

1982 May 5

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KARAGEORGHIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
COMMITTEE OF EDUCATIONAL SERVICE,

Respondent.

(Cases Nos. 371/80 and 483/80).

- 5 *Public (or educational) Officers—Promotions—Seniority—One of the factors to be taken into account—It may be the decisive factor if all other things are equal—When all factors are equal clear reasons should be given for disregarding seniority—Applicant and interested party more or less equally qualified and of equal merit—No reasons given by the respondent Commission for disregarding applicant's seniority of 11 years over interested party—Sub judice promotion annulled.*
- 10 *Public (or Educational) Officers—Promotions—Judicial control—Principles applicable—Administrative Court will intervene in order to set aside a promotion when satisfied by an applicant that he was an eligible candidate strikingly superior to the one selected.*
- 15 *Public (or Educational) Officers—Promotions—Confidential reports—No recent confidential reports in respect of the interested party and no inquiry by the Commission into the existence or not of confidential reports—Sub judice promotions annulled—Section 35(3) of the Public Educational Service Law, 1969 (Law 10/69).*
- 20 *Public (or Educational) Officers—Promotions—Head of Department—Recommendations—Should relate to the candidates—No definite recommendations in favour of any of the candidates by Head of Department—Sub judice promotions made in a manner contrary to section 35(3) of the Public Educational Service Law, 1969 (Law 10/69)—Annulled.*

Public (or Educational) Officers—Promotions—Interview of candidates—Interested party preferred because of the personal evaluation formed by the members of the Commission about each one of the candidates from their personal interviews—No record kept as to the result of the interview—And no system of marking adopted—Sub judge promotion annulled 5

Administrative Law—Administrative acts or decisions—Due reasoning Requirement of due reasoning must be more strictly observed in the case of a decision of a collective organ unfavourable to the subject—Promotions to the post of Inspector-General Elementary Education—No reasons given for disregarding applicant's seniority over interested party—Sub judge decision annulled for lack of due reasoning which renders it contrary to law and in abuse and excess of powers 10

Administrative Law—Inquiry—Due inquiry—Relevant factors—Absence of knowledge of or inquiry into relevant factors leads to annulment of an administrative decision—Public officers—Promotions—No inquiry by the respondent Commission into existence or not of recent confidential reports on the interested party and absence of recommendations of Head of Department on the candidates, which were relevant factors under s 35(3) of the Public Educational Service Law, 1969 (Law 10/69)—Sub Judge promotions annulled 15 20

The applicant, an Inspector of Elementary Education, was a candidate for promotion to the post of Inspector-General, a promotion post The Educational Service Commission at its meeting* of October 22, 1980 after hearing the views of the Head of Department and after considering the files of the candidates "as well as the confidential reports about them and having taken into account their merit, qualifications and seniority, the whole of their educational and general contribution throughout their length of service, the above-mentioned views of the Head of Elementary Education Department, as well as the personal evaluation formed by the members of the Committee about each one of the candidates from their personal interview" decided to promote interested Parties Papaleontiou and Papadopoulos to the above post Hence these recourses which 25 30 35

* See the relevant minutes at pp 444-5 post.

challenged only the promotion of interested party Papaleontiou ("the interested party").

5 Applicant was by about 11 years senior to the interested party and they were both more less equally qualified. There were no recent confidential reports in respect of the interested party save one for the school year 1972-1973; and having regard to the contents of this report and the three most recent reports on the applicant it could be said that they were more or less of equal merit. The Head of Department who was present at the relevant meeting of the Commission made no definite recommendation in favour of any of the candidates but he referred* to the criteria governing promotions.

15 *Held*, that seniority is one of the factors to be taken into account in effecting a promotion and it may be the decisive one if all other things are equal ; that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority; that an administrative Court will intervene in order to set aside a promotion when satisfied by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; that looking at the relevant minutes of the respondent Commission, there are no reasons at all why applicant's seniority was disregarded; that, therefore, this Court is bound to hold that, all other things being more or less equal, applicant's seniority ought to prevail; that applicant has, therefore, discharged the onus of satisfying this Court that he was an eligible candidate who was strikingly superior to the one selected and the respondent has thus, exceeded the outer limits of its discretion, and, therefore has acted in abuse of its powers; that, moreover, this Court is bound to hold that the respondent Commission has not exercised its discretion in a valid manner through failure to take in its exercise into account all material considerations, namely the consideration of seniority; accordingly the sub-judice promotion of interested party Papaleontiou must be annulled.

* See the minutes of the Commission at pp. 444-5 post.

Held, further, (1) that under s.35(3) of Law 10/69 in making a promotion the Commission shall have due regard to the confidential reports on the candidates and to the recommendations made in this respect by the Head of Department; that this provision is taken to mean recommendations of the Head of Department relating to the candidates; that as it appears in the relevant minutes of the Commission, no definite recommendation was made in favour of any of the candidates by the Head of Department; and though he stated that his recommendations and views on each of the candidates appear in their files, no such, at least recent, views and recommendations appear in any of the files of the candidates; that, thus, the decision of the Commission was taken in a manner contrary to law, namely, the aforesaid s.35(3) and also without sufficient knowledge of or inquiry into all relevant factors, a situation that renders the sub judge decision contrary to law in the sense of Article 146.1 of the Constitution (see *Tryfon v. Republic*, (1968) 3 C.L.R. 28, and *Christides v. Republic* (1966) 3 C.L.R. 732 where it was held that absence of knowledge of or inquiry into relevant factors leads to annulment of an administrative decision and that in exercising its discretionary powers, the administration must take into account all relevant factors); accordingly the sub judge decision must be annulled for this reason too.

(2) That it is a settled principle of administrative law that a decision must be duly reasoned and that the lack of due reasoning renders a decision contrary to law and also in abuse and excess of powers; that the requirement of due reasoning must be more strictly observed in the case of a decision of a collective organ unfavourable to the subject (see *Eleftheriou v. The Central Bank*, (1980) 3 C.L.R. p. 85); that the sub judge decision was not duly reasoned and was, therefore, contrary to the principles of administrative Law and thus contrary to law in the sense of Article 146.1 of the Constitution; accordingly it must be annulled for this reason as well.

(3) That the sub judge decision is invalid for the following reason too: Among other matters taken into consideration in preferring interested party Papaleontiou was "the personal evaluation formed by the members of the Commission about each one of the candidates from their personal interviews";

that in the absence of any record in the relevant minutes as to the result of the interview and in the absence of any indication as to whether a system of marking was adopted so as to enable this Court to examine how and why it was reasonably open to the respondent to act upon the results of the personal interview, notwithstanding the substantially greater seniority of the applicant, such a general statement in the minutes of the respondent, as aforesaid, cannot have the effect of rendering the promotion of interested party Papaleontiou one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent.

(4) That the sub judice decision must also be annulled for lack of due enquiry into a most material aspect of the case; that confidential reports are by law (s. 35(3) of Law 10/69), a factor which is taken into consideration in considering promotions; that in spite of the absence of recent confidential reports on interested party Papaleontiou, the respondent Commission failed to initiate or conduct an inquiry into the existence or not of confidential reports; that a failure to make a due inquiry results due to contravention of well-settled principles of administrative law in the invalidity of the relevant administrative action because the notion of law under Article 146(1) of the Constitution has to be construed as including the well settled principles of administrative Law.

Sub judice decision annulled.

Cases referred to:

Papazachariou v. Republic (1972) 3 C.L.R. 486 at pp. 503-505;
Bagdades v. The Central Bank (1973) 3 C.L.R. 417 at p. 426,
Sarouhan v. Republic, 2 R.S.C.C. 136;

Georghiou v. Republic (1976) 3 C.L.R. 74 at p. 83;
Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 300;
Georghiades and Another v. Republic (1967) 3 C.L.R. 257 at
 p. 269;

Jacovides v. Republic (1966) 3 C.L.R. 212 at p. 221;

Lardis v. Republic (1967) 3 C.L.R. 64 at p. 77.

Vonditsianos v. Republic (1969) 3 C.L.R. 83;

Thalassinos v. Republic (1973) 3 C.L.R. 386,

Partellides v. Republic (1969) 3 C.L.R. 480;

Zafirides v. Republic (1980) 3 C.L.R. 140 at pp. 147-148;

- Antoniou v. Republic* (1975) 3 C.L.R. 510 at p. 515;
- Tryfon v. Republic* (1968) 3 C.L.R. 28;
- Christides v. Republic* (1966) 3 C.L.R. 732;
- Eleftheriou v. Central Bank* (1980) 3 C.L.R. 85;
- Mikellidou v. Republic* (1981) 3 C.L.R. 461 at p. 470. 5

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of General Inspector, Elementary Education in preference and instead of the applicant.

- A. Triantafyllides*, for the applicant. 10
- G. Constantinou (Miss)*, Counsel of the Republic, for the respondent.
- A. S. Angelides*, for interested party Papaleontiou.
- G. Arestis*, for interested party Papadopoulos.

Cur. adv. vult. 15

HADJIANASTASSIOU J. read the following judgment. In these proceedings under Article 146 of the Constitution, the applicant, Andreas Karageorghis applied to this Court on 29th October, 1980, for the following relief: (a) Declaration that the decision of the respondents to appoint or promote to the post of General Inspector, Elementary Education, Messrs. George Papaleontiou and Antonios Papadopoulos in preference and instead of applicant is null and void and of no effect whatsoever. It should be noted, however, that on the 14th March, 1981, counsel for the applicant stated that he withdrew the recourse in so far as it was connected with interested party Papadopoulos. 20 25

THE FACTS:

The applicant is an Inspector of Elementary Education since 1966. The interested party Papaleontiou was appointed to the post of Inspector as late as 1976, i.e., 11 years later than the applicant. After his appointment to the post of Inspector in 1977, the interested party served only for a few months in the post in question and later on went to the United States for studies until May, 1980. It was the allegation of the applicant that the interested party did not possess the second requirement of the scheme of service which speaks of at least two years of service in the post of Inspector. In addition and apart from the above, the applicant claimed that his qualifications, experience and merit were by far superior to those of the interested 30 35 40

parties. The applicant also claimed that none of the interested parties had the seniority, qualifications, experience and merit. In accordance with the recommendations of the Minister of Education it was alleged that the applicant should have been promoted in preference and instead of the interested parties, because of his striking superiority, merit, qualifications and experience.

On 20th December, 1980, Mr. A. Triantafyllides, counsel for the applicant, made this statement: "In the present case, Your Honour, after its filing a publication appeared in the Gazette of the 7th November, 1980, in which the appointment of the interested parties was announced. Therefore, I deem it necessary to file a new recourse, No. 483/80, which is identical with the previous one. In fact, the reason why I filed the present recourse is because the interested parties have assumed their duties by the 1st November, and so it came to the knowledge of my client". In the light of this statement, it appears that all counsel appearing in the present case had agreed that an adjournment should be given when Case No. 371/80 would be heard together with Case No. 426/80 which relates to exactly the same matter and which was fixed for directions on that date. It was also agreed that the opposition to both recourses would be filed by the new hearing date. In the light of this statement, both Miss Constantinou and Mr. Angelides informed the Court that the first one would be filing the opposition within fifteen days and the second counsel would be filing the opposition before the hearing. Then the cases were adjourned and were fixed for hearing on 24th January, 1981, at 10.00 a.m.

In the meantime, on 17th January, 1981, counsel appearing on behalf of the Educational Service Committee in support of the legal points stated that the decision attacked is lawful and correct and it was made within the ambit of discretionary power which is based on Law 10/69. Indeed, the present opposition is based on the following facts:-

1. The post of General Inspector, Elementary Education, is a promotion post from the post of Inspector-General Subjects of Elementary Education; 2 ----- 3. The interested party Papaleontiou was appointed to the post of Inspector, General Subjects Elementary Education on 1st February, 1977. 4. The applicant was appointed to the post of Inspector, General

Subjects Elementary Education on 1st September, 1968. 5.
 The interested party Papaleontiou was on educational leave
 from 18th August, 1977, after a scholarship until 22nd May,
 1980. The period of his post-graduate education abroad (from
 24th December, 1978 onwards) is considered as service or
 experience for the purposes of the schemes of service according
 to the decision of the Council of Ministers No. 12655/13.9.1973. 5
 The service of Mr. Papaleontiou as Inspector for the purposes
 of the scheme of service is two years and four months. 6.
 The Educational Service Committee interviewed the candidates 10
 for promotion to the post of Inspector-General, Elementary
 Education on 30th September, 1980. The relevant minute
 is enclosed. 7. On 22nd October, 1980, the Educational
 Service Committee considered the question of the filling of
 the above posts in the presence of the head of Elementary Edu- 15
 cation, Mr. N. Papaxenofontos. The relevant part of the
 minutes is enclosed. 8. The Committee took also into consi-
 deration the merits, the qualifications, the experience, the confi-
 dential reports as well as the view of the head of Elementary
 Education Mr. N. Papaxenofontos, and personal opinion from 20
 the interviews and reached the conclusion that the interested
 parties were the most suitable for the post in question, viz.,
 G. Papaleontiou and A. Papadopoulos. 9. The Committee
 in reaching its decision has taken into consideration all lawful
 measures and no intervention from outside or any decision 25
 has influenced its decision.

Further to the opposition of the Republic Mr. Angelides,
 counsel for the interested party G. Papaleontiou, submitted
 the following: (1) The professional ability of the interested
 party, qualifications, contribution to the service, experience 30
 and service on the educational aspects of the country and gene-
 rally his personality which appear in the appendix "A" the
 law and the discretionary power of the Committee absolutely
 justified the legality of the decision attacked by the applicant.
 (2) Public Service is not a stationary mechanism but it needs 35
 to be flexible improved and enriched beyond the education
 of its members and organs with modern methods and specialized
 knowledge far more than their general experience and abilities.
 (3) To achieve this target and more than that as a motive for
 every public servant in an effort to gain specialised knowledge 40
 the Republic has decided and as a matter of fact adopted as

administrative practice the recognition as actual service and/or experience the studies abroad of a certain public servant, which eventually leads to award a post-graduate title. Especially in the field of education this practice has taken the status of negotiations which can be applied as the case might be. (4) This practice emerges from the fact that the right of a public servant for promotion regards to the service of the public interest which is achieved with the selection of the most suitable candidate for the post, without being only a moral award to the servant. (5) Especially as regards the interested party, in his post-graduate course for his Ph. D. Senior thesis and as scholar as he was, often reported, applying for directions and material communicated and informed his departmental head and the Supervisor of Elementary Education regarding the educational research he was performing with their approval, the subject of which was "School's achievements in the elementary education in Cyprus". Within the course of this research, the interested party during his scholarship has posted to 230 educationals in Cyprus a questionnaire and their answers have been used for formation results, conclusions. In the meantime he had frequent communication with the special educational Psychologist of the Republic and POED. (6) The interested party has to show a remarkable trade-union's involvement as he served for many years as President and member of the Central Educational Committee of POED service which has been recognized with his election as honorary President. (7) As a trade-union member he had to face several cases of problems of the teachers and in general of the country (educational humanitarian and refugees). He was taking active part in several local and international symposiums; he was in close contact with UNESCO for the predominance and adaptation of Unesco's principles in Cyprus. He also shows cultural activities with performances in the "Pnevmatiki Stegi" for the briefing and education of teachers as regards educational and other subjects. He served as a member of the Educational Board of the Republic and took active part in the formation of the objects and targets of a new analysed program in elementary education. (9) For all the above as well as those to which the interested party will refer at the trial of the present case, the interested party prays for the dismissal of the application and the reconfirmation of the decision of the Committee.

An extract from the minutes of the meeting of the Educational Service Committee reads as follows:-

“22nd October, 1980.

B. Elementary Education

(1) Filling of the Post of Inspector General of Elementary Education. 5

The Committee examined the matter of the filling of the above-mentioned posts. Mr. N. Papaxenophontos, Head of Elementary Education Department, present. Mr. Papaxenophontos begins by saying the following: 10

‘In view of the fact that in the present case the criteria set by the law for the promotions (merit, qualifications and seniority) as well as your personal evaluation from the interviews with the candidates, in which I was also present, are going to be taken into consideration. I wish to state the following: 15

As far as the merit is concerned there is no big difference between the candidates and you can certify it by reviewing the confidential reports. There is of course, some secondary differences between the candidates and I wish to point out, that you should mainly consider their administrative ability, since the post is that of Inspector General of Elementary Education, a post for which qualifications have special significance, because by the very nature of the duties of an inspector and the personal relations, he must stand out for his personality and his capacity for co-operation. 20 25

As far as seniority is concerned, I wish to point out the importance of this criterion in this particular case seeing that we have before us candidates who have passed various stages of selection, and they have spent themselves in the service of education. 30

As far as qualifications are concerned, I wish to stress that the first priority is not so much the academic qualifications of the candidates but the special qualifications that should be compatible with this particular post and the relevant duties. 35

What is needed is educational qualifications, knowledge

of modern pedagogic concepts and methods as also by the schemes of service.

5 I have no intention to suggest any particular individual. My recommendations and views appeared in the individual confidential reports for each one of them'.

10 Then the Committee, having studied the candidates' files as well as the confidential reports about them, and having taken into account their merit, qualifications and seniority, the whole of their educational and general contribution throughout their length of service, the abovementioned views of the Head of Elementary Education Department, as well as the personal evaluation formed by the members of the committee about each one of the candidates
15 *from their personal interviews, considers that the most suitable for promotion to the post of Inspector-General of Elementary Education are Georghios Papaleontiou and Antonis Papadopoulos. Therefore, the Committee decides to offer to them promotion to the post of Inspector-General of Elementary Education.*

20 This decision was taken by the votes of 4 members of the committee whilst one abstained".

Academic Qualifications.

Karageorghis Andreas

Qualifications

- 25 (a) Diploma of Pancyprian Gymnasium
 (b) Diploma of Teachers Training College
 (c) Diploma of post-graduate course at Athens University (1959-1961).
 (d) Academic diploma in education
 30 One year post-graduate course—70-71 in English
 (e) M.A. Education 1972
 (f) Ph. D. (1979)

35 He was appointed as teacher on 1.9.1953. He was promoted to School-master B on 1.9.1962. He was appointed as Inspector 15.9.1966. Total years of service: 27.

Observation on the biographical note of the applicant
(exhibit 2)

Studies:

B.3 Concerns Summer Courses: 7. 7. – 28. 7.56 and
2. 8. – 21. 8.56 5

B.8. Duration: September 1973—November 1973

B.4 The interested party A. Papadopoulos was given
the same grade with the applicant of 94/8 at the same
year (1961).

Papaleontiou Georghios 10

- (a) Diploma of Gymnasium of Famagusta
- (b) Diploma of Teachers Training College
- (c) Post-graduate course in England (1957–58)
- (d) Post graduate course in U.S.A. (1968) Elementary
Administration 15
- (e) M.Sc.—University of Albany (1978)
- (f) The “Final defence” is pending for the Ph. D.

He was appointed as teacher 8.9.1948

He was promoted to School-master B. 1. 9.1959

He was promoted to School-master A. 1. 9.1963 20

He was promoted to Inspector on 1. 2.1977

Total years of service: 32.

On 24th January, 1981, and in the presence of all counsel
concerned, Mr. A. Triantafyllides made to the Court this state-
ment: “We have agreed that the two cases 371/80 and 483/80 25
should proceed to hearing today and the rest of the cases to
remain before the Court. We shall decide at a later stage when
the decision of the Court will be issued”. Mr. Pelekanos
appearing on behalf of the applicant in Case No. 426/80 adopted
the statement of Mr. Triantafyllides. Then Mr. Angelides 30
appearing for the interested party G. Papaleontiou made this
statement: “I simply want to state that Case No. 483/80
has not been served as well as the recent recourses which have
been filed”.

The two applications were based on the following grounds 35
of law: (1) The decision complained of has been taken in

excess or abuse of powers in that the respondents disregarded the striking superiority of applicant vis-a-vis the interested parties as well as the very superior seniority, experience, qualifications and merit of applicant vis-a-vis the interested parties.

5 (2) Interested party Papaleontiou is not qualified under the scheme of service (exh. 1) because he does not possess the requirement of service of at least two years in the post of Inspector of Elementary Education. (3) According to the Head of Department, Mr. Papaxenophontos who attended the relevant

10 meeting of the respondents, the decision of the respondents was dictated by the President of the Republic by circles close to the President of the Republic. (4) The respondents acted contrary to the recommendations of the Ministry of Education because they were influenced by the abovementioned outside

15 interferences.

As I have said earlier, the respondents promoted the interested parties and it is alleged on behalf of the applicant that their decision has been dictated to that effect by the President of the Republic. Indeed, counsel for the applicant in his particulars

20 dated 20th December, 1980, stated that the Head of the Department Mr N. Papaxenophontos who appeared before the respondents in connection with this case, on or about October, 1980, informed the applicant in the presence of other officials and in the course of a conversation that the decision of the Commission would be dictated by the President of the Republic. On

25 or about 17th October, 1980, the Head of the Department told the applicant the following: "I have been to the Presidential Palace and asked Mr. Ntinios Michaelides so as not to be exposed". With that in mind the applicant alleged that had

30 the respondent Commission been allowed to decide without any outside interference it would have been impossible to disregard his striking superiority. On 22nd October, 1980, the promotion of the interested parties was communicated and was published on 7th November, 1980.

35 Mr. Triantafyllides in addressing the Court in support of his grounds of law complained bitterly that the decision of the respondents to promote to the post of General Inspector Messrs. George Papaleontiou and Antonis Papadopoulos in preference and instead of the applicant Andreas Karageorghis is the most

40 scandalous case which was decided by the Committee of Educational Service regarding promotions.

(a) because of his striking superiority; and (b) of his diplomas.

Counsel further argued that with regard to the interested party Mr. Papaleontiou, there cannot be a comparison with the applicant and that the committee wrongly compared his client with that of Mr. Papaleontiou because his client was appointed to the post of Inspector since 1966 and Mr. Papaleontiou was appointed in that post eleven years later on viz., in 1977 and Mr. Papadopoulos in 1969;

(c) he was representing the respondent in various international meetings and has exhibited a lot of zeal in the sector of education, but counsel further argued that even from the comparisons of his confidential reports with that of Mr. Papaleontiou, his client could not have been compared with the latter with regard to the longer service as well as his superior qualifications;

(d) Counsel further complained that the respondent Commission had promoted Mr. Papaleontiou in spite of the fact that he does not fulfill the schemes of service regarding his qualifications; and

(e) that the second requirement of the scheme of service makes it clear that Papaleontiou is not qualified under the scheme of service because he does not possess the requirement of service at least for two years in the post of Inspector. Indeed, counsel added, when Mr. Papaleontiou was appointed in 1977 in February, he left Cyprus in August and went to the U.S.A. and remained there till May, 1980. Counsel further stated that the Commission wrongly reached the conclusion that Mr. Papaleontiou had the years of service required by the scheme in question and that was sufficient for the Court to annul the appointment of the interested party Papaleontiou.

As to the decision of the Council of Ministers, counsel strongly argued that the said decision cannot cover the case of Papaleontiou for the simple reason that Mr. Papaleontiou went abroad for a period of two years to get his diploma which was a necessary prerequisite to the scheme of service. Indeed, counsel concluded the interested party could not have been in the race without those two years because he would not have a diploma and the decision clearly says that one must not go to obtain the necessary qualification and to have also the service.

As to the argument of Mr. Angelides with regard to those regulations, they are not applicable in the present case because the regulations were made in 1972 and clearly indicate that they refer to the teaching personnel which in effect points out that it means or refers to a high school teacher or teacher and here we have the applicant and the interested parties which are not a teaching personnel but supervisory personnel.

In addition, counsel submitted that the purpose of the legislature in introducing the requirement of successful service of two years was for the employee to prove through the confidential reports that he was really able as an inspector in order to have a claim to become a General Inspector.

(f) As to the point, counsel added, which are the recommendations of the Head of the Department, Mr. Papaxenofontos made it quite clear who was the best candidate. Counsel further added that it was impossible for Mr. Papaxenofontos to rely on the administrative ability of Mr. Papaleontiou who did not have any service in that post except for a period of four to five months. It was really the intention of the legislature, counsel further argued, for a candidate to have at least a two years successful service because the Committee must have in mind how this man should behave with his subordinates which he should supervise. Indeed, counsel went on, this interested party had only a six months experience only as an inspector and had ceased to offer his services and as a result the Commission could not have a picture of the service of Mr. Papaleontiou before them. Counsel further stated that the report made in favour of the applicant by Mr. Papaxenofontos indicates and supports the work of the applicant who served the education for eleven years and with excellent results, but which was by-passed by the first interested party who did not serve in that post more than six months.

Finally, counsel in a very able argument invited the Court to accept that Mr. Papaleontiou did not have the requirements of service, and applied for an adjournment of the case to enable him to go through all the files in order to acquaint himself with all the confidential reports. Since counsel appearing for the respondents supported the adjournment sought, the case was adjourned and was fixed for further hearing on 14th March, 1981.

On 25th March, 1981, Mr. Triantafyllides made this statement:-

“Written addresses have been filed and also a reply has been filed to the addresses, the Republic has filed the address today and we adopt the reply which is already in the file for the address of Mr. Angelides as a reply to Miss Constantinou as well.

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Mr. Angelides: I agree with my learned colleague Mr. Triantafyllides that all the material has been filed, but I reserve my right to examine a particular certificate regarding the career of applicant Karageorghis which has been appended as an exhibit to the reply of Mr. Triantafyllides”.

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On 27th June, 1981, Mr. Arestis filed his written address and Mr. Triantafyllides made this statement:-

“All cases have now been concluded and I would like only Your Honour to mention one point which perhaps I did not mention in the previous hearing that the point raised by Mr. Angelides regarding the non promotion of my client to Headmaster B although it is conclusively dealt by the report of Mr. Angelides is not raised in the address of the Republic. So subject to this Your Honour, we would ask the Court to reserve judgment”.

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In spite of the fact that judgment was reserved, nevertheless, having gone through the various written addresses of counsel, it appeared to me that there was a lot to be said and particularly some elucidation of the various points introduced by Mr. Angelides. Indeed, Mr. Angelides had pointed out that as regards the applicant Karageorghis he did not possess the prerequisites to be a candidate for the post in question and therefore he had no legal interest to bring a recourse. He went even further and claimed that Mr. Karageorghis has not been promoted to school master B and did not have four years service in that post. In the light of that statement, the Court had no alternative but to re-open the case for further argument and it was fixed on 13th February, 1982. On that date Miss Constantinou undertook to make available Mr. Papaxenofontos, the Head of the Department of Secondary Education, who would give evidence regarding the point raised by Mr. Angelides as to

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the nonpromotion of the applicant Karageorghis in 1962 to the post of Headmaster B.

5 On the 6th March, 1982, counsel for the Republic informed the Court that Mr. Papaxenophontos was ready to give evidence, but she made it clear that she was not adopting the point raised by Mr. Angelides. Then Mr. Papaxenophontos having been sworn, he was cross-examined by Mr. Angelides and said that on the 4th May, 1981, a certificate was issued which bears his signature and appears as exhibit D, and it is attached in the
10 written reply of Mr. Triantafyllides. Questioned further he said that the certificate was prepared by him and he had used the official record of the Teaching Personnel of the Department of Elementary Education of the Ministry of Education. But, he added that he did not examine the file or the files of Mr.
15 Karageorghis when he was preparing the said certificate. Questioned further why he did not write on the certificate regarding the service of Mr. Karageorghis after 1966, and if that was which had been asked from him to write, his reply was that it was this which the Inspector had asked him.

20 Questioned further as to the next service of Mr. Karageorghis he answered that he had the relevant material in front of him and also from the minutes of the Educational Service Committee which has been issued on the 7th September, Mr. Karageorghis was a candidate for the post of Headmaster A and that he was
25 called before the Committee and was promoted from the said Committee as from the 1st September, 1966 to Headmaster A. He further added that in the same meeting the Committee proceeded to deal with the candidates for the post of Inspector and promoted Mr. Karageorghis to Inspector in the same mee-
30 - ting on the 1st September, 1966. The meeting was on the 7th September, 1966 but he was promoted to Headmaster A from 1st September, 1966, and his promotion to Inspector was valid as from 15th September, 1966. Questioned further as to how long time is required for one to be promoted to Headmaster
35 A, in accordance with the scheme of service of that period, and how long period was necessary for a teacher to serve in the post of Headmaster A, his reply was that in accordance with the Regulations of the Greek Communal Chamber it was necessary for a candidate to become Headmaster A for a period of two
40 years. Questioned further as to how many years of service

one requires to become Headmaster A from Headmaster B, his reply was that four years time was necessary for him to become Headmaster B, and 4 years to be promoted to Headmaster A.

Then, having dealt with the case of Mr. A. Papadopoulos, Mr. Papaxenofontos proceeded further to add that the term "teacher" as defined in s.12.1 of the law 7/63 (Greek Communal Chamber) is embracing also schoolmasters. The members of the Committee met in a session during 1966 for the appointment of Inspector. First on the record enlisting the eligible for promotion candidates, was Mr. Karageorghis with an award of 20.61 marks. Last on the list is Mr. Papaleontiou given 16.12 marks. When somebody is receiving schoolmaster's allowance, he is considered to be a schoolmaster. As from 1.9.1962 Mr. Karageorghis was receiving schoolmaster's allowance. According to the official records kept, Mr. Karageorghis is a schoolmaster B as from 1.9.1962, as from 1.9.1966 schoolmaster A, and on the 15.9.1966 he was promoted to the post of Inspector. Four years elapsed from the time when he was appointed schoolmaster B to the time he was promoted to the post of Inspector. See also the minutes of the Educational Service Committee dated 7th September, 1966 (exhibit Z1) where the Committee in dealing with the promotions of schoolmasters, and having in mind the service of the candidates for the posts in question and their marks based on written exams as well as the views of the Committee based on the interview, had prepared a schedule showing the success for each candidate and their general marks. At p. 2 Andreas Karageorghis had obtained the highest marks for the post of school-master, 22.24; for the post of Inspector 20.62; and for Georghios Papaleontiou 16.12.

JUDICIAL CONTROL OF APPOINTMENTS AND PROMOTIONS—PRINCIPLES APPLICABLE:

The paramount duty of the Public Service Commission and of the Educational Service Commission in effecting appointments and promotions is the selection of the most suitable candidate for the particular post, having regard to the totality of the circumstances pertaining to each one of the qualified candidates; that the Court will not interfere with the discretionary power exercised by the appointing organ in effecting

an appointment or promotion by the substitution of its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits it would have reached a different conclusion; that the discretion is exercised in a valid manner if in its exercise all material considerations have been taken into account, due weight is given to material facts and it has not been based on misconception of facts and law. (See my judgments in *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486 at pp. 503-505 and *Bagdades v. The Central Bank*, (1973) 3 C.L.R. 417 at p. 426).

It has further been said "that when the Public Service Commission has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations and without taking into account irrelevant factors, this Court will not interfere with the exercise of such a discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provision of the Constitution or of any law or has been made in excess or in abuse of the powers vested in the Public Service Commission". (See *Sarouhan v. The Republic*, 2 R.S.C.C. 133 at p. 136); and that "when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning" (see *Georghiou v. The Republic*, (1976) 3 C.L.R. 74 at p. 83, a judgment of the F.B.).

In *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, at p. 300, the following were stated: "It is a settled principle of administrative law that mere superiority, not being of a striking

nature, is not sufficient to lead to the conclusion that the appointing authority has acted in excess or abuse of powers". Further, the onus of establishing striking superiority lies on the applicant in a recourse. (See *Georghiou* (supra) at p. 83 and *Georghiades and Another v. The Republic*, (1967) 3 C.L.R. 257 at p. 269). 5

As already stated, applicant has had 11 years seniority over interested party Papaleontiou. Looking at the other two factors that govern promotions, namely merit and qualifications (see s.35(2) of the Public Educational Service Law 1969) as well as the annual confidential reports and the recommendations of the Head of Department (see s.35(3) of Law 10/69) we can say that applicant and interested party Papaleontiou are more or less equally qualified. Regarding the merit of the two candidates, regrettably, no recent confidential reports in respect of interested Party Papaleontiou have been in existence because having perused the personal file of this interested party, I could trace no recent confidential reports. The most recent one is one that refers to the school year 1972—73 at a time when this interested party was holding the post of Headmaster A in the elementary education. And though the Head of Department stated before the respondent committee that his views and recommendations on the candidates appear in their files, no recent views of the Head of Department in respect of this interested party appear. So it is clear that in taking the sub judice decision the respondent did not have an up-to-date picture or assessment of the merit of interested party Papaleontiou through absence of recent confidential reports and recommendations of the Head of Department. 10
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With regard to the importance of recent confidential reports, see the case of *Georghiou* (supra) at p. 82 and *Jacovides v. The Republic*, (1966) 3 C.L.R. 212 at p. 221. 30

I will hereinafter proceed to examine the validity of the sub judice decision on the basis of the material before the respondent committee namely the confidential reports, the qualifications and the seniority of the candidates. As already stated, the qualifications of the applicant and interested party are more or less equal. The confidential reports on the applicant in respect of the last three years preceding the promotion are as follows:- 35
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1979—"excellent" in 10 ratable items and "very good" in 2

1978—"excellent" in 5 ratable items and "quite satisfactory" in 5

5 1977—"excellent" in 4 and "satisfactory" in 6.

The only confidential report in respect of interested party is one dated 17th July, 1973 for the school-year 1972-73 and describes applicant as "excellent" in 4 ratable items and "very good" in 1. The other reports in his file are reports of inspection of his work by Inspectors and the Inspector-General of Elementary Education, the most recent one in respect of an inspection carried out on 4th June, 1971, which are not in the nature of confidential reports; and so no useful comparison can be made or attempted between these reports and the confidential reports of applicant.

Having regard to the contents of the above 1973 report—the only confidential report on the interested party—and the afore-said most recent three confidential reports on the applicant, it can be said that the applicant and interested party are more or less of equal merit. Regarding the other factor that governs promotions, namely seniority, as already stated applicant is by 11 years senior to interested party, and I will hereinafter proceed to deal with the effect of this seniority on the sub judge decision in the light of my finding that as far as the other two factors governing promotions are concerned, i.e. merit and qualifications, applicant and interested party, on the material before me, stand more or less on an equal footing.

EFFECT OF SENIORITY:

It has been authoritatively settled by the case law of this Court that seniority is one of the factors to be taken into account in effecting a promotion and it may be the decisive one if all other things are equal. (See inter alia *Lardis v. The Republic*, (1967) 3 C.L.R. 64 at p. 77; *Vonditsianos v. The Republic*, (1969) 3 C.L.R. 83; *Thalassinou v. The Republic*, (1973) 3 C.L.R. 386).

In *Partellides v. The Republic*, (1969) 3 C.L.R. 480 (C.A.), where applicant's seniority over interested party was just under

two years, in annulling the sub judice promotion, the Court of Appeal is reported to have said:—

“In the circumstances we are of the opinion that it was not reasonably open to the Respondent Commission to promote Interested Party Gregoriades instead of the Appellant. All other things being more or less equal the Appellant’s seniority ought to prevail. It follows that the relevant discretionary powers of the Respondent were exercised in an erroneous manner”. 5

In *Vonditsianos* case (supra) (affirmed on appeal) see p. 445 of the same report, Triantafyllides, J. (as he then was) said:— 10

“On the whole of the material before the Court, and in the absence of any due reasons to the contrary—which I would expect to find duly recorded in the relevant minutes of the Respondent—I fail to see how it was open to the Respondent, in the proper exercise of its discretionary powers, to prefer Interested Party Vovides to Applicant Constantinou, in spite of the greater seniority and experience of the latter over the former, and there being no difference in merit in favour of the Interested Party”. 15 20

In *Bagdades v. The Central Bank*, (1973) 3 C.L.R. 417, where applicant’s 6 years seniority over the interested party was disregarded without cogent reasons, I said at pp. 426 and 428:

“It has been said judicially in a number of cases that the paramount duty of a collective organ in effecting appointments and promotions is to be the selection of the most suitable candidate for the particular post having regard to the totality of circumstances pertaining to each one of the qualified candidates, according to the needs of the scheme of service; (*Georghiades v. The Republic* (1967) 3 C.L.R. 653), including length of service which though always a factor to be considered, is not always the exclusive vital criterion for such appointment or promotion. In their search to select the best candidate for a post a collective organ should carefully consider the merits and qualifications of each candidate, and length of service is one of the factors to be taken into account. At the same time it has been stressed that though it is not always the exclusive vital 25 30 35

criterion, cogent reasons for disregarding substantially greater seniority of a candidate should be given by that body_____

5 In the light of all the material before me, and in the
circumstances of this case, and in view of the fact that the
applicant has served efficiently and most satisfactorily
the bank for a number of years, I find myself unable to
follow or understand the reason why the interested party
was preferred. However, in the absence of any cogent
10 reasons given in the minutes regarding what were actually
the results of the interviews (whether a record was kept
and the system of marking was adopted) as well as what
were the other relevant factors which the Committee said
they took into consideration, and the reason why they
15 disregarded the greater seniority of the applicant, I have
reached the view that the respondent had exercised their
discretionary powers in a defective manner because it was
not reasonably open to them to reach such a conclusion”.

20 In *Zafirides v. The Republic*, (1980) 3 C.L.R. 140, where
applicant’s 13 years seniority over the interested party was
disregarded, A. Loizou, J. in annulling the sub judice pro-
motion said at pp. 147-148:-

25 “In the present case the applicant has, as compared with
the interested party about 13 years of seniority and 15
years of longer service. In spite of this substantial seniority
and greater experience the respondent Commission preferred
the interested party. It is true that in its minutes it is
stated that during the interview the interested party proved
to be, together with Antigoni Petridou the best candidates
30 for appointment or promotion to the post in question.
Also the representatives of the Department are recorded
to have stated that the services of the said two officers had
been very satisfactory and that they considered them very
suitable for the post, but there is nothing in that opinion
35 to suggest clearly a comparison with, or if that amounted
to a preference as against, the other candidates. In other
words it is not clear if that is a recommendation of the
said two officers implying that the other candidates, and
40 at that the applicant in particular was not suitable or
was not recommended for the post. The description

of a candidate as suitable for a particular post cannot by itself be equated to a recommendation of that officer for appointment or promotion to a post in preference to others or that the suitability of one implies the unsuitability of other candidates. 5

In my view the seniority of the applicant is so substantial that in the circumstances of this case more cogent reasons were called for in disregarding same, as in that way an administrative Court would have been enabled to ascertain whether the administrative discretion of the appropriate organ was properly exercised and so become capable of judicial control in the sense of Article 146 of the Constitution". 10

In *Antoniou v. The Republic*, (1975) 3 C.L.R. 510 (C.A.), the following were stated at p. 515:- 15

"We should say that we have felt some anxiety because of the fact that the most senior candidate was not selected for appointment even though he was described as an 'average officer'; one does not have to be 'exceptional' in order to enjoy the benefit of the advantage of seniority". 20

From the above case law there emerges clearly the principle that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority.

Looking at the relevant minutes of the respondent commission, I find no reasons at all why applicant's seniority was disregarded. I am, therefore, bound to hold that, all other things being more or less equal, applicant's seniority ought to prevail. Applicant has, therefore, discharged the onus of satisfying me that he was an eligible candidate who was strikingly superior to the one selected and the respondent has thus, exceeded the outer limits of the discretion, and, therefore, has acted in abuse of its powers. Moreover, I am bound to hold that the respondent Commission has not exercised its discretion in a valid manner through failure to take in its exercise into account all material considerations, namely the consideration of seniority. The sub-judice promotion of interested party Papaleontiou is, therefore, annulled. 25
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There is another reason why the sub judge decision must be annulled. Under s.35(3) of Law 10/69 in making a promotion the Commission shall have due regard to the confidential reports on the candidates and to the recommendations made in this respect by the Head of Department. I take this provision to mean recommendations of the Head of Department relating to the candidates and yet as it appears in the relevant minutes of the Commission, no definite recommendation was made in favour of any of the candidates by the Head of Department; and though he stated that his recommendations and views on each of the candidates appear in their files, no such, at least recent, views and recommendations appear in any of the files of the candidates. Thus, I am bound to arrive at the conclusion that the decision of the Commission was taken in a manner contrary to law, namely, the aforesaid s.35(3) and also without sufficient knowledge of or inquiry into all relevant factors, a situation that renders the sub judge decision contrary to law in the sense of Article 146(1) of the Constitution. (See in this respect *Tryfon v. Republic*, (1968) 3 C.L.R. 28, and *Christides v. Republic* (1966) 3 C.L.R. 732 where it was held that absence of knowledge of or inquiry into relevant factors leads to annulment of an administrative decision and that in exercising its discretionary powers, the administration must take into account all relevant factors). The sub judge decision must further be annulled for lack of due reasoning. Indeed, it has been a settled principle of administrative law that a decision must be duly reasoned and that the lack of due reasoning renders a decision contrary to law and also in abuse and excess of powers. That the requirement of due reasoning must be more strictly observed in the case of a decision of a collective organ unfavourable to the subject (see *Papazachariou* (supra) at p. 504; *Eleftheriou v. The Central Bank*, (1980) 3 C.L.R. p. 85.

In *Bagdades* case (supra) in dealing with the case of due reasoning, I said at pp. 428-429:-

“Having considered the arguments of both counsel and in view of the fact that one of the concepts of administrative law is that administrative decisions must be duly reasoned, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out in the decision of the Committee whether they are right or wrong, ought to have been reasons which not only would

be intelligible, but also can reasonably be said to deal with the substantive points raised, i.e. why the interested party was preferred and what were the other relevant factors which weighed so much in the mind of the Committee in preferring the interested party instead of the applicant who, as I said earlier, had a longer service with the bank. In the absence of those reasons, in reviewing the said decision, I am unable to ascertain whether the decision is well-founded in fact and in accordance with the law, and in the light of this finding that the said decision is not duly reasoned, exercising my powers under Article 146, I would declare that such decision or act is null and void and of no effect whatsoever".

Same as in the *Bagdades* case, I am bound to hold that the sub judice decision is not duly reasoned and is, therefore, contrary to the principles of administrative law and thus contrary to law in the sense of Article 146(1) of the Constitution.

But, in my opinion, the sub judice decision is invalid also for the following reasons:-

Among other matters taken into consideration in preferring interested party Papaleontiou was "the personal evaluation formed by the members of the Commission about each one of the candidates from their personal interviews". In the absence of any record in the relevant minutes as to the result of the interview and in the absence of any indication as to whether a system of marking was adopted (see the *Bagdades* case supra, at p. 428) so as to enable this Court to examine how and why it was reasonably open to the respondent to act upon the results of the personal interview, notwithstanding the substantially greater seniority of the applicant, such a general statement in the minutes of the respondent, as aforesaid, cannot have the effect of rendering the promotion of interested party Papaleontiou one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent.

The sub judice decision must also be annulled for lack of due inquiry into a most material aspect of the case. As already stated, confidential reports is by law (s.35(3) of Law 10/69), a factor which is taken into consideration in considering promotions; and in spite of the absence of recent confidential reports

on interested party Papaleontiou, the respondent Commission failed to initiate or conduct an inquiry into the existence or not of confidential reports. As stated in *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461 at p. 470, "It is established that
5 a failure to make a due inquiry results due to contravention of well-settled principles of administrative law in the invalidity of the relevant administrative action because the notion of law under Article 146(1) of the Constitution has to be construed as including the well-settled principles of administrative law".

10 Therefore, the sub judice decision must be annulled for this reason too.

Having found that the sub judice decision must be annulled for the reasons above stated, I need not deal with the other grounds raised by counsel.

15 Finally, I would like to place on record that in this case the Committee has not only exceeded the outer limits of its discretion by disregarding applicant's substantial seniority, but by stating in its minutes that it took into consideration the confidential reports of the candidates, whereas such reports were not in
20 existence, as far as the interested party was concerned, has acted in utter disregard of all notions of good and proper administration; I would, therefore, conclude by reiterating that it is expected of administrative organs, especially organs such as the Educational Service Committee which is entrusted with
25 highly important public duties akin to the most vital sector of education, to act within the limits of legality and good and proper administration and not in a manner leaving doubts as to the true motive of their acts.

30 Decision annulled, but in the particular circumstances of this case, I think it is proper to award the sum of £50 to the applicant towards his costs.

Sub judice decision annulled. Order for costs as above.