

1983 September 16

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHARIS,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 74/82).

*Administrative Law—Annulment of administrative decision—
Reconsideration of the matter by administrative organ—Material
that can be taken into consideration.*

5 *Public Officers—Promotion—Head of Department—Recommendations*
—Clear and unambiguous recommendation of Head of Depart-
ment in favour of interested party disregarded by Public Service
Commission which relied on confused and unsatisfactory material
presented by the confidential reports—Reasons for disregarding
10 *such recommendations not clear and succinct—Sub judice promo-*
tions annulled for lack of due reasoning.

Public Officers—Confidential reports—Prepared by different reporting
officers—Weight—Countersigning officer disagreeing with
reporting officer—Confidential report rendered of no value.

15 The applicant in this recourse challenged the validity of the
decision of the Public Service Commission taken on 23.11.1981,
to promote to the post of Agricultural Officer 2nd Grade the
four interested parties in preference and instead of himself.
The sub judice decision was the result of reconsideration by the
respondent Commission of its earlier decision of 27.5.1978,
20 which was annulled by the Supreme Court. In making the
sub judice promotion the respondent Commission took into
consideration the facts which existed at the time of the original
decision. It, also, took into consideration the recommendation
of the Head of Department who graded applicant fourth in

line suitable for promotion and comparing him with interested party Iacovides he expressed clear preference to the applicant having stated "that he was a very good officer, he possessed an additional academic qualification and was leading in seniority"; and that, also, interested party Iacovides and applicant "are considered as very good officers but on the basis of the whole criteria" applicant is better. The respondent Commission decided to disregard the recommendations of the Head of Department in favour of applicant having observed that "generally the confidential reports at the material time present the applicant inferior to the interested party Iacovides" and that this interested party "surpasses in qualifications the applicant".

As far as the confidential reports on the applicant for the years 1975 and 1976 were concerned the countersigning officer disagreed with the observations of the reporting officer and the Head of Department went to the extent of writing to the Commission on 24.2.1976 that the evaluation of the reporting officer of the performance and qualities of the applicant was unfair from all points of view and it had to be substituted with the words "very good". The confidential report of applicant for the year 1977 was prepared by a different reporting officer, than the one who reported for the years 1974, 1975 and 1976. The 1977 report rated applicant with 3 "excellent" and 7 "very good". The relevant report of interested party Iacovides for 1977 rated the latter with 4 "Excellent" and 6 "very good" and it was prepared by a different reporting officer than the one who reported for applicant.

Counsel for the applicant mainly contended:

- (a) That the respondent Commission was labouring under a misconception of law whilst reconsidering on 23.11.81 its earlier decision of 27.5.1978, which was annulled by the Court, as it inquired into, or accepted, facts which did not exist at the time of the original decision.
- (b) That the disregard of the recommendation of the Director of Agriculture by the respondent Committee without clear reasoning amounted to abuse of power.

The facts referred to in (a) above related to the recommendations of the Head of Department.

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Held, (1) that once the decision was annulled and the respondent had to reconsider the case it was perfectly legitimate for them to take into account all facts which existed at the time of the original decision irrespective of whether the decision annulled was in effect based on such facts or not, and they were not bound to base their new decision exclusively on the facts and circumstances on which the original decision was based; (see *Kyprianides v. Republic* (1966) 3 C.L.R. 653 at p. 660); that the Head of Department having been properly instructed on the Law applicable in the circumstances, evaluated the services of the candidates as he did, having in mind facts in connection with the services of the candidates which existed at the time of the original decision; that it was quite proper for the Commission to take into consideration such evaluation by the Head of Department *inspite of the fact that no such evaluation was before it when the original decision was taken once the evaluation by the Head of Department who was the same person on both occasions, was based on facts existing at the time the original decision was taken "irrespective whether the decision annulled was in effect based on such facts or not"*, accordingly contention (a) should fail.

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(2) That the recommendation of a Head of Department and especially so in cases where specialized knowledge and ability are required for the performance of certain duties, and the present case falls within such category, is a most vital consideration which should weigh with the P.S.C. in coming to a decision; that if the P.S.C. comes to the conclusion not to follow the recommendations in question the reasons for taking such an exceptional course should be clearly recorded in the relevant minutes of the P.S.C.; that the confidential reports, of the applicant for the years 1975 and 1976 have created an unsatisfactory state of affairs rendering their value next to nil so that no administrative organ can depict therefrom with the required certainty the real picture of the merit of the candidate concerned; that the latest confidential reports (for 1977) of the applicant and the interested party Iacovides are almost similar taking into consideration the fact that they were submitted by different reporting officers (see *Aristotelous v. Republic* (1974) 3 C.L.R. 321 at pp. 325-326); that the recommendations made by the Head of Department in the instant case were clear and unambiguous; that as against the confused and unsatisfactory

material presented by the confidential reports the P.S.C. had before it the clear recommendations of the Director; that in the circumstances it was not open to it to disregard them as they had no other solid soil to step on; and that, therefore, this Court cannot subscribe, to their reasoning, which is not quite clear and succinct; accordingly the recourse will succeed in respect of interested party Iacovides for lack of due reasoning. 5

Promotion of interested party Iacovides annulled. Otherwise recourse dismissed. 10

Cases referred to:

- Demetriou & Sons v. Republic* (1968) 3 C.L.R. 444;
Christodoulidou v. Republic (1968) 3 C.L.R. 57;
Kyprianides v. Republic (1966) 3 C.L.R. 653; affirmed on appeal (1970) 3 C.L.R. 176; 15
Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48;
Evangelou v. Republic (1965) 3 C.L.R. 292;
HjiGeorghiou v. Republic (1975) 3 C.L.R. 477 at p. 483;
Aristotelous and Another v. Republic (1974) 3 C.L.R. 321 at pp. 325-326; 20
Demosthenous v. Republic (1973) 3 C.L.R. 354;
HjiGeorghiou v. Republic (1974) 3 C.L.R. 436;
Andreou v. C.B.C. (1975) 3 C.L.R. 647;
Papazachariou v. Republic (1972) 3 C.L.R. 86;
Michanicos v. Republic (1976) 3 C.L.R. 237; 25
Phylaktou v. Republic (1973) 3 C.L.R. 445;
Georghiades and Others v. Republic (1967) 3 C.L.R. 656 at p. 666;
HjiSavva v. Republic (1972) 3 C.L.R. 174 at p. 205;
Petrides v. Republic (1983) 3 C.L.R. 216. 30

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Agricultural Officer 2nd Grade in preference and instead of the applicant.

- A. *Haviaras*, for the applicant. 35
 R. *Gavrielides*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugnes, by means of the present recourse, the decision of the Public Service Commission, published in the Official Gazette of the Republic under No. 1749 dated 22.1.1982, whereby the
 5 four interested parties referred to in this recourse, were in preference to the applicant, promoted and/or seconded to the post of Agricultural Officer 2nd Grade, with retrospective effect as from 15.6.1978 as follows:

- 10 Int. P. (a) (Charalambos Ipsarides)
 promoted to perm. (Dev.) post
- Int. P. (b) (Iacovos Yiakoumettis)
 seconded to temp. (Dev.) post
- Int. P. (c) (Georghios Xistouris)
 seconded to temp. (Dev.) post
- 15 Int. P. (d) (Andreas Iacovides)
 seconded to temp. (Dev.) post

The aforesaid decision of the P.S.C. was taken on 23.11.1981 (vide appendix 3 to the opposition) and was published in the Official Gazette of the Republic on 22.1.1982, having also been
 20 communicated to the applicant by letter dated 28.1.1982 (vide red 43 in the personal file of the applicant—ex. 1A).

This decision was the result of reconsideration by the P.S.C. of its earlier decision of 27.5.1978 which was annulled by the Court in cases: *Iacovides v. Republic* (1981) 3 C.L.R. 305
 25 and *Koudounas v. Republic* (1981) 3 C.L.R. 46, on a common ground, notably the exclusion of the applicants in both aforesaid cases from promotion and/or secondment in the post of Agricultural Officer 2nd Grade in spite of their selection by the P.S.C. in the first place, due to the contents of an adverse report from
 30 the Central Information Service, concerning the loyalty of the said applicants; it may as well be added here that in neither of the said two cases did the Court deal with any other issue having accepted submission of counsel “not to deal with the qualifications and/or with the comparison between the interested
 35 parties and the applicant” (vide *Koudounas* case—supra—at p. 55, lines 38–39).

The Scheme of Service for the post of Agricultural Officer 2nd Grade, which is a promotion post, appears in Appendix 1, attached to the opposition.

Particulars of the service of the applicant and the interested parties with the Government, as well as their respective qualifications, appear in Enclosure No. 4 attached to the opposition.

In connection with Government Service it may be noted:

- (i) that the applicant was appointed in the temporary post of Assistant Agricultural Officer as early as 15.8.1964 whilst all four interested parties were so appointed on 1.9.1965; 5
- (ii) that the applicant as well as all the interested parties were holding the permanent post of Assistant Agricultural Officer as from the same date (1.6.1969); 10
- (iii) that the promotion of interested party under (a) above to the permanent post of Agricultural Officer 2nd Grade as from 15.6.1978, and the secondment of the remaining interested parties to the temporary post of Agricultural Officer 2nd Grade as from 15.6.1978, is the result of the sub judice decision of the P.S.C. by virtue of which all the interested parties were promoted and/or seconded as above in preference to the applicant who thus remained in the post he was holding prior to this decision i.e. the permanent post of Assistant Agricultural Officer. (It should be noted that the title of this latter post was by virtue of the provisions of Law 20/81, replaced by the title "Agricultural Officer", as from 1.1.1981). 15
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The reconsideration by the P.S.C. of its earlier decision as aforesaid, was effected in two meetings held by the Commission on 21.10.1981 and 23.11.1981 respectively; the relevant minutes of these meetings appear in Appendices 2 and 3 attached to the opposition. 30

At the meeting of the P.S.C. held on 21.10.1981 the Director of the Department of Agriculture who was present (vide Appendix 2 to the opposition) made his recommendations about all candidates grading the applicant after interested parties (a) (b) and (c) as fourth in line suitable for promotion; comparing the applicant with interested party (d) namely Andreas Iacovides, the Director expressed his preference to the applicant giving reasons for his opinion. I shall have the 35

opportunity of reverting to the recommendations of the Director later on in the present judgment.

3 The P.S.C. reached its decision on 23.11.1981 (vide Appendix
3 to the opposition), the sub judge decision, which was published
5 in the Official Gazette of the Republic under No. 1749 dated
22.1.1982, and communicated to the applicant by letter dated
28.1.1982 (vide: red 43 in ex. 1A); by virtue of this decision all
four interested parties were promoted and/or seconded, as
10 stated at the beginning of the present judgment whilst the
applicant was neither promoted nor seconded.

The applicant obviously feeling aggrieved, filed the present
recourse praying for a declaration of this Court to the effect
that the decision in question is "null and devoid of any legal
effect".

15 The grounds of Law on which the present application is based
are thus stated:

- 20 "1. The act and/or decision impugned was reached in contra-
vention of the provisions of the Constitution, the General
Principles of Administrative Law and the provisions of
the Public Service Law and/or in excess or abuse of power.
2. The respondents did not exercise properly their duty,
emanating from the Law and the case law, to select the
most suitable candidate.
- 25 3. The respondents did not take into consideration and/or
did not assess correctly the seniority, qualifications and
experience of the applicant.
4. By appointing and/or promoting the interested parties
instead of the applicant (the respondents) failed to exercise
properly their discretionary powers.
- 30 5. The act impugned is not sufficiently reasoned and/or
the reasoning thereof is insufficient and/or defective.
- 35 6. The act impugned was reached in circumstances
amounting to misconception of facts and/or wrong
assessment of the existing actual state of facts in parti-
cular with the qualifications and the reports of the candi-
dates".

The respondent Public Service Commission in its opposition maintains that "the decision impugned was taken lawfully on the basis of all facts and circumstances of this case and in the course of the correct exercise of its discretionary powers".

Together with the opposition the following documents were appended thereto and/or produced shortly after the filing of the opposition. 5

- A. Copy of the Scheme of Service of the post of Agricultural Officer 2nd Grade (Appendix 1)
- B. Copy of the minutes of the meeting of the P.S.C. held on 21.11.1981 (Appendix 2) 10
- C. Copy of the minutes of the meeting of the P.S.C. held on 23.11.1981 (Appendix 3)
- D. Table showing particulars of the Govt. Service and qualifications of the applicant and the interested parties (Enclosure No. 4) 15

Pursuant to the directions of this Court the parties filed written addresses; on 31.3.1983 when this case was fixed for clarification and evidence, learned counsel for applicant stated that he was neither calling any evidence nor did he wish to add anything to the written address (including the written address in reply) already filed on behalf of the applicant. Learned counsel for the respondent Commission confined himself in producing the files (a) of Confidential Reports (b) Personal files, of the applicant as well as those of all four interested parties which were marked as follows: 20 25

<i>Name</i>	<i>File of Conf. R.</i>	<i>Personal file</i>	
Applicant	Ex. 1	Ex. 1A	
Int. P. (a) (Charalambos Ipsarides)	Ex. 2	Ex. 2A	30
Int. P. (b) (Iacovos Yiakoumettis)	Ex. 3	Ex. 3A	
Int. P. (c) (Georghios Xistouris)	Ex. 4	Ex. 4A	
Int. P. (d) (Andreas Iacovides)	Ex. 5	Ex. 5A	

The complaints of the applicant set out in the present recourse, examined in the light of his written address, may be conveniently grouped mainly under two heads as follows: 35

A. Misconception of Law:

The respondent P.S.C.—it is maintained—was labouring under

a misconception of law whilst reconsidering on 23.11.1981 its earlier decision of 27.5.1978 (the latter was annulled by the Court) as it inquired into, or accepted, facts which did not exist at the time of the original decision: the recommendations of the Director of the Department of Agriculture before the respondent Commission on 21.11.1981—it was submitted— which were at variance with his recommendations of 17.3.1978, as regards the applicant, constituted in effect new material not existing at the time of the original decision.

10 B. Abuse of Power:

It was submitted by learned counsel for applicant, that the disregard of the recommendation of the Director of Agriculture by the respondent Committee without clear reasoning amounted to abuse of power; in spite of the fact—he argued—that at the meeting of the P.S.C. held on 21.10.1981, the Director in his recommendations graded applicant fourth in line suitable for promotion and comparing him with interested party (d) namely Andreas Iacovides expressed clear preference to the applicant, yet the respondent Commission failed to adopt such a recommendation of the Director without stating clearly its reasons for the disregard of the recommendation in question.

I shall now proceed to examine the complaints of the applicant in the order they have been grouped above:

A. Misconception of Law

25 It is well established principal of Administrative law that a decision taken under a misconception of Law “vitiates the administrative act” (*Demetriou & Sons v. Republic* (1968) 3 C.L.R. 444).

30 “A decision taken under a misconception of law amounts to a decision without proper legal basis; it is therefore null and void” (*Christodoulidou v. Republic* (1968) 3 C.L.R. 57).

The legal basis in cases such as the present one is to be found in the case of *Pantelakis Z. Kyprianides v. Republic* (1966) 3 C.L.R. 653 (affirmed on appeal (1970) 3 C.L.R. 176) where at p. 660 my brother judge L. Loizou J. stated the following:

“I am of the view that once the decision was annulled and the Respondent had to reconsider the case it was perfectly

legitimate for them to take into account all facts which existed at the time of the original decision irrespective of whether the decision annulled was in effect based on such facts or not, and they were not bound to base their new decision exclusively on the facts and circumstances on which the original decision was based". 5

Let us now examine the material taken into consideration by the P.S.C. and the allegations of applicant in connection with matters taken into consideration by the Commission, which ought not to have been so taken. 10

On mere perusal of the minutes of both meetings of the P.S.C. (Appendices 2 and 3) one will notice that the P.S.C. was well conversant with the legal position applicable in the circumstances and on repeated occasions they have directed their minds properly to the material which ought to have been taken into considerations: 15

Thus at page 3 (paragraph 3) of Appendix 2 we read:

"The Commission.....examined all the elements before it, which were in force at the material time....."

Again at page 2 (paragraph 2) of Appendix 3 we read: 20

"In conclusion the Commission, having examined the elements at the material time.....".

The complaint of the applicant in this respect is limited to the recommendations of the Director of the Department of Agriculture; it is maintained that at the meeting of the P.S.C. on 17.3.1978 the applicant was graded "first" by the Director (reference is made to the recommendation of the Director appearing at p. 50—lines 10 to 15—of *Koudounas* case—supra) whilst at the meeting of 21.11.1981 he was graded by the Director "fourth" (Appendix 2 page 2). 25 30

I have considered the recommendations of the Director made on 17.3.1978, as they appear not only in *Koudounas* case (supra) but in red 33D of ex. 1A as well, and I hold the view that the Director never graded the applicant as "first"; in his said recommendation, the Director simply referred the names of eleven candidates whom he considered "as the best" compared with the remaining; there is nothing on record indicating that the 35

Director evaluated each one of the candidates and compared them between themselves; he simply distinguished them from the remaining.

5 It is true, though, that at the meeting of the P.S.C. held on 21.11.1981, the Director evaluated the services of the candidates and graded the applicant fourth in line after interested parties (a) (b) and (c); the said evaluation of the director appears at page 2 of Appendix 2; and it is significant to note what is stated in the first paragraph thereof immediately before the recom-
10 mendations of the Director:

15 “Υπό τὸ φῶς τῶν ἀνωτέρω καὶ λαβῶν ὑπ’ ὄψιν ἐπίσης τὰ στοιχεῖα, τὰ ὁποῖα ἴσχυον κατὰ τὸν οὐσιώδη χρόνον, ὅτε ἐλήφθη ἡ ἀκυρωθεῖσα ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου ἀπόφασις τῆς προηγουμένης Ἐπιτροπῆς, ὁ Διευθυντῆς τοῦ Τμήματος διετύπωσε τὰς ἀκολουθοῦσας κρίσεις καὶ συστάσεις”.

20 (“In the light of the above and having taken also into consideration the facts which existed at the material time when the decision of the previous Commission annulled by the Supreme Court was taken, the Head of the Department expressed the following opinion and recom-
25 mendations”).

30 From the above extract of the minutes, as well as from the beginning of the record in question (vide page 1 of Appendix 2) it is abundantly clear that the Director having been properly instructed on the Law applicable in the circumstances, evaluated the services of the candidates as he did, having in mind facts in connection with the services of the candidates which existed at the time of the original decision; and it was quite proper for the Commission to take into consideration such evaluation by the Director in spite of the fact that no such evaluation was before it when the original decision was taken once the evaluation by the Director, who was the same person on both occasions, was based on facts existing at the time the original
35 decision was taken “irrespective whether the decision annulled was in effect based on such facts or not”. (Vide *Kyprianides v. The Republic*—supra).

Therefore, the complaints of the applicant, grouped under the above head, fail and are accordingly dismissed.

I shall now proceed to examine the complaints grouped under head (B) above:

It was submitted by counsel for applicant, that the disregard of the recommendations of the Director of Agriculture by the respondent Commission without clear reasoning amounted to abuse of power. 5

The legal position on this subject was authoritatively stated as early as 1961 by the then Supreme Constitutional Court in the case of *Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 48 (letters D-H): 10

“In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where specialized knowledge and ability are required for the performance of certain duties, is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded. If the Public Service Commission is of the opinion that for certain reasons such recommendation cannot be adopted then as a rule such Head of Department or other officer concerned should be invited by the Public Service Commission to explain his views in order that the Public Service Commission may have full benefit thereof, a course which has not been followed in this case. 15 20 25

If, nevertheless, the Public Service Commission comes to the conclusion not to follow, the aforesaid recommendation it is to be expected for the effective protection of the legitimate interests, under Article 151 in conjunction with Article 146 of the Constitution, of the candidates concerned, that the reasons for taking such an exceptional course would be clearly recorded in the relevant minutes of the Public Service Commission. Failure to do so would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power”. 30 35

In the case under consideration it is clear from the minutes

of the meeting of the P.S.C. held on 21.10.1981 (Appendix 2 para. 2) that the Head of the Department i.e. the Director of Agriculture in his recommendation before the P.S.C. graded applicant fourth in line suitable for promotion and comparing
 5 him with interested party (d) namely Andreas Iacovides expressed clear preference to the applicant; thus in paragraphs 6 and 8 of Appendix 2, page 2 we read the following:

10 “ Ὡς τέταρτον εἰσηγήθη τὸν κ. Γεώργιον Χαρήν (applicant) ὁ ὁποῖος ὡσαύτως ἦτο πολὺ καλὸς ὑπάλληλος, διέθετεν ἐπιπρόσθετον ἀκαδημαϊκὸν προσόν καὶ προηγεῖτο εἰς ἀρχαιότητα τῶν ἄλλων.

15 Ὁ κ. Ἀνδρέας Ἰακωβίδης (interested party-δ) θεωρεῖται πολὺ καλὸς ὑπάλληλος. Ἐχει καὶ αὐτὸς ἐπιπρόσθετον προσόν πλὴν ὅμως θεωρεῖται ὡς κατώτερος τῶν κ.κ. Ὑψαρίδη, Ξυστούρη καὶ Γιακουμεττή. Οἱ κ.κ. Ἰακωβίδης (interested party-δ) καὶ Χαρήν (applicant) θεωροῦνται ὡς πολὺ καλοὶ ὑπάλληλοι, ἀλλὰ ἐν τῷ συνόλῳ τῶν κριτηρίων εἶναι καλύτερος ὁ κ. Χαρήν (applicant).

20 (“As fourth he recommended Mr. Georghios Charis (applicant) who was also a very good officer, possessed an additional academic qualification and preceded the others in seniority.

25 Mr. Andreas Iacovides (interested party-d) is considered a very good officer. He also has an additional qualification, but he is considered as inferior to Messrs. Ipsarides, Xistouris and Yiakoumettis. Messrs. Iacovides (interested party-d) and Charis (applicant) are considered as very good officers, but on the totality of the criteria Mr. Charis (applicant) is better”.

30 The P.S.C. in arriving at the sub judice decision recorded its reasons in preferring interested party Iacovides from the applicant as follows:

35 “ Ἡ Ἐπιτροπὴ ἐν προκειμένῳ ἐξήτασε μὲ ἰδιαιτέραν προσοχὴν τὴν περίπτωσιν τοῦ κ. Γεωργίου Χαρήν (applicant) ὁ ὁποῖος ἔχει συστηθῆ ὑπὸ τοῦ Διευθυντοῦ τοῦ Τμήματος διὰ προαγωγὴν καὶ παρετήρησεν ὅτι αἱ ἐν γένει περὶ αὐτοῦ Ἐμπιστευτικαὶ Ἐκθέσεις (κατὰ τὸν οὐσιώδη χρόνον) παρουσιάζουν αὐτὸν κατώτερον τοῦ κ. Ἰακωβίδη (interested party-δ).

Ἡ Ἐπιτροπὴ παρατήρησε ὡσαύτως ὅτι ἀμφότεροι ἐχαρ-
κτηρίσθησαν ὑπὸ τοῦ Διευθυντοῦ τοῦ Τμήματος ὡς πολὺ
καλοὶ, παρ' ὅλον ὅτι οὗτος συνέστησε τὸν κ. Χαρῆν, καὶ ὅτι
ὁ κ. Ἰακωβίδης ὑπερτερεῖ εἰς προσόντα τοῦ κ. Χαρῆ .

("The Commission in this respect examined with special 5
attention the case of Mr. Georghios Charis (applicant) who
has been recommended by the Head of the Department for
promotion and observed that in general the confidential
reports about him (at the material time) present him inferior 10
to Mr. Iacovides (interested party (d). The Commission
also observed that both have been described by the Head
of the Department as very good, even though he recom-
mended Mr. Charis, and that Mr. Iacovides is superior
as regards qualifications to Mr. Charis").

The above reasoning of the P.S.C. for disregarding the recom- 15
mendations of the Head of Department, as I understand it,
is based on two observations made by the Commission which
touch merit and qualifications.

Thus the Commission says that:

- (a) Generally the confidential reports at the material time 20
"present the applicant inferior to the interested party
Iacovides".
- (b) The interested party Iacovides "surpasses in quali-
fications" the applicant.

I intend to examine as briefly as possible the factual sub- 25
stratum of these two observations made by the Commission
in order to test their correctness.

I shall commence with the confidential reports bearing in 30
mind what was stated in the case of *Evangelou v. The Republic*
(1965) 3 C.L.R. 292 at p. 297:

The confidential reports on the candidates for promotion
"must be regarded only as constituting part of the overall picture
of the merits of each candidate, which the Commission had to
weigh as a whole".

A mere glance at the confidential reports of the applicant for 35
the years 1975 and 1976 will prove beyond any doubt the un-

satisfactory position—to say the least—in connection with the said confidential reports;

Thus (a) in the 1975 confidential report the reporting officer —who was the same for the years 1974 to 1976—rates
 5 the applicant with 2 “fairly good” 7 “good” and one “very good”; The countersigning officer “disagrees with the above assessments” and states: “That Mr. Haris is a very likeable and courteous officer and has considerable competence in his work particularly as regards olive tree culture in which he has
 10 specialized. The above assessment is rather unfair in all respects”.

I feel it my duty to add here that the reporting officer reduced inter alia the rating of the “General intelligence” of the applicant from “very good” in 1974 to “good” in 1975.

15 (b) After a complaint of the applicant in writing on 6.2.1976 addressed to the acting Director-General of Agriculture and Natural Resources in connection with his confidential report (vide relevant file ex. 1) the Ag. Director-General of the Ministry on 24.2.1976 addressed a letter to the Chairman of the Public
 20 Service Commission (vide file ex. 1) transmitting, pursuant to the provisions of s. 45(3) of Law 33/67, the confidential report of the applicant to the Commission together with the views of the Ministry to the effect “ὅτι ἡ γενομένη ὑπὸ τοῦ Ἀξιολογῆσαντος Λειτουργοῦ ἀξιολόγησις ἐπὶ τῆς ἐπιδόσεως καὶ ἰδιοτήτων τοῦ κ. Χαρή εἶναι ἀπὸ ὅλας τὰς ἀπόψεις ἀδίκος καὶ θὰ ἀντικατασταθῶν αὐται μὲ τὴν λέξιν “λίαν καλῶς”.

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(“that the evaluation made by the reporting officer on his performance and qualities of Mr. Charis is in any view unjust and will be replaced by the word ‘very good’ ”).

30 (c) In spite of the above the same reporting officer rates the applicant in the confidential report of 1976 with 6 “good” and 4 “very good”.

The countersigning officer, this time, modestly observes: “I feel that he is better than he has been assessed”.

35 In the case of *Andreas HjiGeorghiou v. The Republic* (1975) 3 C.L.R. 477 it was held by the Full Bench of this Court (at p. 483)

“_____ That it is necessary, in deciding on the merits of candidates, to look at past annual confidential reports and especially at the most recent ones, in order to evaluate the performance of the candidates during their careers as a whole . . .”.

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In the case under consideration the most recent confidential report which could be taken into consideration by the P.S.C. was the report of 1977 which was submitted to the Commission in respect of the applicant and the interested parties as well, as early as February 1978 i.e. 3 months prior to the 27.5.1978, the material time for the reconsideration by P.S.C. of its annulled decision.

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The confidential report of applicant for the year 1977 was prepared by a different reporting officer, than the one who reported for the years 1974, 1975 and 1976; the 1977 report rated applicant with 3 “excellent” and 7 “very good”. The relevant report of interested party Iacovides for 1977 rated the latter with 4 “Excellent” and 6 “very good” and it was prepared by a different reporting officer than the one who reported for applicant. In this connection I may repeat here the observation in *Aristocleous and Another v. The Republic* (1974) 3 C.L.R. 321 referred to at pp. 325-326.

15

20

“Different reporting officers inevitably use different standards in their evaluation of the performance of the various officers serving under them”.

25

Having dealt, as briefly as possible, with the factual substratum in connection with the confidential reports I shall now proceed to the other leg of the observations made by the P.S.C. in the sub judice decision notably qualifications of applicant and interested party Iacovides.

30

According to the Scheme of Service which is set out in Appendix 1 the required qualifications for the post of Agricultural Officer 2nd Grade are the following:

“*Απαιτούμενα Προσόντα

(α) Τριετής τουλάχιστον πείρα εις την θέσιν Βοηθοῦ Γεωργικού Λειτουργοῦ, Μεταπτυχιακαὶ Σπουδαὶ εἰς καταλλήλους ειδικότητας θὰ θεωροῦνται ὡς ἐπιπρόσθετον προσόν.

35

(β) _____

(γ) _____”

(“Required qualifications

- 5 (a) At least three years’ experience in the post of Assistant Agricultural Officer, Post-graduate Studies in appropriate specialities will be considered as an additional qualification.
- (b) _____
- (c) _____”).

10 The applicant was appointed in the temporary post of Assistant Agricultural Officer on 15.9.1964 (vide red 6 in ex. 1A) whilst interested party Iacovides was so appointed on 1.9.1965. They were both appointed in the permanent post of Assistant Agricultural Officer on the same date i.e. 1.6.1969.

The applicant possesses a certificate to the effect that “he has participated in the complete course on Improvement of Olive Production Techniques” held from 15.10.1970 to 15.4.1971 in Cordova, Spain (vide red 39 in ex. 1A).

15 Interested party Iacovides possesses (a) a diploma in Comprehensive Regional Development Planning, Israel, having successfully completed his studies in this course from 18.5.71 to 6.4.72 (vide Red 32 in ex. 5A).

20 (b) a certificate that “he participated in the International Course in Fertilizer Use and Extension Methods held in Israel from 19.7.70 - 5.10.70 (vide Red 30 in ex. 5A).

It is significant to note (i) that for the purposes of the Scheme of Service as in Appendix 1 set out “Post-Graduate Studies” are considered as “additional qualification.”

25 (ii) that the Director of the Department of Agriculture having in mind the above Post-Graduate Studies of the applicant and the interested party Iacovides stated clearly before the P.S.C. that

- 30 (1) the applicant “had an additional academic qualification”,
- (2) the interested party Iacovides “has an additional qualification as well.”

The Director has never stated that the interested party Iaco-

vides "surpasses in qualifications the applicant" and I cannot see where does the P.S.C. base such a finding.

For disregarding the recommendation of the Director there remains, therefore, only the reasoning to the effect that generally the confidential reports at the material time "present the applicant inferior to the interested party Iacovides". 5

Section 44(3) of the Public Service Law 1967 (Law No. 33/67) provides that "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. 10

The recommendations made by the Head of Department in the instant case are clear and unambiguous; he graded applicant fourth in line suitable for promotion and comparing the applicant with interested party Andreas Iacovides stated that they are both considered as very good officers, but "on the totality of the criteria the applicant is better." It is thus apparent that the Head of Department did not express arbitrarily his preference to the applicant over interested party Iacovides; he gave his reasons for such recommendation: "on the totality of the criteria the applicant is better." And the Head of Department was in the best position to know the "criteria" in question. According to the case of *Theodossiou v. The Republic* (supra) the recommendation of a Head of Department and especially so in cases where specialized knowledge and ability are required for the performance of certain duties (and I hold the view that the present case falls within such category) is a most vital consideration which should weigh with the P.S.C. in coming to a decision. 15 20 25

If, nevertheless, the P.S.C. comes to the conclusion not to follow the recommendations in question the reasons for taking such an exceptional course should be clearly recorded in the relevant minutes of the P.S.C. 30

As indicated above the reasons given by the respondent Commission for disregarding the recommendations of the Director are not quite clear and succinct; they boil down to a generality that "confidential reports at the material time present the applicant inferior to the interested party Iacovides." 35

I have had the opportunity of examining the factual substratum on this matter earlier on in the present judgment. I may as well repeat here:

5 (a) the latest confidential reports (for 1977) of the applicant and the interested party Iacovides are almost similar taking into consideration the fact that they were submitted by different reporting officers and as stated in *Aristocleous* case (*supra*).

10 "Different reporting officers inevitably use different standards in their evaluation of the performance of the various officers serving under them." (In the confidential report for 1977 the applicant was rated with 3 "excellent" and 7 "very good" whilst interested party Iacovides was rated with 4 "excellent" and 6 "very good").

15 (b) As regards the confidential reports of the applicant for the years 1975 and 1976, I shall confine myself in saying this much: they have created an unsatisfactory state of affairs rendering their value next to nil; no administrative organ can depict therefrom with the required certainty the real picture of the merit of the candidate concerned.

20 As against this confused and unsatisfactory material presented by the aforesaid confidential reports the P.S.C. had before it the clear recommendations of the Director; in the circumstances it was not open to it to disregard them as they had no other solid soil to step on; in view of the above I cannot subscribe, with respect, to their reasoning.

30 I shall now proceed to examine the remaining complaints of the applicant including the complaint that the sub judice decision is not duly reasoned as a whole.

35 It was held as early as 1961 in the case of *Theodossiou v. The Republic* (*supra*) that the paramount duty of the P.S.C. in effecting appointments or promotions is to select the candidate most suitable, in all the circumstances of each particular case for the post in question. This principle has been reiterated subsequently in a number of cases (*Demosthenous v. The Re-*

public (1973) 3 C.L.R. 354, *HjiGeorghiou v. The Republic* (1974) 3 C.L.R. 436, *Andreou v. C.B.C.* (1975) 3 C.L.R. 467).

In so doing they have to decide on the totality of the circumstances pertaining to each one of the candidates and should not adopt any ready-made rigid rule (*Theodossiou v. The Republic - supra*). 5

“This is a matter of exercise by an administrative organ of its discretion, and so long as same is exercised in a valid manner, all material circumstances taken into account, due weight given to material facts and there is no misconception of law or fact, this Court will not interfere with the exercise of such discretionary powers and will not substitute its own discretion for that of the appropriate organ” (*Papazachariou v. The Republic* (1972) 3 C.L.R. 486). 10

In the present case the P.S.C. which was reconsidering its earlier decision of 27.5.78, which was annulled by the Court, held two meetings for the purpose, on 21.10.81 and 23.11.81; in the first occasion, as already stated, they had the opportunity of hearing the recommendations of the Head of Department. They directed their minds properly to the Law applicable in the circumstances and as I have already held earlier on in the present judgment they did not act under a misconception of Law. 15 20

In reaching the sub judge decision the P.S.C. took into account the facts which existed at the material time as they emerged from the Personal Files and the confidential reports of the candidates; it has also taken into consideration the recommendations of the Head of Department (with the above exception) and exercising its discretion in the light of the established criteria (merit, qualifications, seniority) reached the sub judge decision (vide Appendix 3). 25 30

The applicant complains that his seniority and experience were not taken into consideration therefore the Commission acted under a misconception of fact. It is abundantly clear from the minutes (Appendix 2 and Appendix 3) that the P.S.C. considered the seniority of the applicant over all the other candidates; in this respect there is a minor error in the 2nd page of Appendix 3, to the effect that the applicant was appointed as Assistant Agricultural Officer on 15.10.64; the correct date 35

should be 15.9.64 as it appears in red 6 in ex. 1A. In any event seniority is not by itself the determining factor but part of the overall picture of each candidate (*Michanicos v. Republic* (1976) 3 C.L.R. 237), which should be taken into consideration and it should only prevail where all other things are equal (*Phylaktou v. Republic* (1973) 3 C.L.R. 445). It is clear from the minutes that the P.S.C. did take into consideration that the applicant had about a year's seniority over the remaining candidates but preferred the interested parties to him on the ground of merit.

10 With the exception of interested party Iacovides (as I have already found earlier on the present judgment) the P.S.C. was perfectly entitled to reach the sub judice decision which is warranted by the facts contained in the personal files, the confidential reports and in particular the recommendations of the
15 Head of Department in connection with the remaining interested parties. Under the circumstances the sub judice decision in respect of the interested parties (with the exception of interested party Iacovides) was reasonably open to the P.S.C. which has exercised its discretion properly and in no case did act under the
20 dictation of the Head of Department as alleged by counsel of applicant in his written address; therefore this Court cannot interfere substituting his own discretion for that of the Commission.

25 Finally I intend to deal very briefly with the complaint that the sub judice decision is not duly reasoned.

It is well settled that administrative decisions have to be duly reasoned: what is due reasoning is a question of degree dependent upon the nature of the decision concerned (*Athos Georghiades & Others v. The Republic* (1967) 3 C.L.R. 653 at p.
30 666).

Reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto (*Georghios HjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205, *Petrides v. The Republic* (1983) 3 C.L.R. 216).

35 Having examined the sub judice decision and the background thereto as appearing from the files before me I am satisfied that the sub judice decision in respect of all interested parties with the exception of interested party Iacovides is duly reasoned.

In the result the present recourse against interested parties Ipsarides, Yiakoumettis and Xistouris fails for the reasons stated above and it is accordingly dismissed.

The present recourse succeeds in respect of interested party Andreas Iacovides for lack of due reasoning by the respondent Commission in disregarding the relevant recommendation of the Director of the Department of Agriculture as stated above. 5

The secondment of interested party Andreas Iacovides is accordingly declared null and void and of no effect whatsoever and it is hereby annulled. 10

Having given to this case my best consideration I have decided to make no order as to the costs thereof.

Recourse succeeds against interested party Iacovides. Recourse against the other interested parties dismissed. No order as to costs. 15