

1983 June 18

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
YIANNIS SAFIRIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 445/80).

5 *Public Officers—Appointments and promotions—Evaluation of Candidates interviewed by collective organ such as the Public Service Commission—A subjective process inseparably connected with the persons of which the collective organ concerned is composed at the particular time—Annulment of promotion by Supreme Court upon a recourse—Reconsideration of the matter by the Commission, under a different composition from the one which took the original decision, which decided not to interview the candidates—But took into account their performance at the original interview—Course*
10 *adopted incompatible with requirements of correct functioning of a collective organ and of good administration—Process of selecting for promotion the interested party vitiated by a material irregularity—Annulled.*

Collective organ—Correct functioning—Requirements of.

15 *Good administration—Requirements of.*

20 By means of this recourse the applicant challenged the decision of the respondent Public Service Commission, taken on 12.8.80, to promote the interested party to the post of Occupational Therapist (Psychiatric) as from 1st December 1977. The said decision, which was sub judice in the present proceedings, was reached by the Commission in relation to the filling of the post in question after a previous promotion thereto of the interested party made on 22.9.77 had been annulled by the judgment in a recourse which the applicant in the present case had filed against
25 it. The Public Service Commission which took the above decision on 12th August 1980 was, due to its reconstitution in the

meantime, differently composed from the Public Service Commission which on 22nd September 1977 had initially decided to effect the subsequently annulled promotion of the interested party to the post concerned; and at its meeting on 12.8.80, when the new sub judge decision was taken the Commission, after deciding not to interview the candidates, took into account the performance of the applicant and of the interested party at the interviews on 22nd September 1977 as a material factor militating in favour of the selection for promotion of the interested party instead of the applicant.

Held, that the evaluation of a candidate, when interviewed by a collective organ such as, in this case, the Public Service Commission, is necessarily a subjective process inseparably connected with the persons of which the collective organ concerned is composed at the particular time; that, therefore, since the respondent Commission decided not to interview the candidates on the 12th August 1980 it could not, in the proper exercise on that occasion of its relevant powers, use, as one of the criteria for selecting for promotion the interested party, the impressions regarding the candidates - including the applicant and the said interested party - which were formed at interviews of the candidates by a differently composed Commission on the 22nd September 1977 and which were recorded then in the minutes of the Commission; that, consequently, the respondent Commission has on the 12th August 1980 adopted a course which was not open to it in the proper exercise of its relevant powers, in that it was incompatible with the requirements of the correct functioning of a collective organ and of good administration generally, with the result that the process of selecting for promotion the interested party is vitiated by a material irregularity and has to be annulled on this ground, without there being necessary to deal with any other reason for its annulment which has been put forward by counsel for the applicant.

Sub judge decision annulled.

Cases referred to:

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

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Occupational Therapist (Psychiatric) in preference and instead of the applicant.

M. Christophides, for the applicant.

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

E. Efstathiou, for the interested party.

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Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission to promote K. Koukouris (to be referred to hereinafter as the "interested party")
10 to the post of Occupational Therapist (Psychiatric) as from 1st December 1977. This promotion was published in the Official Gazette of the Republic on 19th September 1980.

The said decision, which is sub judice in the present proceedings, was reached by the Commission in relation to the filling of
15 the post in question after a previous promotion thereto of the interested party had been annulled by the judgment in a recourse which the applicant in the present case had filed against it (see *Zafirides v. The Republic*, (1980) 3 C.L.R. 140).

It is pertinent to quote, at this stage, the following passages
20 from the judgment of A. Loizou J. in the *Zafirides* case, *supra* (at pp. 147, 148):

"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
25 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 for appointment or promotion to the post in question. Also
30 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 to suggest clearly a comparison with, or if that amounted to a
35 preference as against, the other candidates.

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. 5

For all the above reasons the sub judice decision is annulled on the ground of lack of due reasoning as on account of its circumstances same could not be ascertained from the material in the file". 10

The decision for the promotion which was annulled as above had been reached by the Public Service Commission on 22nd September 1977.

After the delivery of the judgment in the *Zafirides* case, supra, the respondent Commission, at its meeting on 17th April 1980, decided that the interested party should be notified that he reverted to his previous post of Assistant Occupational Therapist and that the matter of filling the thus vacated post of Occupational Therapist would be re-examined later. 15 20

It is indisputable common ground that the Public Service Commission which took the above decision on 17th April 1980 was, due to its reconstitution in the meantime, differently composed from the Public Service Commission which on 22nd September 1977 had initially decided to effect the subsequently annulled promotion of the interested party to the post concerned. 25

As it appears from the relevant minutes of the respondent Commission, on 12th August 1980, when it re-examined the filling of the post in question it had before it written advice by counsel for the Republic (who had appeared in the previous proceedings, that is the *Zafirides* case, supra, and who, also, has appeared for the respondent in the present case) in which it was stated that the candidates should be interviewed once again. The Chairman of the Commission stated, however, that after discussing the matter with the Attorney-General of the Republic the latter had advised orally that the candidates should not be interviewed afresh and that they should be evaluated on the basis of the material which existed at the time when the earlier, 30 35

and later annulled by the Supreme Court, decision to promote the interested party was taken.

5 Then the Commission proceeded to hear the views about the candidates of the Director of the Department of Medical Services and of the Director of the Psychiatric Institutions, who referred to, among other things, the performance of the candidates when interviewed by the Commission on 22nd September 1977.

10 Particularly the Director of Psychiatric Institutions stated that he remembered well that at the interviews in question the performance of the applicant was much inferior to that of the interested party; and as it is recorded in the minutes of its meeting on 12th August 1980 the Commission took special notice of what was stated at that meeting, as aforesaid, about the performance of the candidates when interviewed on 22nd September 15 1977 by the Commission.

Then, the Commission proceeded to record in its said minutes of 12th August 1980 that in making on that date its evaluation of the candidates it took into account, also, the impression formed by the Commission when the candidates had been interviewed previously, as such impressions are to be found in the minutes of the meeting of the Commission on the 22nd September 20 1977; and as it can be seen from such minutes, which are quoted in the judgment in the *Zafirides* case, supra (at pp. 143, 144), the Commission on 22nd September 1977 found that the 25 interested party, together with another candidate who is not involved in the present proceedings, were the best candidates.

It follows, from all the foregoing, that at its meeting on 12th August 1980 the Commission took into account the performance of the applicant and of the interested party at the interviews on 30 22nd September 1977 as a material factor militating in favour of the selection for promotion of the interested party instead of the applicant.

As has already been stated in this judgment the composition of the Commission on the 22nd September 1977 was different 35 from the composition of the Commission on the 17th April 1980 and, later, on the 12th August 1980 when the now sub judice decision to promote the interested party was reached.

In my opinion the evaluation of a candidate, when interviewed by a collective organ such as, in this case, the Public Service Commission, is necessarily a subjective process inseparably connected with the persons of which the collective organ concerned is composed at the particular time. 5

In my view, therefore, since the respondent Commission decided not to interview the candidates on the 12th August 1980 it could not, in the proper exercise on that occasion of its relevant powers, use, as one of the criteria for selecting for promotion the interested party, the impressions regarding the candidates - 10 including the applicant and the said interested party - which were formed at interviews of the candidates by a differently composed Commission on the 22nd September 1977 and which were recorded then in the minutes of the Commission.

Consequently, the respondent Commission has on the 12th 15 August 1980 adopted a course which was not open to it in the proper exercise of its relevant powers, in that it was incompatible with the requirements of the correct functioning of a collective organ and of good administration generally, with the result that the process of selecting for promotion the interested party is 20 vitiated by a material irregularity and has to be annulled on this ground, without there being necessary to deal with any other reason for its annulment which has been put forward by counsel for the applicant.

So, this recourse succeeds; but, in the circumstances, I will 25 make no order as to its costs.

Sub judice decision annulled. No order as to costs.