; and, if, nevertheless, the Public Service Commission still felt it could

not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission, for the protection of the legitimate interests of the candidates concerned, Arts. 151 and 146;”

This principle has been consistently followed by this Court 5  
in a number of cases. (See, *inter alia*, *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292; *Nisiotis v. The Republic* (1977) 3 C.L.R. 388, at p. 397; *Andreou v. The Republic* (1979) 3 C.L.R. 379, at p. 388).

With regard to the question of an applicant possessing quali- 10  
fications, which in accordance with the relevant scheme of service are considered an additional qualification and the need for special reasoning if the candidate possessing them is not selected for promotion in spite of them, reference may be made to the cases of *Vasso Tourpeki v. The Republic* (1973) 3 C.L.R. p. 15  
592; and *Nisiotis v. The Republic (supra)*.

The legal position being so and in view of the relevant to these issues facts of the case which are not disputed I agree that the *sub judice* decision should be annulled for lack of due reasoning which renders it contrary to the well established principles of 20  
administrative Law and thus contrary to Law in the sense of Article 146.1 of the Constitution.

In the result recourse No. 320/80 succeeds but in the circumstances there will be no order as to costs.

In the light of this result the two other recourses, under No. 25  
319/80 and 346/80 tried together with this one were not proceeded with and with the leave of the Court were withdrawn and dismissed accordingly with no order as to costs.

*Sub judice decision in recourse  
320/80 annulled. Recourses 319/  
80 and 346/80 withdrawn and dis-  
missed with no order as to costs.* 30