

1983 November 5

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNOULLA HADJIANTONI AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case Nos. 358/82, 364/82,
365/82, 368/82).

Administrative Law—Administrative acts or decisions—Presumption of regularity—Public Officers—Promotions—Personal files of candidates before the respondent Commission—It must be accepted that all qualifications of applicant were considered.

- 5 *Public (or Educational Officers)—Promotions—Qualifications—Respondent Commission under no duty to request applicant to produce any qualifications of hers which were not before it.*

- 10 *Educational Officers—Promotions—Headmaster A of Elementary Education—Merit—Promotions—Seniority—It prevails if all other factors are equal—Interested parties superior in merit and recommended for promotion by Head of Department—Therefore seniority of applicant cannot prevail—Mere superiority of applicant over some of the interested parties which is not of a striking nature cannot justify annulment of sub judice promotions.*

- 15 *Public (or Educational Officers)—Promotions—Interview of candidates—Members of respondent Commission—Not required to record in detail what their impressions were as a result of the interview—Angelidou v. Republic (1982) 3 C.L.R. 520 distinguished; Markides v. Educational Service Committee (1983) 3 C.L.R. 750*
20 *followed.*

In these recourses, which were directed against the decision of the respondent to promote the interested parties to the post of Headmaster of Elementary Education, the following contentions were made by Counsel for the applicants:

Counsel for applicant in recourse 358/82 contended:

- (a) That the respondent Commission has disregarded completely the fact that the applicant has followed a course for Teachers of English in the U.K. which ought to have been considered as an additional qualification; 5
- (b) That though the respondent had before it that the applicant followed a course in the U.K. the relevant certificates for this course were not before the Commission and they thus failed to inquire whether she did possess such qualification or not and what its value was; 10
- (c) That her seniority over the interested parties was wrongly disregarded and no cogent reasons were given by the respondent Commission; 15
- (d) That the respondent Commission ought to have kept a proper record as regards the impressions created by the candidates at the personal interviews so that the judicial control of the sub judge decision may be possible; 20

Counsel for applicants in recourses 364/82 and 365/82 mainly contended:

- (a) That the sub judge decision was contrary to Law and in particular section 35(1) and (2) and section 37 of Law 10/69 which provide that promotions ought to be based on merit, qualifications and seniority, i.e. seniority referring to promotion to last post in that contrary to this the respondent Commission wrongly took into account the overall seniority of the candidates to which it gave undue weight. 25 30
- (b) That both applicants were strikingly superior to the interested parties being by far senior and having better merits.

Counsel for applicant in recourse 368/82 contended:

That the respondent Commission acted in abuse of power in that they failed to select the best candidate, 35

having ignored the applicant's substantially greater seniority. Counsel argued that since there was equality of merit between the applicant and the interested parties, special reasoning was required for ignoring such seniority.

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Held, (1) that since the personal files of the applicant were at all relevant times before the respondent Commission and since the presumption of regularity exists, in the absence of evidence to the contrary, it must be accepted that the respondent did consider all the applicant's qualifications that were before it; that in any event the respondent Commission speaks of having considered the qualifications of all candidates, which it "must be taken to have considered them as against the totality of the requirements of the Scheme of Service in relation to each of them and his qualifications". (see *Savvas Petrides v. Republic* (1982) 3 C.L.R. 914 at p. 924); accordingly contention (a) of applicant in recourse 358/82 should fail.

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(2) That the respondent had no duty to inquire into what was not before it, nor did it have any duty to request the applicant to produce any qualifications of hers which were not before it (see *Michanicos v. Republic* (1976) 3 C.L.R. 237 at p. 246); accordingly contention (b) of applicant in recourse 358/82 should fail.

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(3) That all interested parties have followed various in-service post graduate courses (except interested party 21) which, according to the Scheme of Service, constitute an additional qualification; that, further, all interested parties have received higher recommendations to her for promotion, except interested party 7, who ranks as 103 to her No. 97; and that since, therefore, she is not equal to the interested parties her seniority cannot prevail. Moreover ample reasoning can be found in the sub judice decision and all the relevant documents which are before this Court; accordingly contention (c) of applicant in recourse 358/82 should fail.

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(4) That the respondent Commission were not required to record in detail what their impressions were as a result of the interview (*Markides v. Educational Service Committee* (1983) 3 C.L.R. 750 followed; *Angelidou v. Republic* (1982) 3 C.L.R. 520 distinguished); accordingly contention (d) of applicant in recourse 358/82 should, also, fail.

(5) That though the expression "very long service" does appear in the minutes of the sub judice decision, there is nothing contained therein to suggest or imply that undue weight was given to such longer service or that it was considered by the respondent Commission as pertaining to seniority or as anything more than a mere indication of the greater experience of the candidate under consideration, which of course must be regarded as constituting part of the overall picture of merit of each candidate which the respondent Commission had to weigh as a whole; accordingly contention (a) of applicants in recourses 364/82 and 365/82 should fail.

(6) That though applicant in recourse 364/82 is senior to some of the interested parties and his qualifications are more or less the same as the interested parties, the latter are better in merit; that it is, therefore, clear that his seniority cannot come into play all other things not being equal and no special reasoning was required for ignoring it; that, further, all interested parties have been recommended for promotion by their Heads of Department whereas this applicant has not received any such recommendation and the recommendations of a Head of Department should not be lightly disregarded; accordingly the recourse of this applicant should fail.

(7) That though applicant in recourse 365/82, may be found to be somewhat superior to a number of the interested parties, however, such superiority can in no way be described as a striking superiority which is necessary to be established to justify an annulment of the sub judice decision, because mere superiority, which is not of a striking nature, is not sufficient to lead to the conclusion that the appointing authority has acted in excess or abuse of powers; accordingly the recourse of this applicant should fail.

(8) That the overall picture presented by applicant in recourse 368/82 is not such as could establish any striking superiority over the interested parties in the absence of which this recourse should also be dismissed.

Applications dismissed.

Cases referred to:

Petrides v. Republic (1982) 3 C.L.R. 914 at p. 924;
Michanicos v. Republic (1976) 3 C.L.R. 237 at p. 246;

- Angelidou v. Republic* (1982) 3 C.L.R. 520;
Markides v. Educational Service Committee (1983) 3 C.L.R. 750;
Frangos v. Republic (1970) 3 C.L.R. 312 at pp. 335 338, 343;
Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48;
 5 *Laidis v. Republic* (1967) 3 C.L.R. 64 at pp. 75 76;
Nissiotis v. Republic (1977) 3 C.L.R. 388;
Evangelon v. Republic (1965) 3 C.L.R. 292 at pp. 299-300;
Pantellides v. Republic (1969) 3 C.L.R. 480;
Zafirides v. Republic (1980) 3 C.L.R. 140;
 10 *Ierides v. Republic* (1976) 3 C.L.R. 9 at p. 24;
Christou v. Republic (1977) 3 C.L.R. 11 at p. 24;
Ierides v. Republic (1980) 3 C.L.R. 165 at p. 183.

Recourses.

15 Recourses against the decision of the respondent to promote the interested parties to the post of Headmaster A of Elementary Education in preference and instead of the applicants.

- I. Typographos*, for applicant in recourse No. 358/82.
A. Markidas, for applicants in recourses Nos. 364/82 and 365/82.
 20 *L. Lemonaris*, for applicant in recourse No. 368/82.
R. Vrahim (Mrs.), for the respondent.

Cur. adv. vult.

25 A. FOTZIS J. read the following judgment. By the present recourses which have been heard together the applicants seek a declaration of the Court that the act and/or decision of the respondent Commission to promote the interested parties (later to be named in this judgment) to the post of Headmaster A of Elementary Education is null and void and of no legal effect whatsoever.

30 According to the relevant Scheme of Service (Appendix B of the bundle of documents attached to the opposition), the post of Headmaster A of Elementary Education is a promotion post and the qualifications required are:

- 35 1. At least three years service in the post of Headmaster.
 2. At least satisfactory service according to the last two confidential reports, of which at least one to be at the post of Headmaster.

3. Post graduate studies abroad or additional title in educational matters or certificate of successful following of a special course of In-Service Post-Graduate Education organised by the Ministry of Education, are considered as additional qualifications". 5

On the 25th June 1982 the respondent Commission decided, inter alia, as follows (Appendix "D").

"1. *Filling of posts of Headmaster A of Schools of Elementary Education:*

On the 13th April 1982 the Commission called 10
the Headmasters entitled to promotion to the post of Headmaster A and received them for a personal interview on the 7, 8, and 13 May 1982.

The Educational Service Commission having in mind 15
the provisions of the Law and the Schemes of Service and having studied the personal and confidential files of the candidates and having in mind—

- (a) Their merit, qualifications and seniority,
- (b) the recommendations of the Head of Department concerned as these were communicated with his letter 20
No. 365/68/2 and dated 22nd June 1982,
- (c) the service reports,
- (d) the impression which is formed for each of the candidates during the personal interview,

finds that the following Headmasters are the most suitable 25
for promotion to the post of Headmaster A', since they have been recommended by the Head of Department concerned and have made an excellent impression to the Commission during the interview and for the reasons referred to for each one separately:....." 30

(The names of 65 Headmasters follow, with comments regarding each one of them).

"On the basis of the above the Commission unanimously

decides to offer promotion to the above Headmasters to the post of Headmaster A of Schools of Elementary Education as from 1st September 1982. _____”

As against this decision the applicants have filed the present
5 recourses challenging hereby the promotion of forty interested parties; subsequently, during the course of the hearing of the case they were withdrawn as against nineteen interested parties and there remained as against the following interested parties:

1. Georghios Papavassiliou, 2. Zenon Anayiotos, 3.
10 Andreas Iacovou, 4. Christos Hailis, 5. Costakis Alexandrou, 6. Savvas Tyrimos, 7. Christos Papachristodoulou, 8. Elias Petrou, 9. Herodotos Katsounotos, 10. Andreas Alexandrou, 11. Georghios Kountouris, 12. Ioannis Toumazou, 13. Costas Spyrou, 14. Michael Paschalis, 15. Nicos Christoforou, 16. Anastassios Keliris, 17. Andreas Ioannou, 18.
15 Andreas Kyriakides, 19. Andreas Englezos, 20. Zenon Hadjinnicolaou, 21. Maria Pyliotou.

Recourse No. 358/82 is against nine interested parties that is Nos. 1, 2, 6, 7, 8, 9, 11, 12 and 21 as they appear above.

20 Recourse No. 364/82 is against fourteen interested parties, that is Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 as they appear above.

Recourse No. 365/82 is against nineteen interested parties, that is Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
25 16, 17, 18 and 19 as they appear above.

Recourse No. 368/82 is against eight interested parties, that is Nos. 2, 3, 4, 5, 6, 7, 12 and 20 as they appear above.

Applicant in case 358/82, Yiannoulla Hadjiantoni was first
30 appointed as Teacher of Elementary Education in 1953 and was promoted to Headmistress, Elementary Education on 11th September, 1967. She holds a certificate of the Teachers Training College and attended a summer course of English in the U.K.

She has based her recourse on the following grounds of law:

35 1. That the sub judice decision was taken in abuse and/or in excess of power in that the respondent Commission failed to promote the best candidate.

2. That the respondent acted contrary to section 35 of Law 10/69.
3. That the respondent Commission acted illegally and in a discriminatory manner as regards the applicant.
4. That the sub judice decision lacks due or sufficient reasoning. 5

Counsel for this applicant has argued that the respondent Commission has disregarded completely the fact that the applicant has followed a course for Teachers of English in the U.K. which ought to have been considered as an additional qualification. 10

To my mind this ground cannot stand. The personal files of the applicant were at all relevant times before the respondent Commission and since the presumption of regularity exists, in the absence of evidence to the contrary, it must be accepted that the respondent did consider all the applicant's qualifications that were before it. In any event the respondent Commission speaks of having considered the qualifications of all candidates, which it "must be taken to have considered them as against the totality of the requirements of the Scheme of Service in relation to each of them and his qualifications". See *Savvas Petrides v. Republic* (1982) 3 C.L.R. 914 at p. 924. 15 20

It was also argued by counsel for the applicant that the respondent had before it that the applicant followed a course in the U.K., but that the relevant certificates for this course were not before the Commission and that they thus failed to inquire whether she did possess such qualification or not and what its value was. 25

With due respect I find no merit in such argument as the respondent had no duty to inquire into what was not before it, nor did it have any duty to request the applicant to produce any qualifications of hers which were not before it. See *Michanicos v. Republic* (1976) 3 C.L.R. 237 at p. 246. 30

It has further been argued that her seniority over the interested parties was wrongly disregarded and that no cogent reasons were given by the respondent Commission. 35

Indeed she is senior to all nine interested parties by ten years

to Nos. 1, 2 and 21, five years to 6, 7 and 12 and by three years to 8, 9, and 11. Interested parties 1, 2, 6, 7, 8, 9, 12 have also, as she has, 36 marks and 37 marks in their last two annual reports. Interested party 21 is superior in merit having 37
5 marks for both years and interested party 11 has 36 for both years.

From the perusal of the personal files before me it is evident that all interested parties have followed various in-service post graduate courses (except interested party 21) which, according
10 to the Scheme of Service, constitute an additional qualification.

All interested parties have received higher recommendations to her for promotion, except interested party 7, who ranks as 103 to her No. 97.

Since therefore she is not equal to the interested parties her
15 seniority cannot prevail. Moreover ample reasoning can be found in the sub judice decision and all the relevant documents which are before this Court.

Finally as regards the contention of the applicant that the respondent Commission ought to have kept a proper record
20 as regards the impressions created by the candidates at the personal interviews so that the judicial control of the sub judice decision may be possible as held in the case of *Kleri Angelidou v. Republic* (1982) 3 C.L.R. 520, it was stated in the case of *Klitos Markides v. The Educational Service Committee*, (1983) 3 C.L.R.
25 750 at p. 761.

“In my view, however, *Angelidou* case is distinguishable and consequently not applicable, as in that case the respondent Commission, failed to record the subjective
30 opinion and personal knowledge and information which the members of the Commission possessed about the candidates, obviously prior to the interviews. In the present case no such personal element arises; the ‘opinion’ of the members is the impression which they formed during and as result of the interviews and not before them.

35 Clearly the impression of the members of the respondent Commission is one of the factors taken into consideration by them in reaching their decision together with as stated

‘___ merit, qualifications, seniority, the recommendations of the Heads of Department, the service reports ... ___’ etc.

On this issue of taking into account the personal views of the members of a collective organ, relevant is what has been at length said by reference to the Greek Case Law in the case of *Frangos v. The Republic* (1970) 3 C.L.R. 312 at pp. 335–338. Moreover, *Economou* in ‘Judicial Control of Discretion’ (1965) at p. 233 supports the view that the respondent Commission were not required to record in detail what their impressions were as a result of the interviews, which impressions in any event are born out from the material in the file and therefore this argument of the applicant should fail as the sub judice decision is in this respect duly reasoned.”

This recourse should therefore be dismissed.

Applicant in case 364/82, Panayiotis Kezos was first appointed as a teacher of Elementary Education in 1958 and was promoted to Headmaster on 1st September 1968. He holds a certificate of the Teachers Training College, has attended various seminars and an in-service post graduate education course.

Applicant in case 365/82, Kyriakos HadjiSavva was first appointed as a teacher Elementary Education in 1953 and was promoted to Headmaster on 11th September 1967. He holds a certificate of the Teachers Training College.

Both have based their recourses on the following grounds of law:

1. That the sub judice decision is illegal being contrary to s. 37 and s. 35 of Law 10/69.
2. That the sub judice decision was taken in excess and/or abuse of power as the applicants were strikingly superior to the interested parties.
3. That the sub judice decision was taken in excess and/or in abuse of power in that
 - (a) It lacks due or sufficient reasoning.
 - (b) It was taken without due inquiry.

- (c) It was taken under a misconception of law and fact.
- (d) The marking of the last 2 or 3 confidential reports was not made by taking into consideration only the merits of the persons concerned.

5 Their counsel has argued that the sub judge decision is
contrary to Law and in particular section 35(1) and (2) and
section 37 of Law 10/69, that promotions ought to be based
on merit, qualifications and seniority, i.e. seniority referring
10 to promotion to last post and he urged that contrary to this
the respondent Commission wrongly took into account the
overall seniority of the candidates to which it gave undue weight.

Indeed the expression "very long service" does appear in the
minutes of the sub judge decision. However, there is nothing
15 contained therein to suggest or imply that undue weight was
given to such longer service or that it was considered by the
respondent Commission as pertaining to seniority or as anything
more than a *mere indication of the greater experience of the*
candidate under consideration, which of course must be regarded
20 as constituting part of the overall picture of merit of each candi-
date which the respondent Commission had to weigh as a whole.
I would therefore dismiss this ground.

Furthermore it was argued on their behalf that both of them
were strikingly superior to the interested parties, being by far
senior and having better merits.

25 As regards applicant in case 364/82, he was promoted to his
present post on 1st September 1968. He is therefore senior
to interested parties 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13, but
he is junior to interested party 14 who was promoted to Head-
master on the 15th October 1966, and more or less equal in
30 seniority to interested party No. 10 who was promoted on 1st
January 1969.

His qualifications are more or less the same as the interested
parties.

35 However, interested parties 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12
and 13 are better in merit, all having 36 marks and 37 marks
in their last two reports, except No. 13 who has 37 marks in
both his last two reports to the applicant's 36 and 36.

It is clear therefore that his seniority cannot come into play all other things not being equal and no special reasoning was required for ignoring it.

Finally all above interested parties have been recommended by their Heads of Department (see Attachment "F") for promotion whereas the applicant has not received any such recommendation. And it is well established in *Theodossiou v. Republic*, 2 R.S.C.C. p. 44 at p. 48 that 5

"the recommendations of Head of Department..... should not be lightly disregarded. 10

See also *Lardis v. Republic* (1967) 3 C.L.R. 64 at pp. 75-76; and *Omeros Nissiotis v. Republic* (1977) 3 C.L.R. 388 at 397-398.

In view of the above this applicant has to my mind failed to establish any superiority over the interested parties, let alone a striking superiority. From the perusal of the confidential reports and files before me, I have no doubt that it was reasonably open to the respondent Commission to prefer and promote anyone of the interested parties instead of the applicant and his recourse should therefore fail. 15

As regards case No. 365/82, the applicant who was promoted to Headmaster on 11th September 1967, is senior to all interested parties except No. 14 who was promoted on 15th October 1966 to whom he is junior. His qualifications are more or less the same to the interested parties. 20

As regards merit the applicant has 37 marks in his last two reports, the same as interested parties 13, 17, 18, 19 who also have 37 and 37. Interested parties 11 and 14 have 36 and 36 and interested parties 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15 and 16, all have 36 and 37 marks. 25

Finally as regards recommendations applicant ranked as 102 in priority, whereas all interested parties, except No. 7 who was No. 103, ranked higher in priority to him, having received higher recommendations. 30

From the above it is evident to me that the applicant may be found to be somewhat superior to a number of the interested parties, however, such superiority can in no way be described as a striking superiority which is necessary to be established 35

to justify an annulment of the sub judge decision. As stated in *Evangelou v. Republic* (1965) 3 C.L.R. 292 at pp. 299-300:

5 “In my opinion, however, any margin that might be found to exist in favour of Applicant, over the two Interested Parties concerned, could only be described as mere superiority and it could never come anywhere near to being considered as striking superiority; and 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
10 that the appointing authority has acted in excess or abuse of powers. (See Conclusions from the Council of State in Greece 1929-1959 p. 268 and Decision 1406/1954 of the same organ (Reports 1954 p. 1737)”.

This recourse must also fail.

15 Applicant in Case 368/82 was first appointed as Teacher Elementary Education on 1st May 1958 and was promoted to Headmaster on 1st July 1971. He holds a certificate of the Teachers Training College.

He has based his recourse on the following grounds of law:

- 20 1. The respondent Commission acted contrary to law and in excess of power in that
- (a) they failed to select the best candidate,
 - (b) they disregarded the applicant's greater seniority without giving cogent reasons.
- 25 2. The sub judge decision is not duly reasoned and/or the reasoning is defective and/or wrong in law.
3. The respondent Commission acted in abuse of powers as they withheld applicant's promotion relying on extra-legal accusations.

30 Counsel for this applicant has argued that the respondent Commission acted in abuse of power on that they failed to select the best candidate, having ignored the applicant's substantially greater seniority. He argued that since there was equality of merit between the applicant and the interested
35 parties, special reasoning was required for ignoring such senior-

ity, on the basis of *Costas Partelides v. The Republic* (1969) 3 C.L.R. 480, and *Zafirides v. The Republic* (1980) 3 C.L.R. 140.

The applicant who had 36 marks in both his last two reports is inferior in merit to interested parties 2, 3, 4, 5, 6, 7 and 12, who have 36 and 37 marks respectively in their last two reports and to whom he is senior, but is superior in merit only to interested party 20 who has 34 and 36 marks. But interested party 20 is senior to him by nine years. In view of this I fail to find just cause for his seniority to be considered of any importance and this argument should thus be dismissed.

Moreover, all interested parties have received from their Heads of Department far higher recommendations than the applicant who ranked 94, except interested party 7, who was recommended as No. 103; but this interested party is superior in merit. The overall picture presented by this applicant is not such as could establish any striking superiority over the interested parties in the absence of which this recourse should also be dismissed.

On the whole the sub judice decisions were reasonably open to the respondent Commission which exercised its discretion properly and there cannot be found any abuse or excess of power, nor any misconception of Law or fact, nor can it be said that they are contrary to law. Needless to say that even if I might have taken a different decision in some instances, it is not in law possible for an administrative Court to take a course that it might amount to substituting its own discretion to that of the appropriate administrative organ.

Moreover it should not be ignored that in cases of promotion to the higher posts in the hierarchy in the Public Service, the appointing organ has a very wide discretion. (See *Frangos v. The Republic* (1970) 3 C.L.R. p. 312 at p. 343, *Ierides v. The Republic* (1976) 3 C.L.R. p. 9 at p. 24, also *Christou v. The Republic* (1977) 3 C.L.R. 11 at p. 24 and *Ierides v. The Republic* (1980) 3 C.L.R. 165 at p. 183 (F.B.).

For all the above reasons these all four recourses are dismissed but in the circumstances I make no order as to costs.

As regards the other grounds of law on which I have heard no argument or in respect of which no evidence has been produced, I must dismiss them as having been abandoned.

*Recourses dismissed with no order
as to costs.*

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