

1984 November 27

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. STAVROULLA STAVRIDOU IOANNIDOU,
2. ODYSSEAS KALOGIROU AND ERINI KALOGIROU,
3. DEMETRIOS PETRAKIS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondents.*

(Consolidated Cases Nos. 359/82, 394/82, 395/82).

5 *Educational Officers—Promotions—Assistant Headmaster Elementary Education—Two of the applicants better rated by the Educational Authorities and enjoyed seniority over some of the interested parties—Strikingly superior over these interested parties—Promotion of the latter annulled—Non inclusion of a candidate in the list of candidates recommended by the Department for promotion, a sufficient reason for not appointing such a candidate notwithstanding his service record.*

10 *Educational Officers—Promotions—Recommendations of Department of Education concerned—Must be made by reference to all the three criteria, i.e. merit, qualifications, seniority, specified in section 35(2) of the Public Educational Service Law, 1969 (Law 10/69)—If opinion of the Department is bona fide formed, after a due inquiry, it cannot be struck down as defective merely because*  
15 *it does not coincide with the objective picture emerging on examination of the service record of different candidates.*

20 The applicants, who were teachers of elementary education, were candidates for promotion to the post of Assistant Headmaster, elementary education. The Educational Service Commission promoted the interested parties, in preference and instead of the applicants; and hence these recourses:

Applicant Erini Kalogirou enjoyed superiority, in terms of grades and seniority compared to 17 of the interested parties (listed in Appendix A).

Applicant Demetrios Petrakis enjoyed superiority in terms of grades and seniority compared to 13 of the interested parties (listed in Appendix B). Both these applicants were recommended for promotion by the Department of Elementary Education. 5

Applicants Stavroulla Ioannidou and Odysseas Kalogirou, unlike the first two applicants, did not have the recommendation of the Department of Elementary Education, though their service record, as reflected in their service reports, was very good and they enjoyed seniority over most of the interested parties. Applicant Ioannidou challenged, inter alia, the appointment of one interested party, namely Costas Kelepeshis, who was recommended on grounds of long service. 10 15

*Held*, (1) that all other things being equal, a better rated teacher by the educational authorities, who is senior in service as well, is glaringly superior, a superiority that was overlooked by the respondents; that notwithstanding the importance attached to the merits and seniority of the candidates, the respondents say nothing about the non appointment of the applicant Erini Kalogirou; that the absence of any reasoning suggests a misconception of the facts; that, therefore, applicant Erini Kalogirou was strikingly superior in comparison to seventeen of the interested parties over whom she enjoyed superiority in terms of grades and length of service (see table "A" attached to this judgment); accordingly her recourse succeeds in so far as the seventeen interested parties listed in Appendix "A" are concerned and fails respecting the remaining interested parties over whom she failed to establish striking superiority. 20 25 30

(2) That applicant Petrakis was strikingly superior to thirteen interested parties, over whom he enjoyed superiority in terms of grades and length of service; and that, therefore, his recourse will succeed in so far as the promotion of each of the thirteen interested parties is concerned and will fail respecting the remaining interested parties. 35

(3) That the non inclusion of a candidate in the list of candidates recommended by the Department for promotion, offers

sufficient reason to the appointing body not to appoint such a candidate notwithstanding his service record, as shown in the service reports and personal files; and that it was reasonably open to the respondents to prefer for promotion the interested parties to applicants Stavroulla Ioannidou and Odysseas Kalogirou despite their record.

*Held*, further, that the recommendations of the Department of Education are designed to express the opinion of the Department—as in the case of heads of departments—as to the suitability of candidates for promotion; that if this opinion is bona fide formed after a due inquiry, it cannot be struck down as defective, merely because it does not coincide with the objective picture emerging on examination of the service record of different candidates (pp. 1293--1294 post).

*Held*, with regard to the recourse of applicant Stavroulla Ioannidou against the promotion of interested party Costas Kelepehis, that there is no basis whatever for making recommendations exclusively by reference to anyone of the criteria specified in section 35(2) of the Public Educational Service Law, 1969 (Law 10/69), as relevant to the assessment of the work of a candidate; that the suitability of the candidates must be judged by reference to the three criteria looked at in combination and in the order indicated therein, that is, merit, qualifications, seniority; that in making their recommendations the departmental committee must be guided by the criteria laid down in the law and the relative weight that should be attached to each one of the three considerations; that, therefore, the submission of a separate list, based exclusively on one of the three considerations bearing on the suitability of candidates for promotion, was an arbitrary act that laid unsound foundations for the promotion of those listed therein; and that, consequently, it ought to have been ignored by the respondents; that with the disappearance of this premise for preference of Costas Kelepehis to applicant Stavroulla Ioannidou it was not reasonably open to the Educational Service Commission to appoint Costas Kelepehis because she was by nine years his senior and had overall better grades; that, therefore, she was strikingly superior to him and her recourse will succeed in so far as the promotion

of interested party Kelepeshis is concerned and will fail in relation to every other interested party.

*Recourses of applicants Erini Kalogirou, Petrakis and Ioannidou succeeded in part. Recourse of applicant Odysseas Kalogirou failed.*

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Cases referred to:

*Myrriotis v. Republic* (1975) 3 C.L.R. 58 at p. 68;

*Papadopoulos v. Republic* (1978) 3 C.L.R. 1070 at p. 1075; 10

*HadjiSavva v. Republic* (1982) 3 C.L.R. 76 at p. 78;

*HadjiIoannou v. Republic* (1983) 3 C.L.R. 1041.

#### Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Assistant Headmaster in preference and instead of the applicants. 15

*I. Typographos*, for the applicant in Case No. 359/82.

*M. Christophides*, for the applicants in Case Nos. 394/82 and 395/82.

*R. Vrahimi (Mrs.)*, for the respondents. 20

*Cur. adv. vult.*

PIKIS J. read the following judgment. The three recourses under consideration were raised by four teachers of elementary education they are directed against the same administrative act, the decision of the Educational Service Commission of 14th July, 1982, whereby 102 colleagues of the applicants were appointed Assistant Headmasters. Applicants challenge, by their recourse, the selection of only a number of the appointees those joined as interested parties. The ascertainment of the facts and, more so, their assortment, was a nearly impossible task. With the assistance of counsel, after a degree of probing, we were able to establish ready guides for comparison and, hopefully, gained a comprehensive knowledge of the relevant facts, to enable us to conclude our deliberations and resolve the cases. 25  
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To begin with, applications were invited on 3.5.1982 for the filling of 102 posts of assistant headmaster, a first entry and promotion post. A great number of teachers applied for promotion, 736 in all. Sixteen dropped out by failing to attend  
 5 the appointed interviews held between 12.5.1982 and 12.6.1982. The sub judge decision was, as indicated above, taken on 14.7.1982. In the preamble to the decision, mention is made of the facts taken into consideration and the criteria by reference to which they were evaluated. In the body of the decision,  
 10 the names of the candidates are listed, together with a note attached to each name, singling out the special considerations associated with the choice of each candidate.

The facts before the Commission, to which they paid heed as recorded in the preamble, were:-

- 15 (a) The personal files of the parties disclosing the several stages of their career and their qualifications.
- (b) The service reports giving the grading of the applicants by the appropriate educational authorities over the years and,
- 20 (c) the report embodying the recommendations of the Department of Elementary Education submitted in accordance with s.35(3) of the law\*.

The criteria used as a yardstick for the assessment of the suitability of the candidates, were those enumerated in s.35(2)  
 25 of the law, that is, merit qualifications and seniority.

A proper inference from the remarks made in relation to individual candidates is that they attached especial importance to the overall grading of the candidates, as reflected in their service reports and, the length of their service; also to their  
 30 performance at the interview. The record is elliptical in respect of the last factor for, it gives no details about the performance of the remaining candidates at the interview and does not, in any event, record that the performance of those selected was in any way better than the performance of any of the applicants.  
 35 The significance of performance at an interview is a factor of variable importance, much depending on the remaining material

\* Public Educational Service Law 10/69, as amended by Law 53/69.

available before the selection committee, giving an insight into the abilities of a candidate, as well as the nature and duration of an interview. In this case, the material before the committee was very vocal about every aspect of the personality and aptitudes of the candidates, bearing in mind the criteria by reference to which they were evaluated. Surely, a short interview could not upset the picture conveyed by scrutiny of the performance and traits of candidates over many years, in the case of certain candidates over two or more decades. Coupled with this, the absence of a yardstick for comparison because of failure to note the performance of the applicants at the interview, renders the performance of the interested parties at the interview of a neutral factor for the purposes of this review. It is appropriate to remind of the observations of Hadjianastassiou, J., in *Panayiotis Ioannou Myrtilotis v. The Republic* (1975) 3 C.L.R. 58, 68, to the effect that where importance is attached to the impressions gained at an interview, a standard for comparison must be established, casting a duty on the appointing body to keep a record about the performance of all candidates attending for an interview.

Now, the facts about the applicants: They were among the 720 candidates competing for promotion. All four of them had, comparatively speaking, high grades and were high up on the table of seniority. However, there was this difference between them: Two of them, namely Erini Kalogirou and Demetrios Petrakis, were among the candidates recommended by the departmental committee for promotion, whereas the other two, that is Odysseas Kalogirou and Stavroulla Stavridou Ioannidou, were not. Their complaints, making, in their submission, the appointment of the interested parties liable to be set aside, may be summed up as follows:

The reasoning of the decision is inadequate and the ultimate result arbitrary for, despite the professed attachment of the respondents to the criteria set by law for evaluation of the candidates, they acted in defiance thereof on examination of the material before them. Notwithstanding the superiority of the applicants over many of the interested parties in terms of marks and seniority, their claims to promotion were disregarded in a manner suggesting a defective exercise of discretionary powers. Their superiority over the interested parties, or most of them, was so glaring that disregard of their candi-

dature was beyond the discretion of the respondents, wide though it was.

I took time to look into the facts of the case and marshal them to the extent possible in a comprehensive order—a difficult task in view of the voluminous material before the Court. It is appropriate that the consideration of the recourses be divided into two parts. In the first part, we shall deal with the complaints of the two applicants who were included in the list of recommended candidates by the departmental committee whose claims to promotion were on an identical plane, while in the second, we shall deal with the cases of the remaining two applicants that have features in common.

The gravamen of the case of the two recommended applicants lies in their assertion that, although strikingly superior to the interested parties named in the proceedings, they were not appointed. Striking superiority must emerge on examination of the material facts of the case bearing on the candidates' merits, qualifications, seniority and service, as an indisputable fact. As I had occasion to indicate in the cases of *Papadopoulos v. Republic* (1978) 3 C.L.R. 1070, 1075, and *HadjiSavva v. Republic* (1982) 3 C.L.R. 76, 78, in order for superiority to be striking, it must be glaring, striking one at first sight; self-evident on reflection upon the material bearing on the overall merits of the candidates. This approach to the concept of striking superiority was approved by the Supreme Court in *Hadjoannou v. Republic* (1983) 3 C.L.R. 1041. The adjective "striking" is employed to denote the contrast with superiority simpliciter that does not sap the discretion of the appointing body to appoint an objectively less meritorious candidate.

The task facing us in the following:

Were the two applicants overwhelmingly superior in comparison to the interested parties? The order in which the candidates were recommended was not a consideration to which the respondents attached importance as it emerges from the order in which candidates were selected. Also, there were no noticeable differences in the qualifications of the parties as far as we may discern from the material before us and the decision under consideration.

Guided by the above principles and introduction to the case, we shall focus attention on the facts relevant to the recourses of Erini Kalogirou and Demetrios Petrakis.

*APPLICANT ERINI KALOGIROU:* She was objectively one of the candidates with best claims to promotion on account of her grades and seniority. One need only have a glance at the tables to notice she was one of the candidates with the highest marks. In the context of this case, especially in view of the consistency of her performance as a teacher over the years, she emerges objectively to be superior in terms of "merit" compared to most candidates—the first consideration to which the respondents are enjoined by law to take into account. If this was her only advantage over a number of interested parties, her superiority would not have been striking in the sense explained; but if one adds her seniority to that advantage in relation to those interested parties over whom she was senior, her superiority becomes striking. All other things being equal, a better rated teacher by the educational authorities, who is senior in service as well, is glaringly superior, a superiority that was overlooked by the respondents. Notwithstanding the importance attached to the merits and seniority of the candidates, the respondents say nothing about the non appointment of the applicant. The absence of any reasoning suggests a misconception of the facts, a real probability in view of the magnitude of their task and the confusion likely to arise in such circumstances. If this was not the case, we are then confronted with abuse of discretionary powers.

For the reasons indicated above, Mrs. Erini Kalogirou was strikingly superior in comparison to seventeen of the interested parties over whom she enjoyed superiority in terms of grades and length of service, as it appears from table 'A' attached to this judgment. Her recourse succeeds in so far as the seventeen interested parties listed in Appendix 'A' are concerned.

Respecting the remaining interested parties, the applicant failed to establish striking superiority. In particular, her recourse against the appointment of Andreas Demokritou and Eleni Solomonidou Anastassi is dismissed for their overall grading was better than that of applicant. Further, her recourse must be dismissed respecting the remaining interested parties, in fact against everyone over whom she did not enjoy super-



iority in terms of grades and seniority as well. By the norm of "striking superiority" established for the purposes of this case, she failed, in my judgment, to prove striking superiority over the following interested parties, namely, G. Maratheftis, A. Sophocleous, A. Aristidou, N. Antoniadis, P. Kyprianou, G. Palexas, R. Karavalli, K. Vryonides and K. Violaris. The first two were senior to the applicant, while the remaining seven had equal seniority. If the grades of the applicant, in comparison to the grades of the latter seven interested parties, were substantially higher, a case of striking superiority might have been made out. But this was not the case.

*APPLICANT DEMETRIOS PETRAKIS:* Like Mrs. Kalogirou, Mr. Petrakis was one of the best candidates for promotion, in view of his grades and length of service. Going through the same exercise, as that carried out in the case of Mrs. Kalogirou, we arrive to the following conclusions: He was strikingly superior to thirteen interested parties over whom he enjoyed superiority in terms of grades and length of service, as table "B" appended to this judgment demonstrates. His recourse succeeds in so far as the appointment of each of the thirteen interested parties is concerned.

His case fails against the remaining interested parties. Three of them, namely, N. Pyrgou, A. Demokritou and M. Germanou-Demetriade, were more highly rated and senior in service, in comparison to the applicant. As compared to twenty-eight interested parties named below\*, the comparison presents, as in the case of Mrs. Kalogirou, more complication for the applicant excelled over the interested parties only in relation to one item of rating, viz. grades, while he had similar or lesser seniority to them. A similar result must be recorded in the

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| * G. Tsangarides                | P. Periklos          |
| S. Saveriades                   | P. Pitsillidou       |
| P. Nicolaou                     | A. Avraamides        |
| Chr. Makis                      | A. Markidou          |
| C. Makrides                     | A. Sophocleous       |
| A. Mavresis                     | R. Karavalli         |
| Ph. Christodoulides             | A. Kaminaridou       |
| Andriani Constantinou-Anastassi | E. Spyrou-Antoniadou |
| G. Zevedeos                     | P. Stavrou           |
| Ph. Eleftheriades               | Ch. Charalambides    |
| G. Maratheftis                  | G. Palexas           |
| A. Aristidou                    | I. Ioannides         |
| N. Antoniadis                   | K. Violaris          |
| P. Kyprianou                    | M. Georghiadou       |

case of Eleni Solomonidou Anastassi who had higher marks than applicant.

For the reasons given above, the recourse succeeds in so far as directed against the appointment of the interested parties named in table 'B'. It fails respecting the remaining interested parties. 5

*THE CASE OF APPLICANTS STAVROULLA STAVRIDOU  
IOANNIDOU AND ODYSSEAS KALOGIROU:*

The case of the aforementioned applicants is on a different plane as compared to the first two, although their service record, as reflected in their service reports, was very good and they enjoyed seniority over most of the interested parties. Unlike the first two applicants, they did not have the recommendation of the Department of Elementary Education. The first question that arises is whether it was reasonably open to the respondents to appoint the interested parties—all of them—in preference to the applicants, notwithstanding the superiority of the latter over many appointees, in terms of grades and seniority. The answer is directly dependent on the weight that should be attached to the recommendations of the Department, made under s.35(3) of the law. 10  
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The law identifies the recommendations of the Department as a separate consideration to which the Educational Service Commission should have regard to in ascertaining the merits of the candidates and determining their claims to promotion. Before the amendment of the law in 1979, the competence to make recommendations vested in the inspectors of education. One can readily contemplate the reasons that led to the substitution of the Department as the recommending authority for the inspectors of education. It seems to me the amendment of the law was meant to establish a more impersonal mechanism for the evaluation of the services of teachers serving in different schools and areas of the country. And in that way, form a collective opinion about the capabilities and devotion to duty of candidates for promotion. The largeness of the Department, the great numbers of teachers involved, and the fact that teachers are graded by very many different inspectors of education, justified the evolution of mechanism designed to play down and possibly neutralize inevitable differences in the rating made by different inspectors. 25  
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The value of the departmental recommendations in the selection process is, in many respects, comparable to the recommendations of the head of a department, made under s.44(3) of the Public Service Law. They constitute a separate element  
5 in the assessment process, meriting distinct consideration by the Educational Service Commission as a pointer to the overall merits of candidates and their suitability for appointment. I need not debate the precise implications and ponder the exact value that should be attached to recommendations made under  
10 s.35(3) of Law 10/69, or precisely determine the amenity of the appointing body to depart therefrom. On the other hand, it is clear to me that non inclusion of a candidate in the list of candidates recommended by the Department for promotion, offers sufficient reason to the appointing body not to appoint  
15 such a candidate notwithstanding his service record, as shown in the service reports and personal files. Hence I conclude it was reasonably open to the respondents to prefer for promotion the interested parties to the two applicants despite their record. However, this is not the end of the matter for the chal-  
20 lenge of the applicants is not confined to the decision itself but extends to preliminary acts, in particular the recommendations of the Department of Elementary Education. The decision embodying the recommendations is attacked for lack of due reasoning and proper inquiry and, secondly, for arbitrary-  
25 ness, in that, contrary to the provisions of s.35(2), part of the recommendations rested exclusively on one of the three criteria for evaluation of the services of educationalists, namely seniority.

As in the case of recommendations of departmental head,  
30 the recommendations of the department of education may be coloured by the opinion of the recommending body. The recommendations are designed to express the opinion of the department—as in the case of heads of departments—as to the suitability of candidates for promotion. If this opinion  
35 is bona fide formed after a due inquiry, it cannot be struck down as defective, merely because it does not coincide with the objective picture emerging on examination of the service record of different candidates. If the task of the Department was confined to an evaluation of the service record of the candidates,  
40 it would be a superfluous body for that task could be performed with equal ease and amenity by the appointing body. In the case of teachers of elementary education, as noted above, there

are especially cogent reasons for institutionalising the formation of the collective opinion of the department. There is nothing before me to suggest that the opinion of the Department is fraught with mala fides or that it is based on any inadmissible material. The presumption of regularity requires us to assume that a bona fide effort was made to form a valid opinion on the suitability of different candidates for promotion. Consequently, I cannot uphold the submission that the recommendations of the Department of Education in relation to the first list of recommendees are in any way defective. Therefore, the recourse of Odysseas Kalogirou must be dismissed.

*Mrs. Stavroulla Stavridou Ioannidou* challenges, inter alia, the appointment of one interested party, namely Costas Kelepeshis, who was recommended on grounds of long service. There is no basis whatever for making recommendations exclusively by reference to anyone of the three criteria specified in s.35(2) of the law, as relevant to the assessment of the worth of a candidate. The suitability of the candidates must be judged by reference to the three criteria looked at in combination and in the order indicated therein, that is, merit, qualifications, seniority. In making their recommendations the departmental committee must be guided by the criteria laid down in the law and the relative weight that should be attached to each one of the three considerations. Therefore, the submission of a separate list, based exclusively on one of the three considerations bearing on the suitability of candidates for promotion, was an arbitrary act that laid unsound foundations for the promotion of those listed therein. Consequently, it ought to have been ignored by the respondents. With the disappearance of this premise for preference of Costas Kelepeshis to Stavroulla Stavridou Ioannidou, the pertinent question is whether it was reasonably open to the Educational Service Commission to appoint Costas Kelepeshis. The answer is in the negative for Stavroulla Stavridou Ioannidou was by nine years his senior and had overall better grades. Therefore, she was strikingly superior to him. Her recourse succeeds in so far as the appointment of interested party Costas Kelepeshis is concerned, and fails in relation to every other interested party.

In the result, the recourse of Erini Kalogirou succeeds in so far as directed against the interested parties named in table 'A'.

The recourse of Demetrios Petrakis succeeds in so far as directed against the appointment of the interested parties named in table 'B'.

5 The recourse of Stavroulla Stavridou Ioannidou succeeds in so far as directed against the appointment of interested party Costas Kelepeshis.

The recourse of Odysseas Kalogirou fails.

Let there be no order as to costs.

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

#### A P P E N D I X 'A'

	N a m e	Overall Grades	Years of Service
	1. S. Saveriades	78.19	20
15	2. A. Mytilineos	78.52	16
	3. G. Vassiliades	82.30	19
	4. M. Makrides	81.09	20
	5. Fr. Michaelides	81.14	17 11/12
	6. A. Gregoriou	76.71	18 11/12
20	7. A. Mavresis	79.02	20
	8. S. Stavridou-Kyriakidou	78.57	18
	9. Eleni Hadjitheophilou	81.58	18 11/12
	10. Ph. Christodoulides	81.54	20
	11. Chr. Rossidou	83.70	19
25	12. Andriani Constantinou-Anastasi	82.83	20
	13. N. Kyprianou	78.36	18 11/12
	14. Z. Koumoudiou	83.36	17 9/12
	15. G. Zevedeos	79.43	20
30	16. I. Pittakas	81.06	19
	17. Ph. Eleftheriades	79.93	20

## APPENDIX 'B'

Name	Overall Grades Years of Service		
1. A. Mytilineos	78.52	16	
2. G. Vassiliades	82.30	19	
3. M. Kei	79.20	18	5
4. A. Vlamis	81.38	19	
5. Fr. Michaelides	81.14	17	
6. A. Gregoriou	76.71	18	
7. S. Hadjithemistou	81.92	17 7/12	
8. S. Stavridou-Kyriakidou	78.57	18	10
9. Kl. Symeonides	81.00	19	
10. N. Kyprianou	78.36	18 11/12	
11. M. Ttofis	81.00	19	
12. I. Pittakas	81.06	19	
13. Eleni Hadjitheophilou	81.58	18 11/12	15