

1985 May 10

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

- 1. ANDREAS THEMISTOCLEOUS AND OTHERS,
- 2. DEMETRIOS PETRAKIS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Cases Nos. 123/81, 124/81).

*Educational Officers—Promotions—Qualifications—Constituting additional qualifications under the schemes of service—Special and adequate reasons as to why such qualifications are disregarded should be given—Recommendations of Head of Department—To be adequately recorded—Recommendations of Department concerned not stating why and on what criteria it chose to recommend the interested parties—And in the case of one of the interested parties such recommendations inconsistent with the picture given in the service reports—Respondents promoting candidates recommended by the Department concerned without stating why such candidates were preferred to others possessing more qualifications which were or may be considered an additional qualification under the schemes of service—Sub judice promotions annulled for lack of due reasoning.*

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*Educational Officers—Promotions—Interview of candidates—Rather long time elapsing between the interviews and the sub judice decision—In the absence of proper records and of a system of marking doubtful if respondents were in a position to make a proper comparison between the parties.*

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*Collective Organs—Need to keep proper and adequate records.*

*Administrative Law—Administrative acts or decisions—Need that reasoning thereof must be clear and adequate.*

5 The applicants and the interested parties were candidates for promotion to the post of Assistant Headmaster of Schools of Elementary Education. Under the relevant scheme of service there were required, inter alia, “at least satisfactory service on the basis of the last two confidential reports” and “post-graduate education abroad or an  
10 additional title of studies in educational subjects or a certificate of successful attendance of a special series of educational seminars organized by the Ministry, are considered as an additional qualification”.

15 The personal interviews of the candidates took place on various dates in November, 1979. In March, 1980, the respondents interviewed another lot of candidates and the decision relating to the promotions was taken in December, 1980. Applicant No. 1 in Case 123/81, applicant No. 2 in the same case and applicant in Case 124/81, as  
20 well as some of the interested parties possessed qualifications which under the relevant schemes of service were considered as an “additional qualification”.

25 All the interested parties were recommended for promotion by the Head of Department but the applicants were not so recommended. For the school year 1978/79 interested party No. 2 was rated as “average”, regarding his work in the class, by his Headmaster and in the relevant report it was, also, stated that he has shown indifference for the work of the school and his example had  
30 a negative influence on certain teachers. The reports of the applicant in case 124/81 during the relevant period were impressive and the service reports of applicants 1 and 2 in Case 123/81 were far superior to those of interested party No. 2. The respondent Commission having in  
35 mind the provisions of the Law, the schemes of service and the recommendations of the Head of Department decided\* that on the basis of merit, qualifications and se-

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\* The text of the decision is quoted at pp. 1075-1076 post.

niority of the candidates, the recommendations of the Head of Department, the service reports "and the opinion which its members have formed about each one of the candidates at the personal interviews, the interested parties were the most suitable" and promoted them to the above posts. Nowhere in the decision was there any mention about the additional qualifications of the candidates nor was there any record of the results of the interviews. 5

*Upon a recourse by the applicants:*

*Held*, (1) that where a certain qualification is considered as an advantage under the schemes of service special and adequate reasons as to why such qualification was disregarded should be given by the organ effecting the promotions, if a candidate not possessing such a qualification is selected for promotion in preference to another possessing one (see *Protopapas and The Republic* (1981) 3 C.L.R. 456); that it is not possible to deduce from the wording of the sub judge decision whether the respondents took into consideration at all and, if they did, how they evaluated the qualifications of the applicants compared to those of the interested parties; that though the evaluation of the qualifications of candidates is within the discretion of the respondents and this Court cannot substitute its own discretion for that of the organ concerned, in this respect, in the present case, this Court is not in a position to know as to who of the applicants and/or interested parties were considered to possess any qualifications which may be considered as an "additional qualification" under the scheme of service. 10  
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(2) That Collective Organs have to keep proper and adequate records; that the inadequate recording of the recommendations of the Head of Department deprives the Court of the ability to examine how and why it was reasonably open to the respondent to act upon his recommendations; that, moreover, the reasoning of a decision must be clear and adequate in order to enable the Court to exercise judicial control over it; that in the present case the department concerned confined itself to merely listing the names of those candidates whom it recommended for promotion without stating why and on what criteria it chose to recommend them; that the respondents 30  
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then proceeded to promote certain of those candidates whose names appeared on the above list without stating why those candidates or any of them were preferred to others possessing more qualifications, which are or may be considered an additional qualification under the scheme of service as for example applicant in Case No. 124/81 who possesses a post-graduate diploma; and that, accordingly, the sub judice decision must be annulled on the ground of lack of due reasoning.

*Held, further,* (1) that the comments of the Headmaster on interested party No. 2 hardly satisfy the requirement under paragraph 2 of the "required qualifications" of the scheme of service which provides "at least satisfactory service on the basis of the last two confidential reports"; and that in this respect the recommendation of the department concerning this interested party is inconsistent with the picture given in the service reports and reliance upon it by the respondents renders their decision improper and bad in Law (see *Kousoulides v. The Republic* (1967) 3 C.L.R. 438; *Ioannou v. The Republic* (1977) 3 C.L.R. 61).

(2) That in the absence of proper records and of a system of marking all the candidates interviewed it is, to say the least, doubtful if, in view of the rather long time that had elapsed between the interviews and the sub judice decision, the respondents were in a position to make a proper comparison between the candidates (see *Demetriades and The Republic* (1983) 3 C.L.R. 842).

*Sub judice decision annulled.*

30 Cases referred to:

*Protopapas v. Republic* (1981) 3 C.L.R. 546;

*Karayiannis v. Republic* (1969) 3 C.L.R. 341;

*HadjiLouca v. Republic* (1971) 3 C.L.R. 96;

*Eleftheriou v. Central Bank* (1980) 3 C.L.R. 85;

35 *Iosif v. C.Y.T.A.* (1975) 3 C.L.R. 261 at pp. 275-276;

*Kittides v. Republic* (1973) 3 C.L.R. 123 at p. 143;

*Demosthenous v. Republic* (1973) 3 C.L.R. 354 at p. 365;

*Kousoulides v. Republic* (1967) 3 C.L.R. 438;

*Ioannou v. Republic* (1977) 3 C.L.R. 61;

*Tapakoudis v. Republic* (1981) 3 C.L.R. 9;

*Demetriades v. Republic* (1983) 3 C.L.R. 842. 5

### Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Assistant Headmaster in the Elementary Education in preference and instead of the applicants. 10

*I. Typographos* with *A. Papacharalambous*, for applicants in Case No. 123/81.

*M. Christofides*, for applicant in Case No. 124/81.

*M. Florentzos*, Senior Counsel of the Republic, for the respondents. 15

*Cur adv. vult.*

L. LOIZOU J. read the following judgment. These two recourses were heard together as they are part of the same administrative act and present common questions of Law and facts. A third recourse No. 142/81 which was being heard together with these two was withdrawn. 20

Both recourses challenge the same decision of the Educational Service Committee whereby 13 teachers A were promoted to the post of Assistant Headmaster of Schools of Elementary Education in preference and instead of the applicants. 25

The facts are briefly as follows:

All applicants hold the post of teacher A in the Elementary Education and possess the qualifications required by the scheme of service for promotion to the post of Assistant Headmaster. 30

After the consent of the Ministry of Finance had been given for the filling of 13 vacant posts of Assistant Head-

master the respondent Educational Service Committee met on the 23rd October, 1979, to consider the promotions. On that date they decided, in view of the limited number of vacant posts, and the large number of candidates possessing the qualifications for promotion, to select the most prevailing candidates, on the basis of merit, qualifications and seniority and invite them for a personal interview. The interviews took place on various dates between the 1st and the 26th November, 1979, Later on, on the 6th February, 1980, the respondents decided to invite on the 10th March, 1980, for a personal interview certain other teachers A who, presumably, had by that date become eligible according to the criteria specified by the Committee. (Appendix "E" attached to the Opposition).

On the 20th November, 1980, the Department of Elementary Education made its recommendations for the sub judice promotions after taking into consideration the service reports of the candidates and the views of the Inspectors and General Inspectors about them (Appendix "Z" attached to the Opposition). All interested parties were included in the list of those recommended for promotion whilst none of the applicants was.

The respondent Committee finally met on the 30th December, 1980, and decided to promote the 13 interested parties whose names appear in the recourses out of the list of the 41 teachers A recommended for promotion by the Department of Elementary Education. The minutes of the meeting of the Committee which are attached to the Opposition as Appendix "Στ" read as follows:

*"(c) Promotions to the post of Assistant Headmaster*

The Committee after studying the personal and confidential files of all teachers A who are entitled to promotion to the post of Assistant Headmaster and having in mind the provisions of the Law and the schemes of service and the recommendations of the Head of the Department concerned (see file 365/68/2), decides unanimously that, on the basis of merit, qualifications and seniority of the candidates, the above recommendations of the Head of Department, the service reports and the opinion which its members

have formed about each one of the candidates at the personal interviews, the following teachers A are the most suitable for promotion to the post of Assistant Headmaster.

It, therefore, decides to offer them promotion to the post of Assistant Headmaster of Schools of Elementary Education as from 1st January, 1981: 5

1. Costas Patsalides
2. Andreas Katikkis
3. Eleni Iacovidou 10
4. Timoleon Charilaou
5. Georghios Tziapouras
6. Antonis Papantoniou
7. Elisavet Papageorghiou
8. Nicolaos HjiAristides 15
9. Kleanthis Kleanthous
10. Nicos Tomasides
11. Andreas Talantitis
12. Christoforos Papachristoforou
13. Demetris HadjiDemetriou". 20

Recourse No. 123/81 is based on the following grounds of Law:

"1. The respondents possess exclusive authority, inter alia, to promote members of the Educational Service. 25

2. This authority should be exercised by the selection of the most suitable candidates.

3. Taking into consideration the seniority, rating, merit, qualifications, as well as other material which should have been taken into consideration by the respondents, the applicants were undoubtedly superior 30

to the other candidates and should have been promoted to the post of Assistant Headmaster.”

The grounds of Law relied upon in recourse No. 124/81 are:

5 “1. The candidates selected for promotion are inferior to the applicant who is strikingly superior to them and/or better than them as to qualifications, merit, service reports, seniority, professional training etc. This contravenes the Law especially Law  
10 10/69, sections 35, 36 and 37 and the administrative principle which requires, in the case of promotions and/or filling of public posts, that the best candidates should be selected both for the sake of public service as well as for reasons of justice to those citizens seeking  
15 appointment to public posts. In view of this there is contravention of the equal and/or uniform measure of judgment and/or defective or wrong exercise of discretionary power and/or excess of the limits of discretionary power and/or misconception of facts.

20 2. The decision is not reasoned and/or the reasoning is defective and/or misconceived. It does not contain, as it should, complete and special reasoning, it does not specify the factual circumstances as well as the reasons for which it was led to its judgment as to  
25 the best candidates. It does not mention the material qualifications of the candidates and the evaluation made, especially comparatively, and more specifically, it does not mention the specific material qualifications of those selected for promotion and no evaluation  
30 is made of their qualifications as opposed to the qualifications of the applicant.”

There was a third ground of Law which was withdrawn.

In his written address counsel for applicant in Case No. 124/81 withdrew his recourse against interested parties No.  
35 1 Costas Patsalides, No. 2 A. Katikkis, No. 3 Eleni Iacovidou and No. 6 Antonis Papantoniou.

After the filing of the written address both cases were fixed for oral clarifications on the 9th July, 1983. On that date recourse No. 123/81 was restricted to only three of



the interested parties i.e. No. 1 Costas Patsalides, No. 2 Andreas Katikkis and No. 13 Demetris HadjiDemetriou and it was abandoned in so far as the other ten interested parties were concerned. And at the request of counsel the personal files and confidential reports relating to applicant in Case No. 124/81 and those relating to applicants 1 and 2 in Case No. 123/81 as well as those relating to the remaining interested parties were produced (exhibit 1). 5

In view of the above, recourse No. 123/81 is directed against the promotion of interested parties 1, 2 and 13 and recourse No. 124/81 against that of interested parties 4, 5, 7, 8, 9, 10, 11 and 12. 10

In the final analysis neither of the two recourses challenges the promotion of interested parties No. 3 Eleni Iacovidou and No. 6 Antonis Papantoniou. 15

Both counsel have limited their written address to a comparison of the applicants and the interested parties. The gist of their arguments is that in accordance with the provisions of the Law and the principles of administrative Law the applicants should have been preferred for promotion to the interested parties. 20

The relevant Law governing promotions of educational officers is the Educational Service Law, 1969, (Law 10/69) and the material section is section 35, sub-sections (1), (2) and (3) of which, after their amendment in 1979 by Law 53/79, read as follows: 25

«35. (1) Οὐδείς εκπαιδευτικός λειτουργός προάγεται εις ἄλλην θέσιν, ἐκτός ἐάν-

(α) ὑπάρχη κενή τοιαύτη θέσις·

(β) κατέχη τὰ προσόντα τὰ ὁποῖα προβλέπονται εις τὸ σχέδιον ὑπηρεσίας διὰ τὴν τοιαύτην θέσιν· 30

(γ) βάσει τῶν τελευταίων δύο ὑπηρεσιακῶν ἐκθέσεων αὐτοῦ δὲν ἀξιολογεῖται ὡς μὴ προάξιμος·

(δ) δὲν ἐπιμωρήθη διαρκούσης τῆς προηγούμενης διετίας διὰ πειθαρχικὸν ἀδίκημα σοβαρᾶς φύσεως. 35

(2) Κατὰ τὴν ἐξέτασιν τῶν διεκδικήσεων τῶν ἐκ-

παιδευτικῶν λειτουργῶν πρὸς προαγωγὴν λαμβάνονται δεόντως ὑπ' ὄψιν ἡ ἀξία, τὰ προσόντα καὶ ἡ ἀρχαιότης συμφώνως πρὸς διαδικασίαν ἣτις καθορίζεται.

5 (3) Κατὰ τὴν προαγωγὴν ἡ Ἐπιτροπὴ λαμβάνει δεόντως ὑπ' ὄψιν τὰς περὶ τῶν ὑποψηφίων ὑπηρεσιακὰς ἐκθέσεις καὶ τὰς συστάσεις τοῦ οἰκείου Τμήματος Ἐκπαιδεύσεως.»

10 (“35. (1) No educational officer is promoted to another post, unless-

(a) There is such a vacant post;

(b) he possesses the qualifications required under the scheme of service for such post;

15 (c) on the basis of his last two service reports he is not evaluated as not fit for promotion;

(d) he was not punished during the preceding two years for a disciplinary offence of a serious nature.

20 (2) In examining the claims of educational officers for promotion the merit, qualifications and seniority shall be duly taken into consideration in accordance with the defined procedure.

25 (3) In making a promotion the Committee shall have due regard to the service reports of the candidates and recommendations of the respective Department of Education.”)

The relevant paragraph of the scheme of service (which is attached to the Oppositions in both recourses as Appendix “D”) regarding the required qualifications for the post of  
30 Assistant Headmaster, reads as follows:

“1. To be a teacher A and have at least two years service at a school of B or C class or at rural schools preferably of B or C class.

35 2. At least satisfactory service on the basis of the last two confidential reports.

3. Post-graduate education abroad or an additional title of studies in educational subjects or a certificate of successful attendance of a special series of educational seminars organized by the Ministry, are considered as an additional qualification.”

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I propose to deal first with the issue of qualifications. As it appears from the comparative tables filed by counsel for the respondents, all interested parties are graduates either of the Paedagogical Academy or of the Teachers Training College of Cyprus. Most of them have also attended certain seminars or courses on various subjects related to teaching.

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Applicant No. 1 in Case No. 123/81 appears to have, besides, a certificate of attendance of a seminar for the teaching of English (blue 60 in his file), a diploma from Pantios School of Economic and Political Sciences (1977), a certificate of attendance of a series of lessons on business administration organized by the Cyprus Productivity Centre (1978) and a certificate of attendance of evening classes for the lessons of the first year of a course on Practical Knowledge at the Nicosia Technical School (1971-1972). These certificates, although filed as exhibits in the recourse, do not appear in the file of this applicant but their existence has not been disputed by counsel for the respondents nor is there any allegation on his part that they were not brought to the knowledge of the respondent Committee. Applicant No. 2 in the same case appears to have attended a series of educational seminars (blues 35, 64, 80, 81 and 82 in his file).

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Applicant in Case No. 124/81, Demetris Petrakis has a diploma in Geography from the university of London, which he obtained in 1973 as an external student. He has also attended, on scholarship, a summer course in the American university of Beirut of six weeks' duration in 1975 and another one at the university of Nottingham of three weeks' duration in 1979 on the subject of "The Teaching and Usage of Contemporary English". He has also attended certain educational seminars.

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It has been held in a number of cases that where a certain qualification is considered as an advantage under

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the schemes of service special and adequate reasons as to why such qualification was disregarded should be given by the organ effecting the promotions, if a candidate not possessing such a qualification is selected for promotion in preference to another possessing one. (See, *Protopapas and The Republic* (1981) 3 C.L.R. 456).

It is not possible to deduce from the wording of the sub judice decision whether the respondents took into consideration at all and, if they did, how they evaluated the qualifications of the applicants compared to those of the interested parties. The evaluation of the qualifications of candidates is within the discretion of the respondents and this Court cannot substitute its own discretion for that of the organ concerned. In this respect, in the present case, this Court is not in a position to know as to who of the applicants and/or interested parties were considered to possess any qualifications which may be considered as an "additional qualification" under paragraph 3 of the scheme of service. Nor does such information appear in any record or minutes of the respondents or the recommendations of the department concerned (which is Appendix "Z" attached to the Opposition).

The need for keeping proper and adequate records by collective organs has been stressed by this Court in several cases. (See, *Karayiannis v. The Republic* (1969) 3 C.L.R. 341; *HadjiLouca v. The Republic* (1971) 3 C.L.R. 96; *Eleftheriou v. The Central Bank* (1980) 3 C.L.R. 85).

In the case of *Iosif v. C.Y.T.A.* (1975) 3 C.L.R. 261 it was held (at pp. 275-276) that the inadequate recording of the recommendations of the Head of Department deprived the Court of the ability to examine how and why it was reasonably open to the Board to act upon the recommendations and the promotions were annulled on this ground.

The reasoning of a decision must be clear and adequate in order to enable the Court to exercise judicial control over it. (*Kittides v. The Republic* (1973) 3 C.L.R. 123, 143; *Demosthenous v. The Republic* (1973) 3 C.L.R. 354, 365).

In the present case the department concerned confined

itself to merely listing the names of those candidates whom it recommended for promotion without stating why and on what criteria it chose to recommend them. The respondents then proceeded to promote certain of those candidates whose names appeared on the above list without stating why those candidates or any of them were preferred to others possessing more qualifications, which are or may be considered an additional qualification under the scheme of service as for example applicant in Case No. 124/81 who possesses a post graduate diploma.

Whilst on the point of recommendations I wish to point out another reason, which came to my notice when going through the files, for which such recommendations should be regarded as erroneous or inadequately recorded. It appears from the personal file of interested party No. 2, whose promotion is challenged by recourse No. 123/81 that for the school year 1978/79 his Headmaster rated him as follows:

“He has organized a lecture for parents (D2), on 21.3.79. He attended a few lectures of the school for parents.

His work in the class was average.

He has shown indifference for the work of the school.

His example had a negative influence on certain teachers.

His participation in the meetings of the teaching staff was average.”

These comments hardly satisfy the requirement under paragraph 2 of the “required qualifications” of the scheme of service which provides “at least satisfactory service on the basis of the last two confidential reports”. In this respect the recommendation of the department concerning this interested party is inconsistent with the picture given in the service reports and reliance upon it by the respondents renders their decision improper and bad in Law. (*Kousoulides v. The Republic* (1967) 3 C.L.R. 438; *Io-*

3 C.L.R. Themistocleous and Others v. Republic L. Loizou J.  
annou v. The Republic (1977) 3 C.L.R. 61; Tapakoudis v.  
The Republic (1981) 3 C.L.R. 9).

As opposed to the report of this interested party the reports of the applicant in Case No. 124/81 during the  
5 relevant period are impressive and are full of praise for his ability, system of work and the results achieved and yet, this applicant, for reasons unknown, was not even recommended for promotion. Far superior to that of the interested party in question are also the service reports of  
10 applicants 1 and 2 in Case No. 123/81.

The department concerned did not record any reasons why it recommended this interested party inspite of the comments in his aforementioned report. Nor can any reason be found in any other record or minute of the respondents  
15 or in the sub judice decision.

For all the above reasons these recourses must succeed and the sub judice decision annulled on the ground of lack of due reasoning.

Before concluding however, I wish to make certain observations by way of comment which came to my notice in going through the relevant files. As it can be seen from the minutes of the respondent Committee Appendix "E" the personal interviews for the promotions took place on various dates in November, 1979. Then in March, 1980,  
20 they interviewed another lot of candidates who, it would appear, became eligible in the meantime. But the decision relating to the promotions was not taken until December, 1980. In the absence of proper records and of a system of marking all the candidates interviewed it is, to say the  
25 least, doubtful if, in view of the rather long time that had elapsed between the interviews and the sub judice decision, the respondents were in a position to make a proper comparison between the candidates. (See, *Demetriades and The Republic* (1983) 3 C.L.R. 842).

I would also like to observe that there appears to be some inconsistency between the material contained in the file of the proceedings and the personal file of applicant 1 in Case No. 123/81 with regard to the date of his appointment and the date of his promotion to the post of teacher  
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40 A.

In his written address learned counsel states that this applicant was appointed on the 1st September, 1962 and was promoted to teacher A on the 1st September, 1972. The same dates appear in the comparative table attached to the Opposition, Appendix "H". In a certificate dated 15th October, 1969, attached to the written address of counsel and signed by the Principal of the Paedagogical Academy it is stated that this applicant had attended the Academy between the years 1960-1962 and completed the prescribed two year full time course of study and practical training during this period. From his personal file however, it appears that the above information is not accurate and that he, in fact, attended the Paedagogical Academy during the years 1963-1965, that he was first appointed on the 1st April, 1967 and was promoted to the post of teacher A on the 15th November, 1976.

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