

1983 October 19

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MYTIDES,

Applicant.

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 226/82).

CONSTANTINOS A. HJICONSTANTINOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 290/82).

Public Officers—Promotions—Head of Department—Recommendations—Sections 44(3) of the Public Service Law, 1967 (Law 33/67)—Opinion of Head of Department of the performance of candidates at the interview falls short of the “recommendations” envisaged by the above section—Recommendations in the confidential reports—Effect.

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Public Officers—Promotions—Interview of candidates—Performance of candidates at the interview—Weight to be attached to such performance.

Public Officers—Schemes of service—Interpretation and application—Within the discretion of the Public Service Commission—Principles on which Court reviews exercise of such discretion—Duty of the Public Service Commission to construe a scheme of service, ascertain the qualifications of each candidate, apply the scheme

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of service and decide whether a candidate is eligible for promotion thereunder—Conclusion of Departmental board regarding qualifications of interested party—Not binding on the Commission—Failure of the Commission to carry out any or due inquiry as to the qualifications of the interested party and as to whether his degree of Bachelor in Business Administration satisfied the requirement of “University diploma or title in commerce or economics or equivalent academic qualification”—Sub judice decision annulled for absence of due inquiry leading to defective exercise of discretion.

Administrative Law—Inquiry—Due inquiry into a material aspect—Absence of—Annulment of Administrative decision.

The applicants and 2 other candidates were recommended by a Departmental Board established under section 36 of the Public Service Law, 1967 (Law 33/67), for appointment to the post of Officer in Charge of the Prices Control and Consumers' Protection Section of the Ministry of Commerce and Industry. The Public Service Commission after evaluating the performance of the candidates at the interview, in the light of the opinion in this respect of the Head of Department and after taking into consideration, inter alia, the established criteria (merit, qualifications and seniority) decided to promote Mr. C. Paschalis (“the interested party”) to the above post.

The first qualification required under the relevant scheme of service, so far as relevant for this case was “University diploma or title in commerce or economics or equivalent academic qualification”. The interested party was the holder of a Degree of Bachelor of Business Administration of the American University of Beirut.

Under section 44(3) of the Public Service Law, 1964 “in making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists”.

Upon a recourse by the applicant challenging the validity of the above promotion:

Held, (1) that “recommendations” (“συστάσεις”) in the

context of section 44(3) has to be given its popular meaning rather than be taken as being used in any narrow legal or technical sense; that it carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post; that he has to make an assessment of the suitability of every candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto; that the opinion of the Head of the Department on the performance of the candidates at the interview falls short of the "recommendations" envisaged by the Law; that the performance of a candidate at the interview is a relevant consideration to be taken into account by the Head of the Department as well as by the Commission; that such impression created by a candidate at the interview is not, however, the most safe way of assessing a candidate because, inter alia, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit; that the evaluation of a candidate solely on his performance at the interview is tantamount to a complete disregard of the performance of a candidate for promotion during his service; that an impression of the personality of a candidate at an interview may, however, be of some assistance, depending on the requirements of the post, but in no way it can be the decisive factor; and that, therefore, the Head of the Department in this case made no recommendations under s.44(3) of Law No. 33 of 1967.

Held, further, that the recommendations in the confidential reports are general in nature and not specific for the post in question and, therefore, they carry little weight. They are only one of the factors to be taken into consideration in assessing the merits of a candidate.

(2) *After dealing with the principles on which the Supreme Court reviews the exercise of the discretion of the Public Service Commission in interpreting and applying a scheme of service—vide pp. 1107-1109 post:*

5 That one of the matters to be examined by the Commission
in cases of promotion is whether a candidate for promotion to
another office possesses the qualifications laid down in the
scheme of service for that office (see section 44(b) of Law 33/67);
and that, therefore, the conclusion of the Departmental Board
regarding the qualifications of the interested party is not binding
on the Commission; that the Commission has a statutory duty
to construe the scheme of service, then ascertain the qualifications
of each candidate as a factual situation and finally to apply
10 the scheme of service in this factual situation and decide whether
a candidate is under the scheme of service eligible for promotion;
that these duties cannot be either usurped by or left to
the Departmental Board and the ultimate competence and
responsibility rests on the Commission; that in the present case,
15 having regard to the qualifications required by the relevant
schemes of service, the process of construction, inquiry and fact
finding should have been meticulously followed and it should
be reflected in the minutes of the meetings of the Commission;
that the Commission failed to construe the scheme of service
20 and they failed to carry out any or due inquiry as to the quali-
fications of the interested party; that they failed to exercise their
discretion; that they failed to inquire into the question whether
the Degree of Bachelor in Business Administration held by
the interested party satisfies the first required qualification for
25 the post in question; and that, therefore, the Commission has
not conducted the sufficiently necessary inquiry into a most
material aspect of the matter; and that, accordingly it exercised
its discretion in a defective manner, leading to its decision
regarding the promotion of this interested party being wrong
30 in law and in excess and abuse of powers; and, thus, it has to
be annulled.

35 *Held*, further, that it is outside the limits of the jurisdiction
of this Court to construe the scheme of service and to
state whether the qualification held by the interested party
sufficed. The Court should not substitute its own decision
for the decision of the Commission. It was upon the Commis-
sion to take such a decision.

Sub udice decision annulled.

Cases referred to:

- Theodossiou v. Republic*, 2 R.S.C.C. 44;
Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 297;
Gavriel v. Republic (1971) 3 C.L.R. 186 at p. 199;
Lardis v. Republic (1967) 3 C.L.R. 64; 5
HjiConstantinou v. Republic (1973) 3 C.L.R. 65;
Petrides v. Public Service Commission (1975) 3 C.L.R. 284;
Soteriadou v. Republic (1983) 3 C.L.R. 921;
Triantafyllides and Others v. Republic (1970) 3 C.L.R. 235;
Papapetrou v. Republic, 2 R.S.C.C. 61 at p. 69; 10
Petsas v. Republic, 3 R.S.C.C. 60;
Georgiades v. Republic (1967) 3 C.L.R. 653 at p. 668;
Tryfon v. Republic (1963) 3 C.L.R. 28;
Kyriacou v. Republic (1975) 3 C.L.R. 35;
Scarparis v. Republic (1978) 3 C.L.R. 106; 15
Michael and Another v. Public Service Commission (1982) 3
 C.L.R. 726;
Photos Photiades & Co. v. Republic, 1964 C.L.R. 102.

Recourses.

Recourses against the decision of the respondent to promote the interested party to the post of Officer in Charge of the Prices Control and Consumers' Protection Section of the Ministry of Commerce and Industry in preference and instead of the applicants. 20

A.S. Angelides, for the applicant in case No. 226/82. 25

C. Anastassiades, for the applicant in Case No. 290/82.

A. Vladimirov, for the respondent.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The Public Service Commission on 1.4.82 appointed-promoted the interested party C. Paschalis to the post of Officer in Charge of the Prices Control and Consumers' Protection Section of the Ministry of Commerce and Industry ("Ministry"). Such decision was published in the Official Gazette of 14.5.1982, Notification No. 923. The applicants, who were not preferred, 30
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by these recourses seek annulment of the said decision on the ground that it is unlawful, void and with no legal effect.

The events leading to the taking of the sub judge decision are, in short, as follows:-

- 5 The Director-General of the Ministry of Commerce and Industry by letter 31/60/iv dated 8.8.1981 requested the Public Service Commission to take the necessary steps for the filling of the post of Officer in Charge of the Prices Control and Consumers' Protection Section, a first entry and promotion post.
- 10 The post was advertised in the Official Gazette of 11.9.1981. Fourteen candidates applied for the post. The applications, in conformity with regulation 3 of the Regulations for Departmental Boards established under section 36 of the Public Service Law, and the confidential reports of the applicants, who were
- 15 civil servants, and copy of the scheme of service approved by the Council of Ministers were forwarded to the Director-General of the Ministry as Chairman of the Departmental Board.

- The Departmental Board met on 13.11.1981 and, having regard to the required qualifications according to the scheme
- 20 of service and the advertisement in the Official Gazette, invited 8 candidates for interview, as the other six candidates did not satisfy the qualifications, but they interviewed only seven as one of them did not turn up. They unanimously recommended the applicants and Theodoulos Charalambides and by majority
- 25 of four to one the interested party.

- The four candidates recommended by the Departmental Board were interviewed by the Public Service Commission on 18.3.1982. The interviews took place in the presence of Mr. Erotokritos, Director-General of the Ministry, who was invited
- 30 to attend and assist the Commission, presumably in accordance with s.44, paragraph 3, of Law No. 33 of 1967. At the conclusion of the interviews the Director-General of the Ministry expressed his opinion about the performance of each one of the candidates at the interviews.

- 35 The Commission at its meeting of 22.3.1982 took the sub judge decision that reads as follows—(Appendix 7):-

“ Η Έπιτροπή πρόεβη εις ίδιαν άξιολόγησιν τής άποδόσεως ένός έκάστου τών ύποψηφίων κατά τās ένώπιον της συνευτεύξεις, ύπό τó φώς και τών έν προκειμένω κρίσεων του Γενικοϋ Διευθυντοϋ του Ύπουργείου Έμπορίου και Βιομηχανίας. Η κρίσις τής Έπιτροπής έχει ως άκολουθως:

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1. Μυτίδης Γεώργιος: Πάρα πολύ καλός
2. Πασχάλης Κώστας Γ.: Πάρα πολύ καλός
3. Χαραλαμπίδης Θεόδουλος Άντωνίου: Πολύ καλός
4. Χατζηκωνσταντίνου Κωνσταντίνος Άνδρέου: Σχεδόν πολύ καλός.

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Έν συνεχεία ή Έπιτροπή έπελήφθη τής γενικής άξιολογήσεως τών ύποψηφίων, άπάντων δημοσίων υπαλλήλων, και τής συγκρίσεως τούτων μεταξύ των.

Η Έπιτροπή, έξετάσασα έν προκειμένω τὰ ουσιώδη στοιχεία άπό τους Προσωπικούς Φακέλλους και τās Έμπιστευτικές Έκθέσεις τών ύποψηφίων και λαβοϋσα ύπ' όψιν τὰ πορίσματα τής Τμηματικής Έπιτροπής και τήν άπόδοσιν ένός έκάστου τών ύποψηφίων κατά τās ένώπιον τής Έπιτροπής Δημοσίας Ύπηρεσίας συνευτεύξεις, καθως έπίσης και τó γεγονός ότι τó προβλεπόμενον ύπό του οικείου Σχεδίου Ύπηρεσίας πλεονέκτημα, ήτοι μεταπτυχιακόν δίπλωμα ή τίτλον, κατέχουν οί κ.κ. Πασχάλης, Χαραλαμπίδης και Χατζηκωνσταντίνου, έκρινεν ότι επί τή βάσει του συνόλου τών καθιερωμένων κριτηρίων (άξία, προσόντα, άρχαιότης) ό κ. Κώστας Γ. ΠΑΣΧΑΛΗΣ ύπερτερεί τών λοιπών ύποψηφίων, εύρε τουτον κατάλληλον και άπεφάσισεν όπως προαγάγη αυτόν εις τήν μόνιμον (Τακτ. Προϋπ.) θέσιν Προϊσταμένου Ύπηρεσίας Έλέγχου Τιμών και Προστασίας Καταναλωτών άπό 1.4.1982”.

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(“The Commission made its own evaluation of the performance of each candidate during the interviews before it, in the light, also of opinion in this respect of the Director –General of the Ministry of Commerce and Industry. The opinion of the Committee is as follows:

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1. Mytides Georghios: Excellent.
2. Paschalis Costas G: Excellent.

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3. Charalambides Theodoulos Antoniou: Very good.
4. HjiConstantinou Constantinos Andreou: Almost very good.

5 Further the Commission examined the general evaluation of the candidates, who were all public officers, and their comparison between them.

10 The Commission after having examined for this purpose the material facts from the personal files and the confidential reports of the candidates and having taken into consideration the findings of the Departmental Committee and the performance of each candidate during the interviews before the Public Service Commission, as well as the fact that the advantage provided by the relevant scheme of service i.e. post-graduate diploma or title, is possessed by Messrs. 15 Paschalis, Charalambides and Hji Constantinou, decided that on the totality of the established criteria (merit, qualifications, seniority) Mr. Costas G. Paschalis is superior to the remaining candidates, found him suitable and decided to promote him to the permanent (Ordin. Estim.) post of 20 Officer in Charge of the Prices Control and Consumers' Protection Section as from 1.4.1982").

The applicants dispute the validity of the sub judice decision, inter alia, on the following grounds:-

- 25 (a) The Commission failed to give reasons for disregarding the recommendations of the Head of the Department for promotion;
- (b) The interested party lacks the qualification prescribed by the scheme of service;
- 30 (c) The decision is faulty because it was taken on a defective or no inquiry as to the meaning of the scheme of service and the correct facts; and,
- (d) The decision is the product of a misconception of fact.

GROUND (a):

35 Since the establishment of the Republic the manning of the public service was entrusted to the Public Service Commission. The recommendation of a head of department was always considered a most vital consideration not likely to be disregarded —(*Theodossiou v. The Republic*, 2 R.S.C.C. 44).

In *Evangeou v. The Republic*, (1965) 3 C.L.R. 292, at p. 297, Triantafyllides, J., as he then was, said:-

“Had there been made a recommendation by the Head of the Department concerned in relation to the filling in 1963 of the vacancies in question and had in such report a comparison been made between the Applicant and the Interested Parties and had Applicant been described therein as more fit for promotion than those other two candidates, the Commission would normally have been expected to either follow it or give reasons for not doing so”.

The Public Service Law, section 44(3), reads as follows:-

“In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists”.

“Recommendations” (“συστάσεις”) in the context of this section has to be given its popular meaning rather than be taken as being used in any narrow legal or technical sense. It carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post. He has to make an assessment of the suitability of every candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto. (*Georghios Gavriel v. The Republic*, (1971) 3 C.L.R. 186, at p. 199).

The Head of a Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidates to discharge the duties of the post. It is well established that the Public Service Commission has to pay heed to such recommendations and if they decide to disregard them, they have to give reasons for doing so. (See, inter alia, *Lardis v. The Republic*, (1967) 3 C.L.R. 64; *HjiConstantinou v. The Republic*, (1973) 3 C.L.R. 65; *Petrides v. Public Service Commission*, (1975) 3 C.L.R. 284; *Avgi Soteriadou v. The Republic*, (1983) 3 C.L.R. 921).

The opinion of the Head of the Department on the performance of the candidates at the interview falls short of the "recommendations" envisaged by the Law. The performance of a candidate at the interview is a relevant consideration to be taken into account by the Head of the Department as well as by the Commission. Such impression created by a candidate at the interview is not, however, the most safe way of assessing a candidate because, inter alia, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit. (*Triantafyllides and Others v. The Republic (Public Service Commission)*, (1970) 3 C.L.R. 235). The evaluation of a candidate solely on his performance at the interview is tantamount to a complete disregard of the performance of a candidate for promotion during his service. An impression of the personality of a candidate at an interview may, however, be of some assistance, depending on the requirements of the post, but in no way it can be the decisive factor.

In view of the aforesaid I hold that the Head of the Department in this case made no recommendations under s.44(3) of Law No. 33 of 1967.

Reliance was placed by counsel for applicant Mytides on the recommendations on the form of application for promotion to the post in question and in the confidential reports. The recommendations in the confidential reports are general in nature and not specific for the post in question and, therefore, they carry little weight. They are only one of the factors to be taken into consideration in assessing the merits of a candidate.

In view of the aforesaid I find no merit in Ground (a) above.

GROUND (b) & (c):

The qualifications required by the scheme of service run as follows—(Appendix 9):—

35 "Απαιτούμενα Προσόντα:—

- (1) Πανεπιστημιακόν Δίπλωμα ή τίτλος εις τὰ Οικονομικά ή 'Εμπορικά ή Ισότιμον άκαδημαϊκόν προσόν, ή να είναι

Μέλος 'Ανεγνωρισμένου Σώματος 'Επαγγελματικῶν Λογιστῶν ἦτοι:-

- (i) The Institute of Chartered Accountants in England and Wales;
- (ii) The Institute of Chartered Accountants in Scotland; 5
- (iii) The Institute of Chartered Accounts in Ireland;
- (iv) The Association of Certified Accountants;
- (v) The Institute of Costs and Management Accountants,

-ἦ-

οἰουδήποτε ἄλλου Σώματος τὸ ὁποῖον ἤθελεν ἐγκριθῆ 10
ὡς ἰσότιμον ὑπὸ τοῦ 'Υπουργοῦ Οἰκονομικῶν.

- (2) Δεκαετῆς τούλάχιστον πείρα εἰς θέματα σχετιζόμενα μὲ τὸ ἐμπόριον ἢ καὶ τὴν βιομηχανίαν ἐκ τῆς ὁποίας πενταετῆς τούλάχιστον διοικητικῆ πείρα.
- (3) Πολὺ καλὴ γνῶσις τῆς Οἰκονομίας τῆς Νήσου ἰδιαιτέρως 15
δὲ τῶν προβλημάτων τοῦ ἐμπορικοῦ ἢ/καὶ βιομηχανικοῦ τομέως.
- (4) 'Ακεραιότης χαρακτῆρος, ὀργανωτικὴ καὶ διοικητικὴ ἱκανότης, πρωτοβουλία, ὑπευθυνότης καὶ εὐθυκρισία.
- (5) 'Αρίστη γνῶσις τῆς 'Ελληνικῆς καὶ πολὺ καλὴ γνῶσις 20
τῆς 'Αγγλικῆς γλώσσης.
- (6) Μεταπτυχιακὸν δίπλωμα ἢ τίτλος θὰ θεωρῆται πλεονέκτημα".

("Required qualifications:

- (1) University diploma or title in Economics or Commercial 25
subjects or an equivalent academic qualification or to be a Member of a Recognised Body of Professional Accountants i.e.
 - (i) The Institute of Chartered Accountants in England and Wales; 30
 - (ii) The Chartered Accountants in Scotland;

- (iii) The Institute of Chartered Accountants in Ireland;
- (iv) The Association of Certified Accountants;
- (v) The Institute of Costs and Management Accountants,

-or-

- 5 any other body which might be approved as equivalent by the Minister of Finance.
- (2) At least ten years' experience in matters relevant to commerce and/or industry out of which at least five years' administrative experience.
 - 10 (3) Very good knowledge of the economy of the island and especially of the problems of the commercial and/or the industrial sector.
 - (4) Integrity of character, organising and administrative ability, initiative, responsibility and sound judgment.
 - 15 (5) Excellent knowledge of the Greek language and very good knowledge of the English language.
 - (6) Post-graduate diploma or title will be considered as an advantage").

20 Counsel for the applicants strenuously argued that the interested party lacked qualifications No. 1, 2, 3 and 6.

It should be stated that in deciding whether or not the Commission in a given case has conformed with the relevant scheme of service, the Court will not give to such scheme a different interpretation other than that given to it by the Commission, provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question—(*Theodoros G. Papapetrou v. The Republic*, 2 R.S.C.C. 61, at p. 69; *Chr. Petsas v. The Republic*, 3 R.S.C.C. 60).

30 The interpretation and application of schemes of service is within the discretion and power of the Commission. The power of the Supreme Court is limited to reviewing the exercise of their discretion. So long as their decision was one that was reasonably open, both as a matter of construction of the scheme of service and as respects its application to the situation

of the candidates, there is no room for interference, notwithstanding a different opinion on the part of the Court on either of the two subjects—(*Georghiades v. The Republic*, (1967) 3 C.L.R. 653; *Tryfon v. The Republic*, (1968) 3 C.L.R. 28; *Kyriacou v. The Republic*, (1975) 3 C.L.R. 35; *Scarparis v. The Republic*, (1978) 3 C.L.R. 106). 5

The application, however, by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations—(*Athos Georghiades v. The Republic*, (supra), at p. 668). 10

No officer shall be promoted to another office unless he possesses the qualifications laid down in the scheme of service for such office—(Section 44(1)(b) of Law No. 33 of 1967).

The first qualification required, so far as relevant for this case, is:— 15

“1. University diploma or title in commerce or economics or equivalent academic qualification”.

The scheme of service was approved by the Council of Ministers on 16th July, 1981—Decision No. 20.615.

On the same day—16th July, 1981—and by the same Decision 20 three other schemes of service, emanating from the same Ministry, for the post of Director of Commerce, Commercial Officer and Director of Industry were approved. They are exhibits No. 5(c), 5(b) and 6(b), respectively.

In exhibits No. 5(b) and 5(c) the qualifications required are: 25 University diploma or title in commerce, economics or *business administration* or equivalent academic qualification. In exhibit No. 6(b) the required qualification is: University diploma or title in economics or other equivalent academic qualification.

On 29.4.1976 by Decision of the Council of Ministers No. 30 14.883 two schemes of service of the same Ministry were approved for the post of Senior Industrial Officer (exhibit No. 6(a)) and Senior Commercial Officer (exhibit No. 5(a)).

In exhibit No. 6(a) the academic qualification required is: 35 University diploma or title in economics. In exhibit No. 5(a),

however, it is: University diploma or title in commerce, economics or *business administration*. (The underlining of "business administration" is mine).

5 From the above it is plain that commerce, economics and *business administration* are three different qualifications. This view is reinforced by the contents of exhibit No. 13, a letter emanating from the Institute of Administrative Management of England dated 23rd May, 1983, in which it is stated:—

10 "As required by yourself, I have undertaken to provide brief descriptions of each of the areas of learning outlined in you letter.

Economics: This is a study of the production and distribution of wealth, and more to nowadays the study of the problems of price determination.

15 *Commerce*: A study of commerce will encompass all forms of trade—wholesale, retail, import, export, entrepot and all services which exist to carry on a trade. Economic theory is of course going to encroach upon the syllabus of a qualification in commerce, determination of price for example.

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Business Administration: This is a study of information within an organisation, how it should be processed, transmitted, stored and retrieved. It is also concerned with the measurement of performance and the need for continuous review of procedures. Manpower aspects are also covered.

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I hope that those definitions clarify any problems you may have had".

30 "Equivalent academic qualification" in the context it is used in the scheme of service should be read together with the preceding qualification. It cannot be read as meaning a title of any kind, unrelated to economics or commerce. The equivalent academic qualification should be restricted to economics or commerce. The subject remains the same but only the

35 University diploma or title is equated to a non-University equivalent academic qualification. (See *Michael and Another v. Public Service Commission*, (1982) 3 C.L.R. 726).

The interested party is the holder of a Degree of Bachelor of Business Administration of the American University of Beirut.

Only in the minutes of the meeting of the Departmental Board we find a general reference to the qualifications of the candidates and the scheme of service. 5

In Appendix "A", minutes of the meeting of the Departmental Board of 13.11.1981, it is stated that "The Departmental Board, having taken into consideration... the scheme of service.decided unanimously to invite to oral interview the following 8 candidates and not to invite the other 6 candidates as they did not satisfy the approved scheme of service for the post". 10

On 2nd February, 1982, the members of the Commission took knowledge of the report of the Departmental Board, according to which 8 of the candidates possessed the required qualifications, and decided to invite the four recommended by the Departmental Board and Aghissilaos Nicolaides for interview. 15

At the meeting of 18.3.1982—the date of the interviews—no reference was made to the possession of the qualifications required by the scheme of service. At its meeting when the sub judice decision was taken, on 22.3.1982 (Appendix 7), again nothing specific is mentioned about the qualifications prescribed by the scheme of service. 20

The Departmental Board is not a body that takes decisions neither is it vested with power other than the one envisaged in s.36 of the Law that provides for its establishment. The Regulations governing the functions of the Departmental Boards cannot take away the competence of the respondent Commission as provided by Law and they have to be interpreted in such a way as to be *intra vires* and not *ultra vires* the empowering law. 25 30

The competence of the Commission in cases of promotion is regulated by s.44 of the Law whereby under paragraph (b) of subsection (1) thereof, one of the matters to be examined by the Commission is whether a candidate for promotion to another office possesses the qualifications laid down in the scheme of service for that office. Therefore, the conclusion of the Departmental Board regarding the qualifications of the 35

interested party is not binding on the Commission. The Commission has a statutory obligation to inquire and decide for itself this very serious matter which is a sine quo non to any further steps in the process of the exercise of its discretion—
5 —(*Michael and Another v. P.S.C.* (supra)).

As stated in *Photos Photiades & Co. v. The Republic of Cyprus, through the Minister of Finance*, 1964 C.L.R. 102, an administrative authority has a duty to make the reasonably necessary inquiry for the purposes of ascertaining the correct facts to which
10 the relevant legislation is to be applied. The ascertainment of the true factual situation is one of the four necessary steps in the making of an administrative act, as follows: the study and, if necessary, interpretation of the relevant legal provisions; ascertainment of the correct facts; application of the law to
15 the facts; and decision on the course of action.

The Commission has a statutory duty to construe the scheme of service, then ascertain the qualifications of each candidate as a factual situation and finally to apply the scheme of service in this factual situation and decide whether a candidate is
20 under the scheme of service eligible for promotion. These duties cannot be either usurped by or left to the Departmental Board. The ultimate competence and responsibility rest on the Commission.

In the present case, having regard to the qualification No. 1,
25 which is the primary qualification, and the other schemes of service, to which reference was made, as well as the contents of exhibit No. 13, the process of construction, inquiry and fact finding should have been meticulously followed and it should be reflected in the minutes of the meetings of the Commission.
30 The Commission failed to construe the scheme of service; they failed to carry out any or due inquiry as to the qualifications of the interested party. They failed to exercise their discretion. This emerges from the material placed before the Court.

Did the Degree of Bachelor in Business Administration held
35 by the interested party satisfy the first required qualification for the post in question? This question, simple as it appears, is decided by a complex administrative process.

I find, therefore, that the Commission has not conducted

the sufficiently necessary inquiry into a most material aspect of the matter and that, therefore, it exercised its discretion in a defective manner, leading to its decision regarding the promotion of this interested party being wrong in law and in excess and abuse of powers; and, thus, it has to be annulled. 5

It is outside the limits of the jurisdiction of this Court to construe the scheme of service and to state whether the qualification held by the interested party sufficed. The Court should not substitute its own decision for the decision of the Commission. It was upon the Commission to take such a decision. 10

The applicants complain that the interested party does not possess qualifications No. 2, 3 and 6. I may say from now that I find no merit in the allegation that it was not open to the Commission to conclude, as it did, on the additional qualification —post-graduate diploma. I need not, however, express any opinion on qualifications No. 2 and 3 so as not to prejudice the respondent Commission in its new inquiry, neither do I consider pertinent to deal with other grounds on which the validity of the sub judice decision is challenged. 15

In the result the sub judice decision is annulled but in all the circumstances of the case no order as to costs is made. 20

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