

1983 June 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS MAKRIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 557/82).

CHRISTOS CHRISTOUDIAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 558/82).

*Public Officers—Appointments and promotions—Schemes of service—
Interpretation and application by appointing organ—Judicial
control—Principles applicable—Schemes of service requiring
very good knowledge of English—Observations in one of con-
fidential reports of the interested party that his knowledge of
English inadequate and his academic qualifications not in them-
selves suggestive of knowledge of English—Incumbent on
the Commission to make further inquiries into the knowledge
by the interested party of the English language.*

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*Public Officers—Appointments and Promotions—Head of Depart-
ment—Duties of—Recommendations—What is connoted by—*

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5 *Recommendations in this case resting exclusively on the impression gained from the interview of the candidates and no evaluation of the overall merits of the candidates—Recommendations abortive and they should have been ignored—Sub judice decision annulled.*

10 *Public Officers—Appointments and promotions—Interview of candidates—Performance at interview—Not the sole consideration bearing on the suitability of a candidate—Shortlisting of candidates suitable for appointment by reference to their performance at the interview only—Therefore one of the applicants was excluded from the final list on the basis of an insufficient inquiry—Sub judice decision annulled.*

15 *Public Officers—Appointments and promotions—One of the applicants having better confidential reports and more senior than the interested party—Both equally qualified—His superiority, therefore, a striking one and no reasons were given for ignoring it—Sub judice decision annulled.*

20 *Administrative Law—Administrative acts or decisions—Reasoning—Self contradictory reasoning—Public officers—Appointments and promotions—Assessment of Public Service Commission that the interested party emerges as the most suitable candidate contradicts the material before them.*

25 The applicants in these recourses challenged the validity of the appointment of the interested party to the post of Registration Officer in the Census Department of the Ministry of Interior. Before making the sub judice appointment the Public Service Commission interviewed 16 candidates in the presence of the Head of Department; and at the end of the interview he singled out four of the sixteen candidates whom he recommended as suitable for
30 appointment subject to the qualification that the interested party was evaluated as coming up best and was recommended for appointment. His evaluation of the merits of the candidates and the recommendations made were based exclusively on the impressions of the Director-General at the interview. He had no personal know-
35 ledge of their abilities, as they were serving in government departments other than his own and did not attempt, in any way, to evaluate their service records, particularly their confidential reports.

After deciding by majority that the interested party had performed best at the interview they selected him for appointment,

again by majority, on the ground that generally he was better compared to the other shortlisted. In making their decision the respondent Commission were guided by the judgment and views of the Head of Department. The confidential reports of applicant Makrides for the three years preceding appointment, were overwhelmingly better compared to those of the interested party and he was senior as well. Also he had at least equal qualifications with the interested party and arguably better. 5

The schemes of service required very good knowledge of English, coupled with capacity to compile clearly and swiftly reports in English; and it was argued on the part of the applicants that the interested party lacked this qualification because in his confidential report for the year 1973 it was stated that his knowledge of English was inadequate to the extent of rendering it difficult for him to make international comparisons. 10 15

Held, after stating the principles governing interference with the interpretation and application of schemes of service by the appointing body:

(1) That since the academic qualifications of the interested party are not in themselves suggestive of knowledge of English and, certainly, cannot in themselves be construed as establishing that the interested party had the knowledge of English envisaged by the schemes of service, it was incumbent, in view of the said observations in the confidential reports, upon the Public Service Commission to make further inquiries into the knowledge of the interested party of the English language; in the absence of further information on the subject of his knowledge, it was not open to them to treat the interested party as possessing the knowledge required by the schemes of service; to compile reports in a foreign language with amenity, is no easy task. It was an important condition of the schemes of service that was misapplied in the case of the interested party. Consequently, both applicants succeed in their contention that the interested party was ineligible for appointment. 20 25 30 35

(2) That in making his recommendations before the Public Service Commission the Head of Department has a duty to make an assessment of the suitability of a 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 in this case the Head of Department manifestly failed to carry out his duties as defined above. He confined his inquiry to impressions gained from the interview of the candidates and rested his recommendations exclusively thereupon. He failed altogether to evaluate the overall merits of the candidates; his recommendations were, therefore, abortive; and they should have been ignored.

Held, further, that the performance of a candidate at an interview is a relevant consideration to which the departmental head, as well as the Commission, may pay due regard. The significance to be attached to the impressions gained at an interview, varies with the administrative requirements of the post and the importance of a candidate's personality for an effective discharge of the duties assigned under the schemes of service. But under no circumstances, can performance at an interview become the sole relevant consideration bearing on the suitability of a candidate for appointment. That would mean writing off the performance of a candidate in the service, the most significant pointer to the merits of a candidate.

(3) That since the Public Service Commission shortlisted the suitable for appointment, exclusively by reference to their performance at the interview, and they made the same error as the Head of Department the complaint of applicant Christoudias that he was excluded from the final list of candidates and, consequently, consideration for appointment on the basis of an insufficient inquiry, is well founded and the fact that the interested party had better confidential reports does not solve the problem; and that once they excluded a candidate on the basis of an insufficient inquiry, the only remedy is to set aside the decision and enable them to inquire into the matter in the manner warranted by law and principles of sound administration.

(4) That the ultimate assessment of the respondent Commission that the interested party emerged as the most suitable candidate contradicts the material before the Commission in view of the better confidential reports and the seniority of applicant Makrides and consequently their reasoning is self-contradictory; that the superiority of Makrides in terms of merit, as reflected in his confidential reports, became striking on

account of his seniority and no reasons at all were given for ignoring this superiority striking as it was; accordingly the sub judice decision must be annulled for this reason too.

Sub judice decision annulled.

Cases referred to:	5
<i>Georghiades v. The Republic</i> (1967) 3 C.L.R. 653;	
<i>Tryfon v. The Republic</i> (1968) 3 C.L.R. 28:	
<i>Kyriacou v. The Republic</i> (1975) 3 C.L.R. 35:	
<i>Scarpatis v. The Republic</i> (1978) 3 C.L.R. 106;	
<i>Lardis v. The Republic</i> (1967) 3 C.L.R. 64;	10
<i>HadjiConstantinou v. The Republic</i> (1973) 3 C.L.R. 64;	
<i>Petrides v. Public Service Commission</i> (1975) 3 C.L.R. 284;	
<i>Gavriel v. Republic</i> (1971) 3 C.L.R. 186 at p. 199;	
<i>Panayiotou and Another v. Republic</i> (1968) 3 C.L.R. 639;	
<i>Duncan v. Republic</i> (1977) 3 C.L.R. 153;	15
<i>Christodoulou and Another v. C.Y.T.A.</i> (1978) 3 C.L.R. 61;	
<i>Stylianou and Another v. Public Service Commission</i> (1980) 3 C.L.R. 11;	
<i>Marathevtou and Others v. Republic</i> (1982) 3 C.L.R. 1088;	
<i>Michanicos and Another v. The Republic</i> (1976) 3 C.L.R. 237 at p. 252;	20
<i>Papadopoulos v. The Republic</i> (1982) 3 C.L.R. 1070.	

Recourses.

Recourses against the decision of the respondents to appoint the interested party to the post of Registration Officer in the Census Department in preference and instead of the applicants. 25

C. *Loizou*, for applicants.

R. *Gavrielides*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 30

PIKIS J. read the following judgment. The applicants in these recourses dispute the validity of the appointment of Nicolaidis, chosen in preference to them, to the post of Registration Officer in the Census Department of the Ministry of the Interior. The events leading up to the appointment of the interested party, will be briefly recapitulated in order to identify the issues in dispute.

The machinery for the filling of the vacant post was moved by Mr. Christofi, Director-General of the Ministry of the Interior, addressing on 25.1.82 a letter to the Public Service Commission to take the necessary steps for the filling of the post. The position, a first entry and promotion post, was advertised in the official gazette on 12.2.82, inviting applications from persons possessing the qualifications envisaged by the scheme of service. Fifty-two persons applied for appointment. The applications were examined by the Public Service Commission on 10.6.82 in order to ascertain whether the applicants possessed the necessary qualifications. After sifting the applications, they decided that nineteen of the applicants possessed the necessary qualifications, while twenty-two applicants were rejected on the ground that they did not possess the requisite qualifications. A further inquiry was deemed necessary into the qualifications of ten applicants. The searches led them to the admission of seven of these applicants and the rejection of three of them. In all, they decided to accept the candidature of twenty-six applicants. The candidates were summoned to an interview; only sixteen of the twenty-six candidates responded to the invitation. They were interviewed during three sessions of the Public Service Commission, held on 27th, 29th and 30th October, 1982. The interviews took place in the presence of Mr. Christofi, who was invited to attend and aid the Commission in its deliberations, presumably in accordance with the provisions of s.44(3) of Law 33/67, making the attendance of a departmental head permissible and his recommendations highly relevant.

At the conclusion of the interviews, Mr. Christofi summed up his impressions of the candidates, gained during the interviews. He singled out four of the sixteen, that he recommended as suitable for appointment subject to this qualification: The interested party Nicolaidis was evaluated as coming up best and was recommended for appointment. The evaluation of the

merits of the candidates and the recommendations made, were based exclusively on the impressions of the Director-General at the interview. He had no personal knowledge of their abilities, as they were serving in government departments other than his own and, did not attempt, in any way, to evaluate their service records, particularly their confidential reports. Having apprised the Commission of his views of the candidates and, his recommendations, he departed, leaving the Commission to deliberate on its decision. 5

There is a detailed record of the deliberations of the Commission, clearly indicating the basis upon which the decision was made. They trod on the lines earmarked by Mr. Chrtstofi and made their shortlist on the basis of the impressions formed at the interview. They shortlisted the four candidates, recommended by the Director-General, for similar reasons, that is, their performance at the interview. It is the case for applicant Christoudias that the shortlist was compiled upon an insufficient inquiry, in that selection was confined to the performance of candidates at the interviews, disregarding other ponderous material, such as confidential reports and other matters bearing on the candidates. 10 15 20

The process of selection thereafter, followed this pattern: The members of the Commission decided by majority that, Nicolaides had performed best at the interview. Then, they recited facts relevant to their merits, as they emerged from their confidential reports and their qualifications and, noted their seniority in the service. In the end, they selected the interested party, again by majority of 4:1, the Chairman dissenting, on the ground that generally he was better, compared to the others shortlisted (γενικά υπερέχει τών άλλων υποψηφίων). In making their decision, they were guided, as they explicitly stated, by the judgment and views of the Director-General. One is apt to get the impression here that they treated the recommendations of Mr. Christofi as deriving from an overall evaluation of the merits of the candidates, as opposed to the limited compass of his recommendations based exclusively on impressions from the interviews. Why they regarded the interested party as coming up best, it is nowhere explained. In fact, the assertion of the Commission here contradicts the facts set out in their minutes. The confidential reports of applicant Makrides for the three years preceding appointment, were overwhelmingly 25 30 35 40

better compared to those of the interested party and, he was senior as well. Also he had at least equal qualifications with the interested party and arguably better. How they concluded that Nicolaides was generally better than Makrides, is a matter of
 5 conjecture, unless they attached to the performance of the candidates at the interviews greater weight than to the other factors bearing on their suitability, listed above.

Grounds propounded for Annulment:

The validity of the decision is questioned upon the following
 10 grounds:-

(a) *Ineligibility of the interested party for appointment.*
 The contention here is that Nicolaides lacked one of the qualifications required by the schemes of service for appointment, namely, very good knowledge of
 15 English, enabling him to compile reports with clarity and swiftness.

(b) *Failure of the Director-General reporting in his capacity as departmental head, under s.44(3) - Law 33/67, to make a proper evaluation of the comparative merits of the candidates.*
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It is evident from the minutes of the Commission embodying his evaluation of the candidates and his recommendations for appointment that he carried out both tasks, exclusively by reference to the performance
 25 of the candidates at the oral interviews.

(c) *Misconception by the Public Service Commission of the facts relevant to the suitability of the candidates for appointment.*

The Public Service Commission shortlisted, like the
 30 Director-General, four of the sixteen candidates for final consideration, on the basis of their impressions of the candidates at the interview. The submission made on behalf of applicant Christoudias is that the process of selection was vitiated on account of exclusion from consideration of salient facts, bearing on the
 35 suitability of candidates, deriving from their service records and other material considerations.

(d) *Abuse of powers on the part of the respondents, arising from their disregard of the striking superiority of applicant Makrides.*

I was invited to hold that Makrides enjoyed striking superiority over Nicolaides, that was disregarded for no good reason. 5

Eligibility of the Interested Party for Appointment:

The schemes of service as noted above, required very good knowledge of English, coupled with capacity to compile clearly and swiftly reports in English. It was argued on the part of the applicants that interested party Nicolaides lacked this qualification, a vital prerequisite for appointment. Consequently, his appointment must be set aside. 10

The interpretation and application of schemes of service is a matter for the appointing body, in the sense that it forms part of their discretionary powers. It must be exercised bona fide and reasonably. The powers of the Supreme Court are 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 schemes 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 (see, inter alia, *Georgiades 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; *Scarpatis v. The Republic* (1978) 3 C.L.R. 106). 15 20 25

The submission that the interested party lacked the requisite knowledge of English, is primarily based on the affirmation of the reporting officer of the interested party, for the year 1973, in the Department of the Ministry of Labour and Social Insurance for Trade Unions, where he served as examiner, that his knowledge of English was inadequate to the extent of rendering it difficult for him to make international comparisons. This assessment is confirmed by the countersigning officer, Mr. Sparsis, the Director-General of the Ministry. This statement, coupled with the absence of any direct statement that the interested party overcame this shortcoming, were facts suggesting lack of knowledge of English, to the extent envisaged by the schemes of service. 30 35

The reply made on this subject by the interested party and the respondents, was that the absence of a similar assertion in subsequent confidential reports, the fact that interested party had private lessons to improve his English, coupled with the final
5 recommendation by the Director-General of the Ministry of Labour and Social Insurance forwarding his application for appointment to the present post, made it reasonably open to the Commission to conclude that he possessed the necessary knowledge of English required by the schemes of service.

10 First, a word about the recommendation submitted by the Director-General forwarding the application of the interested party. Such a recommendation has no specific place in the process of appointment. It is at best an additional testimonial. Unless all the candidates come from the same department, it is
15 of little comparative value. Further, it was not the task of the Director-General of the Ministry of Labour and Soc. Ins. to decide whether Nicolaidis possessed the qualifications for appointment. Nor does he appear to have addressed his mind specifically to the proficiency of the interested party in the
20 English knowledge.

The academic qualifications of the interested party are not in themselves suggestive of knowledge of English and, certainly, cannot in themselves be construed as establishing that the interested party had the knowledge of English envisaged by the
25 schemes of service. His service in the Government might have enabled the interested party to acquire the necessary knowledge but there are indications to the contrary. The assessment of the reporting and countersigning officer for the year 1973, casts doubts not only on the facility of the interested party to write
30 English with clarity and ease but, on his ability to read and comprehend English adequately as well. In the light of these data, it was incumbent, to say the least, upon the Public Service Commission to make further inquiries into the knowledge of the interested party of the English knowledge. In the absence of
35 further information on the subject of his knowledge, it was not open to them to treat the interested party as possessing the knowledge required by the schemes of service. To compile reports in a foreign language with amenity, is no easy task. It was an important condition of the schemes of service that was misapplied
40 in the case of the interested party. Consequently, both applicants succeed in their contention that the interested party was

ineligible for appointment. But that is not the only reason for which the sub judge decision must be set aside. There are other weightier reasons still, that lead to the same conclusion.

The Duties of the Departmental Head - Object of Recommendations:

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Under the system of public administration applicable in Cyprus, the manning of the public service and matters incidental thereto, are entrusted to the Public Service Commission, an independent body. Unlike other countries, appointments in the public service are not made by the departments concerned. That does not of course mean that government functionaries should be excluded from the process of appointing public officers. The Public Service Law, especially s.44(2), provides for their participation and makes their recommendations a factor of distinct importance. In this way, any gaps there may exist, in the knowledge of the Commission, about the requirements of a department and particular posts, are filled by the participation of the departmental head in the process of appointment.

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A departmental head is in a unique position to appreciate the demands of a particular post and the qualifications necessary for the discharge of the duties carried by the post. A series of decisions establishes that the Public Service Commission must attach proper weight to his recommendations and heed them, unless they have reasons to the contrary, to be detailed in the decision of the Commission (see, inter alia, *Lardis v. The Republic* (1967) 3 C.L.R. 64; *Hadjiconstantinou v. The Republic* (1973) 3 C.L.R. 65; *Petrides v. Public Service Commission* (1975) 3 C.L.R. 284).

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Now, what are the duties of a departmental head? He must weigh all factors, set forth by law, bearing on the suitability of the competing candidates for appointment, that is, merits, qualifications and seniority (s.44(2)) - Law 33/67. When the applicants are members of the public service and seek promotion, their service record is of primary importance in discerning their merits, that is, establishing their ability, their performance at work and devotion to duty. The importance of confidential reports is such that one may be precluded from promotion if there is an affirmation in the last two confidential reports that he is unsuitable for promotion (s.44(1)(c)).

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What is connoted by "recommendations", was the subject of discussion in *Georghios Gavriel v. The Republic* (1971) 3 C.L.R. 186, 199. It signifies the duty to make an assessment of the suitability of a 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.

In this case, Mr. Christofi, Director-General of the Ministry of Interior, attending under the provisions of s.44(3), manifestly failed to carry out his duties as defined above. He confined his inquiry to impressions gained from the interview of the candidates and rested his recommendations exclusively thereupon. He failed altogether to evaluate the overall merits of the candidates; his recommendations were, therefore, abortive; they should have been ignored. The performance of a candidate at an interview is a relevant consideration to which the departmental head, as well as the Commission, may pay due regard. The significance to be attached to the impressions gained at an interview, varies with the administrative requirements of the post and the importance of a candidate's personality for an effective discharge of the duties assigned under the schemes of service (see, inter alia, *Milia Panayiotou And Another v. Republic* (1968) 3 C.L.R. 639; *Eleni Eliadou Duncan v. Republic* (1977) 3 C.L.R. 153; *Christodoulou And Another v. C.Y.T.A.* (1978) 3 C.L.R. 61; *Stylianou And Another v. Public Service Commission* (1980) 3 C.L.R. 11 and, *Marathevtou And Others v. Republic* (1982) 3 C.L.R. 1088). But under no circumstances can performance at an interview become the sole relevant consideration bearing on the suitability of a candidate for appointment. That would mean writing-off the performance of a candidate in the service, the most significant pointer to the merits of a candidate.

In my judgment, the recommendations of the Director-General were elliptical, based on an insufficient inquiry, misleading as well. They ought to have been totally disregarded by the Commission.

The Decision of the Public Service Commission:

The Public Service Commission, far from disregarding the defective recommendations of Mr. Christofi, attached considerable importance to them, as it appears from their minutes, as

if they were based on a thorough assessment of the merits of the candidates. In this way, the defect was not remedied. It was perpetuated, leading the Commission astray from their duty to select the candidate most suitable on a consideration of the merits, qualifications and seniority, of the candidates. 5

The Public Service Commission shortlisted the candidates suitable for appointment, exclusively by reference to their performance at the interview. They made the same error as the Director-General. Therefore, the complaint of applicant Christoudias that he was excluded from the final list of candidates and, consequently, consideration for appointment on the basis of an insufficient inquiry, is well founded. On the part of the interested party and respondents, it was submitted that this was a matter of no consequence for, on a comparison of the confidential reports of Christoudias and the interested party, the latter had better reports. That does not solve the problem. I shall not put myself in the position of the administrative organ trusted with the selection of candidates. Once it appears that they excluded a candidate on the basis of an insufficient inquiry, the only remedy is to set aside the decision and enable them to inquire into the matter in the manner warranted by law and principles of sound administration. 10 15 20

This is not the end of the matter for, I am of opinion that the decision is vulnerable to be set aside for yet another reason: The contradictory reasoning of the Commission as to the selection of the interested party and, their failure to give proper weight to the striking superiority of applicant Makrides over the interested party. 25

As it emerges from the minutes of the Commission, they addressed their minds to the confidential reports of the candidates shortlisted, their qualifications and seniority. And, of course, performance at the interview. Their ultimate assessment that, the interested party emerged as the most suitable candidate, contradicts the material before the Commission. It is an erroneous estimate of the material before them. Applicant Makrides was reported upon as "excellent" during the last three years, whereas the interested party was, over two years, reported upon as "very good" and "excellent" only in the last year. Here again, there were differences between the two for, the interested party was reported upon as "excellent" on nine 30 35 40

items, whereas applicant Makrides was reported upon as “excellent” on all eleven items. Consequently, their reasoning was self-contradictory. This state of affairs brings to the fore the observations in *Gava v. The Republic* (1981) 3 C.L.R. 476, 490, 5 that the reasons given in support of the decision of the Commission contradict the material before them, rendering the decision liable to be set aside. It is probable they were led to this result because of the ill-founded recommendations of the departmental head, a factor to which they attached importance for their final 10 selection as well. The superiority of Makrides in terms of merit, as reflected in his confidential reports, became striking on account of his seniority. What constitutes “striking superiority”, was discussed inter alia, in *Pantelis Th. Michanicos And Another v. The Republic* (1976) 3 C.L.R. 237, 252; *Papadopoulos v. 15 The Republic* (1982) 3 C.L.R. 1070 and, *Marathevtou And Others v. The Republic* (1982) 3 C.L.R. 1088. No reasons at all were given for ignoring this superiority of Makrides, striking as it was.

For all the above considerations and for each one of the reasons given above, the decision must be set aside.

20 In the result, the decision is annulled.

Mr. Loizou: I claim costs.

Mr. Gavrielides: I leave the matter to the Court.

COURT: Respondents are adjudged to pay £50.- towards costs of applicants.

25 *Sub judice decision annulled. Respondents to pay £50.- towards costs of applicants.*