

1984 November 7

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ADONIS CONSTANTINIDES AND TWO OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Cases Nos. 481/82, 508/82).

*Educational Officers—Promotions—Headmaster, Secondary Education
—Merit—Applicants rated one point higher than interested
party—Qualifications—Interested party more or less equal to
one of the applicants but superior to the other applicant and,
also, possessing an additional qualification—Seniority—Interested 5
party senior to both applicants by two years and recommended
for promotion whereas one of the applicants was not—A difference
of one or two points not such as to amount to a striking superiority
—Though applicants superior in merit they have failed to establish
striking superiority as against the interested party which is essential 10
to justify the annulment of the sub judice promotions.*

*Administrative Law—Administrative acts or decisions—Reasoning—
Promotions to post of Headmaster, Secondary Education—Re-
spondent Commission not required to record in detail what their
impressions were in respect of the applicants or the interested 15
parties.*

*Educational Officers—Transfers—Postings—Educational needs—Veri-
fication—Regulation 14(1) of the Educational Officers (Teaching
Personnel) (Appointments, Postings, Transfers, Promotions and
Connected Subjects) Regulations of 1972. 20*

The applicants in the above recourses attacked the promotion of interested party Philippides ("the interested party") to the post of Headmaster, Secondary Education.

Counsel for the applicants mainly contended:

- (a) That the respondent failed to promote the best candidate and that applicants were strikingly superior to the interested party.
- 5 (b) That the sub judge decision lacked due reasoning because reasons were given only as regards the interested party.
- 10 (c) That the respondent committee in reaching the decision to promote the interested parties, wrongly took into account the specialization of the candidates and this is evident from the fact that at the same time with the promotions, the respondent also decided for the posting of the interested parties contrary to regulation 14(1) of the relevant Regulations, as there had been no need verified by the appropriate authority, and no reasons were given as to why the applicants were not promoted, nor was it recorded what factors the respondent Committee took into consideration and what were its impressions.
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20 Regarding merit, applicant Andreas Christodoulides was rated in the last two confidential reports with one point more than the interested party and applicant Anastassios Nicolaides, was rated with one point more than the interested party in the last confidential report but he was rated as equal in the previous one.

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As regards qualifications, the interested party was superior to applicant Andreas Christodoulides as he has got, according to the schemes of service, an additional qualification and he was more or less equal as regards applicant Anastassios Nicolaides.

30 On the question of seniority the interested party was senior to both applicants by two years.

The interested party and applicant Anastassios Nicolaides, were recommended for promotion, whereas applicant Andreas Christodoulides, was not.

35 *Held*, (1) that a difference of one or two marks in one report is not such as to amount to a striking superiority of the applicants over the interested party; that the fact that applicant Christo-

doulides was not recommended for promotion should not be lightly disregarded by the respondent Committee; that though the applicants were superior in merit they have failed to establish striking superiority as against the interested party, which is essential to justify an annulment of the sub judice decision; and that, therefore, it was reasonably open to the respondent Committee to prefer the interested party instead of the applicants. 5

(2) That from the decision itself it is abundantly clear that the reasons of the respondent Committee in promoting the interested party, are clearly recorded in it and it is, therefore, duly reasoned; and that, further, the respondent Committee was not required to record in detail what their impressions were in respect of the applicants or the interested parties. 10

(3) That there is nothing to indicate that the respondent Committee took into consideration the specialization of the interested party; and that regulation 14(1) has no relevance to the case in hand as what is in issue here is not the validity of the postings but of the promotions (*Dekatris v. Republic* (1982) 3 C.L.R. 8 at p. 15 adopted). 15

Recourses dismissed. 20

Cases referred to:

Michaelides v. Republic (1979) 3 C.L.R. 56 at p. 71;

Konnaris v. Republic (1974) 3 C.L.R. 377 at p. 388;

Georgiou v. Republic (1983) 3 C.L.R. 17 at p. 33;

Nissiotis v. Republic (1977) 3 C.L.R. 388 at p. 397; 25

Dekatris v. Republic (1982) 3 C.L.R. 8 at p. 15;

Evangelou v. Republic (1965) 3 C.L.R. 293 at p. 299.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Headmaster, Secondary Education in preference and instead of the applicants. 30

A.S. Angelides, for the applicants in Case No. 481/82.

D.A. Demetriades, for the applicant in Case No. 508/82.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicants in the present recourses, which have been heard together as they attack the same administrative decision, claim a declaration of the Court that the decision of the respondent Committee dated 17.9.1982 to promote the interested parties, namely, 5
1. Kleri Angelidou, 2. Georghios Poullis, 3. Demetrios Philippides and 4. Christodoulos Kleopas, to the post of headmaster, secondary education, as from 1.9.1982 instead of the applicants, is null and void and of no legal effect whatsoever. 10

The two applicants in Recourse No. 481/82, namely, 1. Adonis Constantinides and 2. Andreas Christodoulides, attack only the promotion of interested party No. 3 Demetrios Philippides. The applicant in Recourse No. 508/82, Anastassios 15
Nicolaidis, originally attacked the promotion of all interested parties. In the course of the hearing of these recourses, however, recourse No. 481/82 was withdrawn by applicant No. 1 and recourse No. 508/82 was also withdrawn by the applicant against interested parties 1, 2 and 4. Therefore, what remains 20
for consideration by the Court is the complaint of applicant No. 2 in recourse No. 481/82 and the complaint of the applicant in recourse No. 508/82 against the promotion of interested party No. 3, Demetrios Philippides.

The relevant facts of the case are as follows:

25 By two letters dated 2.6.1982 and 2.7.1982 the Director-General of the Ministry of Education informed the Chairman of the Committee of Educational Service that the Minister of Finance gave his consent for the filling of four posts of headmaster in secondary education and requested him to proceed 30
with the filling of the said posts.

The post of headmaster in secondary education is, according to the relevant schemes of service, a promotion post and the qualifications required are the following:

- 35 1. At least three years service in the post of Assistant Headmaster.
2. At least satisfactory service on the basis of the last two confidential reports.

3. Good knowledge of one of the prevailing European languages.
4. Post graduate studies abroad or additional title preferably in paedagogics or subjects concerning the administration of schools, is considered as an additional qualification. 5

At its meeting of 9.7.1982 the respondent Committee decided; inter alia, according to the relevant minutes, as follows:

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- (a) *Promotions to the post of Headmaster of Schools of Secondary Education.* 10

The Committee of Educational Service having considered the personal files and confidential reports of all the Assistant Headmasters who are eligible for promotion to the post of Headmaster and having in mind the provisions of the Law and the Schemes of Service and after taking into account— 15

- (a) the merit, qualifications and seniority of the candidates,
- (b) the recommendations of the Department of Education as communicated together with the document of the Directors of Secondary and Technical Education, dated 5.7.1982, and the views of the said Directors who are present, 20
- (c) the service reports,

finds that the following Assistant Headmasters who are included among those who have been recommended by the Department of Education concerned, are the most suitable for promotion to the post of Headmaster for the reasons referred to herein for each one separately. 25

1. Kleri Angelidou, 2. Georghios Poullis, 3. Philippides Demetrios and 4. Kleopas Christodoulos.

On the basis of the above the Committee of Educational Service decided to offer promotion to the post of Headmaster to the above, as from 1.8.1982 and to post them as follows: 30

- (a) Kleri Angelidou — Lefkara Gymnasium
- (b) Georghios Poullis — Pedoulas Gymnasium

- (c) Demetrios Philippides — Technical School Ay. Lazaros, Larnaca
- (d) Christodoulos Kleopas — Agros Gymnasium”.

Hence the present recourse.

5 The grounds of law, on which both recourses are based, as argued by counsel for applicants, may be summarised as follows:

1. The decision of the respondent Committee to promote the interested party Demetrios Philippides, is contrary to the provisions of section 35 of the Public Educational Service Law of 1969 (Law 10/69), as amended, since it did not select the best candidate on the basis of the criteria of merit, qualifications and seniority.
- 10 2. The applicants are strikingly superior to the interested party.
- 15 3. The said decision is not duly reasoned.
4. The respondent Committee in reaching the decision complained of did not take into consideration the qualifications of the applicants as provided by the schemes of service, particularly the additional qualifications of applicant Anastassios Nicolaides, and so, the said decision was taken without due enquiry, and
- 20 5. That in promoting the interested party, the respondent Committee took into consideration his specialization and this is obvious from the fact that the promotions and postings were made at the same time contrary to Regulation 14(1) of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations of 1972.
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30 The applicant, Andreas Christodoulides, who is the holder of a degree in Natural Science of the Athens University, was first appointed to the post of School Master, Secondary Education, in 1959 and was promoted to Assistant Headmaster on 15.9.1973. In the last two confidential reports, prior to the promotions, he was rated in each one with 37 points.

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The applicant, Anastassios Nicolaides, is the holder of a degree of the School of Philisophy of the University of Athens

and in 1979 took a post graduate course in the United States of America on Problems in Supervision and Administration. He was first appointed to the post of school master, Secondary Education, on 1.9.1959, and was promoted to the post of Assistant Headmaster on 15.9.1973. In the last two confidential reports, prior to the promotions, he was rated with 36 and 37 points, respectively.

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Interested party, Demetrios Philippides, is the holder of a HND Diploma in Mechanical Engineering of Borough Polytechnic, and the holder of a certificate in Paedagogics of the Garnet College, 1960 to 1961. He was first appointed to the post of Technologist in 1961, and was promoted to the post of Assistant Headmaster on 1.9.1971. In the last two confidential reports, prior to the promotions, he was rated in each one with 36 points.

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Counsel for applicant in Case No. 481/82, Andreas Christodoulides, submitted that the respondent failed to promote the best candidate and he asserted that the applicant is strikingly superior to the interested party, as it appears from the personal files and the confidential reports. He further argued that the sub judge decision lacks due reasoning as reasons were given only as regards the interested parties and no reasons were given as to why the applicants were not promoted, nor was it recorded what factors the respondent Committee took into consideration and what were its impressions. He further submitted that the requirement of due reasoning is even of greater importance given that the respondent was a collective organ. His next argument was that the respondent committee in reaching the decision to promote the interested parties, wrongly took into account the specialization of the candidates and this is evident from the fact that at the same time with the promotions, the respondent also decided for the posting of the interested parties contrary to regulation 14(1) of the relevant regulations, as there had been no need verified by the appropriate authority. He relied on *Michaelides v. The Republic* (1979) 3 C.L.R. 56 at page 71 and *Konmaris v. The Republic* (1974) 3 C.L.R. 377 at page 388.

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Counsel for applicant in Case No. 508/82, Anastassios Nicolaidis, adopted the legal arguments put forward by counsel for applicant in Case No. 481/82 and further submitted that

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his client being strikingly superior ought to have been promoted instead of the interested party. He also submitted that the extra school activities of his client, as well as the fact that the applicant had followed a post graduate course in Problems in Supervision and Administration, which are indicative of his superiority, over the interested party, were totally disregarded by the respondent Committee.

As regards merit, the applicant, Andreas Christodoulides, was rated in the last two confidential reports with one point more than the interested party and the applicant Anastassios Nicolaides, was rated with one point more than the interested party in the last confidential report but he is rated as equal in the previous one.

As regards qualifications, the interested party is superior to the applicant Andreas Christodoulides as he has got, according to the schemes of service, an additional qualification and he is more or less equal as regards Anastassios Nicolaides.

On the question of seniority the interested party is senior to both applicants by two years.

The interested party and applicant Anastassios Nicolaides, were recommended for promotion, whereas applicant Andreas Christodoulides, was not.

It is clear from the above that it was reasonably open to the respondent Committee to prefer the interested party instead of the applicants. The applicants are only slightly superior in merit to the interested party but the interested party is by two years senior to both of them. Furthermore, as regards qualifications, he is more or less equal to applicant Nicolaides but he is superior to applicant Christodoulides, as he has got an additional qualification.

As it is stated in *Georghiou v. The Republic* (1983) 3 C.L.R. 17, at page 33, "a difference of one or two marks in one report is not such as to amount to a striking superiority of the applicant over such interested parties as to lead to the annulment of the sub judice decision".

Moreover, the applicant Christodoulides was not recommended for promotion, a fact which should not be lightly disregarded by the respondent Committee.

As stated in *Nissiotis v. The Republic* (1977) 3 C.L.R. 388, at page 397: "In the instant case, obviously the recommendations of the Director of the Department of Personnel have made the overall picture of the interested party more favourable than that of the applicant, and the recommendations of a Head of Department could not be ignored without special reasoning being given, which, apparently, the respondent Commission could not find on the material before them". 5

As regards the argument that the sub judice decision is not duly reasoned, I must say that from the decision itself it is abundantly clear that the reasons of the respondent Committee in promoting the interested party, are clearly recorded in it and it is, therefore, duly reasoned. 10

In the *Judicial Control of Discretionary Power in Public Administration*, 1965 Edition by Economou, the following is stated at page 233: 15

"Κατά το περιεχόμενον της επαρκής είναι η αιτιολογία της ελεγχομένης πράξεως διακριτικής εξουσίας όταν κατά την έκδοσιν αυτής, ελήφθησαν υπ' όψιν παρά του εκδόντος οργάνου πάντα τα στοιχεία τα δυνάμενα ν' ασκήσωσι επιρροήν τινά επί της εν τη προσβαλλομένη πράξει ουσιαστικής εκτιμήσεως, εν τη ελευθερία κρίσεως ή προκρίσεως. Η καθολικότης αυτή λήψεως υπ' όψιν των στοιχείων δέον να προκύπτει, είτε εκ της προσβαλλομένης πράξεως είτε εκ των στοιχείων του φακέλλου κατά τ' ανωτέρω μη απαιτουμένης, κατά την μάλλον κρατούσαν άποψιν μείας εκάστου των ληφθέντων υπ' όψιν και εκτιμηθέντων στοιχείων της αιτιολογίας". 20 25

And in English:

"In its context, the reasoning of an act of discretionary power under review is sufficient if, when issued, there were taken into consideration by the issuing organ all the elements capable of exerting certain influence on the substantial evaluation of the sub judice act in a liberal judgment or choice. This totality of the elements taken into consideration must be deducted either from the act under review or from the elements in the file, not requiring, according to the rather prevailing view, reference to each one of the 30 35

elements of the reasoning which was considered and evaluated”.

It is clear from the above that the respondent Committee was not required to record in detail what their impressions were in respect of the applicants or the interested parties.

As to the argument of counsel for applicants that in reaching the decision complained of, the respondent Committee took into account the specialization of the interested party, there is nothing to indicate that this is so nor can this be deducted from any documents before the Court.

The cases cited are distinguishable from the present case as in those cases there was clear evidence in the sub judice decision itself, that specialization was one of the factors taken into consideration in effecting the promotions in question.

As regards the argument of counsel in relation to regulation 14(1), I fail to see any relevancy of this Regulation to the case in hand as what is in issue here is not the validity of the postings but of the promotions. Nevertheless, I must repeat what was said by this Court in the case of *Dekatris v. The Republic* (1982) 3 C.L.R. 8 at page 15 in dismissing a similar argument:

“To my mind under regulation 14(1) the appropriate authority makes submissions as to the needs of the schools in general as regards the number of the teaching personnel required for every lesson, their specialities and the like. The person who is going to fill the post and any further transfers to meet the situation created by the original transfers is entirely left with the respondent committee as provided by section 39(1) of the Law.

In the present case no verification was required from the appropriate authority for the respondent committee to make this particular transfer”.

Finally, I must say that the applicants have failed to establish striking superiority as against the interested party, which is essential to justify an annulment of a sub judice decision. Although the applicants are found to be superior in merit, could in no way have been described as strikingly superior. In *Evangelou v. The Republic* (1965) 3 C.L.R. 293, at page 299, it was stated:

“In my opinion, however, any margin that might be found to exist in favour of Applicant, over the two Interested Parties concerned, could only be described as mere superiority and it could never come anywhere near to being considered as striking superiority; and it is a settled principle of administrative law that mere superiority, not being of a striking nature, is not sufficient to lead to the conclusion that the appointing authority has acted in excess or abuse of powers. (See Conclusions from the Council of State in Greece 1929–1959 p. 268 and Decision 1406/1954 of the same organ (Reports 1954C p. 1737)).”

For all the above reasons, both recourses fail and are dismissed with no order as to costs.

Recourses dismissed with no order as to costs.