

1985 September 6

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS GEORGHIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

*(Cases Nos. 91/84, 161/84,
178/84, 181/84, 183/84, 189/84,
190/84, 191/84, and 196/84).*

5 *Educational Officers—Promotions—The Public Educational Service Law 10/69 section 35(2)(3) as amended by section 5(b) and 5(c) of Law 53/79—Recommendations “of the respective Department of Education”—The recommendations of the Head of the Department are the recommendations of the Department—Unless applicant succeeds in proving the contrary or in creating a doubt.*

10 *Educational Officers—Promotions—The Court will not interfere with a promotion unless it is established that the person not selected had “striking superiority” over the person selected—Seniority of 4 years and 3 months (other things being equal) constitutes “striking superiority”.*

Administrative act—Reasoning of—May be supplemented from the material in the file.

15 *Educational Officers—Promotions—Original promotions annulled by this Court for formal reasons—Sub judice promotions effected after reconsideration of the case following the*

annulment—In the circumstances the sub judice promotions were validly made with retrospective effect.

Res Judicata—Annulment of earlier promotions for formal reasons—The doctrine of res judicata cannot be invoked as a ground for annulling the sub judice new promotions of the same persons. 5

The 35 interested parties in these recourses were originally promoted together with 25 other persons from the post of schoolmaster to the post of Assistant Headmaster in the secondary education by a decision of the respondent Commission dated 2.11.1981. The said promotions were annulled by the Supreme Court on the 1.8.1983 in *Frixos Demetriades and others v. The Republic* (1983) 3 C.L.R. 842. On the 19.12.1983 the respondent Commission decided to promote inter alia to the said post the interested parties in these recourses with retrospective effect as from the 15.11.1981. As a result the applicants, who were candidates for promotion to the said post of Assistant Headmaster filed the present recourses. 10 15

The grounds of law on which the applicants relied may be conveniently grouped as follows: 20

1. Violation of the doctrine of Res Judicata.

2. Violation of section 35(2)(3) of the Public Educational Service Law 10/1969 as amended by section 5(b) and 5(c) respectively of Law 53/1979 in that the recommendations submitted to the respondent Commission were the personal recommendations of the Heads of the Department of Secondary and Technical Education respectively and not those “of the respective Department of Education” as envisaged by the section aforesaid. 25 30

3. Absence of due inquiry in that the time of the meeting of the respondent Commission (4 hours) during which the sub judice decision was reached was insufficient for the examination of the files and the relevant documents concerning the great number of candidates. 35

4. Misconception of facts; additional qualifications ignored.

5. Lack of due reasoning. Counsel for applicants argued that the Commission failed to give special reasoning for ignoring the additional qualifications of the applicants in reaching their decision.

5 6. Retrospectivity in the commencement of the operation of sub judice promotions.

10 *Held* (1) As to ground 1 above: The case of *Frixos Demetriades and others v. The Republic* (supra) was never adjudicated on its merits; therefore the doctrine of Res Judicata cannot be invoked in the present cases.

15 (2) As to ground 2 above: The Department as such cannot submit a recommendation. The recommendation must be submitted by a living entity on behalf of the Department. The best possible representative of the Department in this respect is its Head. His recommendations are the recommendations of the Department, unless the contrary or a doubt is created by the applicant. There is no material whatever indicating that the above presumption of regularity may be rebutted in the present cases.

20 (3) As to ground 3 above: In the circumstances and in the absence of any evidence to the contrary the presumption of regularity prevails.

25 (4) As to grounds 4 and 5 above and as to other grounds of law which were not explicitly grouped above:
A) An administrative Court will not interfere with a promotion, unless it is established that the person not selected had "striking superiority" over those selected. The fact that interested parties 5 and 12 were marked with 33 as against 34 of the applicant in recourse 190/84 should only
30 be described as mere superiority and it could never come anywhere near to being considered as striking superiority. Additional qualifications do not indicate by themselves striking superiority. Seniority prevails, if all other things are equal. Seniority of 4 years and 3 months (all other things being equal) is of a striking superior nature. As applicant in recourse 178/84 is senior to interested party 10 in
35 that recourse by 4 years and 3 months and more or less equal in merit and qualifications the promotion of the said

interested party would be annulled. In the light of the above principles and the material before the Commission all sub judice promotions (except the promotion of interested party 10 in recourse 178/84) were reasonably open to the Commission. (B) The applicants, in recourses 91/84 and 189/84 were neither recommended by the respective Department of Education nor did they possess additional qualifications whilst all interested parties were so recommended and further many of them possessed such additional qualifications. The applicants in recourses 178/84 and 181/84 did not possess any additional qualifications whilst quite a number of the interested parties had an additional qualification.

All the additional qualifications of the applicants in cases Nos. 161/84, 183/84, 190/84, 191/84 and 196/84 as well as those of all interested parties (which possessed same) in all cases (i) were qualifications referred to in the scheme of service, (ii) were placed before the E.S.C. together with the basic qualifications, the service reports etc., of each one of the candidates, according to the presumption of regularity.

When the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the scheme of service in relation to each one of them and his qualifications.

In view of the above it is clear that in the circumstances, the sub judice decision is duly and cogently reasoned, its reasoning being supplemented from the file. It would have been futile to expect more express reference to the additional qualifications when there were so many factors establishing overwhelming superiority of the interested parties. Express reference to reasons for disregarding additional qualifications is expected in cases where there are not so many apparent reasons in the file.

(5) As to ground 6 above: As a rule an administrative act cannot validly be given retrospective effect; but there are certain exceptions to this rule. When an administrative act is annulled by the Court for formal reasons (as the

original promotion of the interested parties) the results of the new act, since it relates to the same subject-matter as the annulled one and it is decided within reasonable time from the original one and on the basis of the same facts and law, it can relate back to the time of the original act. Therefore, all sub judice promotions made with retrospective effect were validly made in this respect.

Sub judice decision in case 178/84 as far as interested party 10 is concerned annulled. Recourse 178/84 as against all other interested parties and all the other above recourses dismissed. No order as to costs.

15 Cases referred to:

- Frixos Demetriades and Others v. The Republic* (1983) 3 C.L.R. 842;
- Pieris v. The Republic* (1983) 3 C.L.R. 1054;
- 20 *Michanicos and Another v. The Republic* (1976) 3 C.L.R. 237;
- Michaelides v. The Republic* (1976) 3 C.L.R. 115;
- Christou v. The Republic* (1977) 3 C.L.R. 11;
- Duncan v. The Republic* (1977) 3 C.L.R. 153;
- HjiSavva v. The Republic* (1982) 3 C.L.R. 76;
- 25 *Evangelou v. The Republic* (1965) 3 C.L.R. 292;
- Elli Loizidou-Papaphoti v. Educational Service Commission* (1984) 3 C.L.R. 933;
- Protopapas v. The Republic* (1981) 3 C.L.R. 456;
- Republic v. Petrides* (1984) 3 C.L.R. 378;
- 30 *Petrides and another v. The Republic* (1982) 3 C.L.R. 914;
- Skarparis v. The Republic* (1978) 3 C.L.R. 106;
- Makrides v. The Republic* (1983) 3 C.L.R. 750;
- Partellides v. The Republic* (1969) 3 C.L.R. 480;

Morsis v. The Republic (1965) 3 C.L.R. 1;

Georgiades v. The Republic (1966) 3 C.L.R. 153;

HjiGregoriou v. The Republic (1968) 3 C.L.R. 326;

Afxentiou v. The Public Service Commission (1973)
3 C.L.R. 309;

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Panayides v. The Republic (1973) 3 C.L.R. 378.

Recourses.

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

A. S. *Angelides*, for applicants in Cases Nos. 91/84, 161/84, 178/84 181/84, 189/84, 190/84, 191/84 and 196/84.

A. *Pandelides*, for applicant in Case No. 183/84. 15

R. *Vrahimi (Mrs.)*, for the respondent.

N. *Ioannou (Mrs.)*, for interested party Ioanna Moushioutta in Cases Nos. 161/84, 178/84 and 181/84.

L. *Vassiliou*, for interested party Georghios Drakos in Cases Nos. 91/84, 161/84, 178/84, 191/84 and 196/84. 20

A. *Panayiotou*, for interested party Panayiotis Marcou in Cases Nos. 91/84, 178/84 and 196/84.

Cur. adv. vult. 25

LORIS J. read the following judgment. The eleven applicants in these nine recourses (as they now stand) challenge the validity of the promotion by the respondent Educational Service Commission, on 19.12.1983, of 35 schoolmasters to the post of Assistant Headmaster in the Secondary Education, in preference to and instead of the applicants.

These recourses were heard together on the application of all concerned as they emanate from the same decision taken by the respondent Commission and present common issues of law.

Before proceeding further I consider it necessary to mention at this stage, that certain changes have been effected in seven out of the nine above intitled recourses after the filing thereof and before the conclusion of the hearing as follows:

A.(a) In Case No. 91/84 two interested parties were withdrawn; they are:

(i) Pavlou Eleftherios - withdrawn on 22.2.84; his promotion is not being challenged by any other recourse and his name is not included in the 35 schoolmasters referred to at the beginning of this judgment.

(ii) Kleanthous Costas withdrawn on 28.2.84; his promotion is being challenged though, by recourse 181/84; his name is therefore included in the 35 schoolmasters referred to above in connection with recourse 191/84.

(b) In case No. 189/84 interested party namely Michael Antonios was withdrawn on 24.5.85; (vide letter of counsel of applicant of even date in the relevant file) his name is not therefore included in

the schoolmasters whose promotion is being challenged above.

B. In cases Nos. 178/84, 181/84, 190/84 and 191/84 prayers under paragraphs 3 in each one of the said recourses, concerning another decision of the respondent Commission dated 9.4.84 were withdrawn and dismissed on 2.7.84; the interested parties related thereto were withdrawn in consequence thereof and they are not included in the 35 schoolmasters mentioned at the beginning.

C. In case No. 183/84 the prayer in respect of another decision of the respondent Commission dated 5.4.84 was withdrawn and dismissed on 27.2.85; as a result one interested party namely Ioannis Tourvas was withdrawn.

The 35 schoolmasters—interested parties in the cases under consideration—were originally promoted to the post of Assistant Headmaster in the Secondary Education together with 25 other schoolmasters (who are not parties in the present cases) by virtue of the decision of the respondent Commission dated 2.11.1981.

All the aforesaid promotions were annulled on 1.8.1983 by the Court (vide *Frixos Demetriades and Others v. The Republic* (1983) 3 C.L.R. 842).

On 19.12.1983 the respondent Commission “after having gone thoroughly through the personal files and confidential reports of all candidates and after having taken into consideration the merits, qualifications and seniority of each one of the candidates, their service reports as well as the departmental recommendations” (as stated verbatim in the decision Appendix “A”) decided to promote inter alia the interested parties in the present cases, to the post of Assistant Headmaster in the Secondary Education with retrospective effect as from the 15th November, 1981.

All applicants in the above intitled recourses impugn the aforesaid decision of the respondent Commission dated 19.12.1983 relying on several grounds of law which ap-

pear in each one of the recourses and may be conveniently grouped as follows:

1. Violation of the doctrine of "res judicata";
- 5 2. Violation of the law regulating promotions in the Educational Service;
3. Absence of due inquiry;
4. Misconception of facts; additional qualifications ignored;
5. Lack of due reasoning;
- 10 6. Retrospectivity in the commencement of the operation of the sub judice decision.

I shall now proceed to examine the grounds of law relied upon by the applicants as grouped above:

- 15 1. *Violation of the doctrine of "res judicata"*: In the case of *Pieris v. The Republic* (1983) 3 C.L.R. 1054 it was stated (at p. 1066 of the report) that:

"For the doctrine of res judicata to be validly invoked, the following prerequisites must be satisfied:-

- 20 (a) The decision relied upon to set up res judicata, must involve an adjudication on the merits, in contradistinction to an adjudication resting on the absence of the requisite formalities. For example a decision issuing out of an incompetent organ or one challenged out of time.
- 25 (b) The point in issue must have been decided directly or by necessary implication in the first recourse."

It is abundantly clear from mere perusal of the case of *Frixos Demetriades and Others v. The Republic* (supra),
 30 that the aforesaid case was never adjudicated on its merits; 6 preliminary points of law agreed upon between the parties were set down for hearing (vide p. 846 of the report) and the learned trial Judge having examined only two, decided to annul the administrative decision of 2.11.

1981; the relevant passage of the decision of the Court at page 855 reads as follows:

“... I find that the sub judice decision must be annulled both for lack of due reasoning and wrong exercise of discretion...”.

5

The learned trial Judge states further down at p. 857 of the decision the following:

“However, having regard to the fact that no evidence was adduced as to which of the interested parties are not possessed with such additional qualification and which of the applicants are so possessed and this because the case was not examined on its merits, and, also in view of the fact that the sub judice decision has already been annulled on other grounds, I am not going to decide the issue.”

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In view of the above it is clear that the doctrine of *res judicata* cannot be invoked in the present cases as there was no adjudication on the merits in the first recourse i. e. the case of *Frixos Demetriades and Others v. The Republic*, (supra).

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2. *Violation of the law regulating promotions in the Educational Service.*

The relevant law is the Public Educational Service Law 1969 (Law No. 10/69 and the material section is s. 35(2) (3); the aforesaid sub-sections were amended by s. 5(b) and 5(c) respectively of Law 53/79. Sub-sections (2) and (3) of section 35, as amended read as follows:

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

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(3) In effecting a promotion, the Commission shall have due regard of the service reports of the candidates and the recommendations of the respective Department of Education.”

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It is the complaint of the applicants as expounded in their respective written addresses that the recommendations

submitted to the respondent E.S.C. were the personal recommendations of the Heads of the Department of Secondary and Technical Education respectively and not those "of the respective Department of Education" as envisaged by s. 5(3) of Law 10/69 as amended by s. 5(c) of Law 53/79.

With respect, I cannot agree with this submission of learned counsel for applicants; the Department as such cannot submit a recommendation. The recommendation must be submitted by a living entity on behalf of the Department and I fully agree with my brother Judge Stylianides who stated in the case of *Loizidou-Papaphoti v. The E.S.C.* (1984) 3 C.L.R. 933 that "the best possible representative as spokesman of a Department is no other than the Head thereof. He represents his department and his recommendations, unless the contrary or a doubt is created by the applicant, are not his personal but the recommendations of the Department. It is presumed that he conveys to the Commission the recommendations of the department..."

I have no doubt in my mind that the recommendations in question were submitted to the respondent commission by the two Heads of Departments on behalf of their respective Departments and there is no material whatever before me indicating that this presumption of regularity may be rebutted. On the other hand, it is clear that the respondent commission treated at all times the recommendations in question as emanating from the respective Department (vide Appendix "A" page 1 «τους οποίους τὸ οἰκείο Τμήμα συνέστηνε», and page 6, «έκπαιδευτὲς πού ἔχουν σύσταση τοῦ οἰκείου Τμήματος.»)

For the reasons given above this ground also fails.

3. *Absence of due inquiry.*

The complaint advanced in this respect mainly rests on the allegation that the time of the meeting of the respondent commission (4 hours) during which the sub judice decision was reached at was insufficient for the examination by the Commission of all the personal files, service reports, recommendations by the respective Educational Departments of the great number of candidates.

Learned counsel for applicants submitted in his written address, after making mathematical calculations that the Commission could not devote more than 25 seconds for the examination of the relevant documents in connection with each one of the candidates. Such an inquiry he submitted was obviously defective and would unavoidably lead to mistakes of fact which should render the relevant decision a nullity owing to misconception of facts. 5

I am not in a position to say how much time has been devoted by the Commission for the examination of the case of each one of the candidates; in this connection I think that there was nothing to prevent the members of the commission to get acquainted with the contents of the personal files and the service reports of each one of the candidates prior to the meeting or even avail themselves of comparison lists prepared for the purpose. Anyway, the fact remains that all personal files, service reports and recommendations by the respective Educational Departments for all candidates were available to all members of the commission on 19.12.83 at the meeting when the sub judice decision was taken, and further it is stated in the decision of the commission that all the aforesaid documents were examined by the commission exhaustively before the sub judice decision was reached. 10 15 20

In the circumstances and in the absence of any evidence to the contrary the presumption of regularity prevails and this ground is doomed to failure as well. 25

I shall now proceed to examine grounds 4 and 5 above together as they are interwoven; further as the facts of one recourse may differ from another. I think it is convenient to deal with each one of the recourses separately extending the judicial scrutiny of the sub judice decision to other grounds of law which although raised might have not been pursued further or perhaps were not explicitly grouped above. 30 35

Case No. 91/84: Both applicants in this recourse were not recommended by the respective Department of Education for promotion whilst all the interested parties were so recommended.

Both applicants are equal or more or less equal in merit with the interested parties with the exception of interested parties 2, 4 and 7 who are superior in merit to the applicants.

- 5 Both applicants possess only the basic qualifications required by the scheme of service; the same qualifications are possessed by the interested parties whilst interested parties 8 and 18 possess additional qualifications.

10 As regards seniority interested parties 6, 7 and 13 have seniority over both applicants.

The applicants have slight seniority over interested parties No. 1, No. 2, No. 4, No. 8, No. 9, No. 17 and No. 19.

Seniority is more or less equal with the remaining interested parties.

- 15 Taking into consideration that all the interested parties were recommended by the respective Department of Education whilst both applicants were not so recommended, and further that seniority prevails, all other things being equal - which is not the present case, the sub judice decision was reasonably open to the respondent E.S.C. In the
20 circumstances the above recourse is doomed to failure.

25 *Case No. 189/84:* All the interested parties in this recourse were recommended by the respective Department of Education for promotion whilst both applicants were not so recommended.

As regards merit all the interested parties are better rated than both applicants with the exception of interested party No. 6 who has the same marks with applicant No. 2.

- 30 As regards qualifications, I. P. No. 1, No. 2 and No. 6 possess additional qualifications as provided by the scheme of service whilst both applicants possess only the basic qualifications required, the same as those of I. P. 3, 4 and 5.

35 Applicant No. 1 has seniority over 4 interested parties whilst applicant No. 2 has seniority of about 1 year over I. P. No. 6 (the latter has additional qualifications).

In view of the above the promotion by the E.S.C. of

the interested parties instead of the applicants was reasonably open to the Commission.

In the circumstances this recourse is doomed to failure as well.

Case No. 181/84: The applicant as well as all ten interested parties in this recourse were recommended by the respective Department of Education, for promotion. 5

The applicant has no additional qualification whilst interested parties 3, 7, 9 and 10 possess such additional qualification. 10

As regards merit the applicant is rated with 34 and 35 marks the last two years (prior to material date of appointment in 1981) whilst interested parties Nos. 1, 2, 3, 6 have 35 and 35 marks respectively, and interested party No. 10 has 35 and 36 marks for the same period; the remaining interested parties have the same marks with the applicant for the period in question with the exception of interested party No. 9 who has 32 and 35 marks but as already stated he possesses an additional qualification, recognised by the scheme of service, whilst the applicant has only the basic qualifications. 15 20

In connection with seniority interested parties 9 and 10 are senior to the applicant whilst the remaining interested parties are junior to the applicant, the applicant enjoying a seniority ranging from one to four years over these interested parties. 25

In view of the fact that some of the interested parties have an additional qualification whilst others are in a somewhat better position as regards merit the seniority of the applicant cannot tip the scales decisively in his favour as seniority prevails if all other factors are equal. 30

Furthermore we must always bear in mind that an Administrative Court will not interfere with a promotion unless it is established that the person not selected had "striking superiority" over those selected. (*Michanicos and Another v. Republic* (1976) 3 C.L.R. 237, *Michaelides v. The Republic* (1976) 3 C.L.R. 115, *Christou v. Republic* 35

(1977) 3 C.L.R. 11, *Duncan v. Republic* (1977) 3 C.L.R. 153, *HjiSavva v. Republic* (1982) 3 C.L.R. 76).

In the circumstances this recourse fails as well.

5 *Case No. 183/84*: The applicant in this case as well as the remaining interested party namely Aris Skordes (vide withdrawal of the other prayer on 27.2.85 explained at the beginning of this judgment) were recommended by the respective Department of Education, for promotion.

10 The marks of the interested party (36-37) are slightly better than those of the applicant (36-36).

The additional qualifications of both are more or less the same.

15 The applicant was promoted to the post of B 6 on 1.9.1974 whilst the interested party was promoted to the same post as early as 1.9.1970.

It is therefore self-evident that it was reasonably open to the respondent commission to promote the interested party to the post of Assistant Headmaster in the Secondary Education in preference to and instead of the applicant.

20 This recourse fails as well.

Case No. 161/84: The applicant as well as all sixteen interested parties in this case were recommended by the respective Department of Education for promotion.

25 The applicant (35 and 35 marks for the last two years) is inferior in merit to interested parties 3, 4, 6, 10, 11, 12 and 14, equal in merit with interested parties, 1, 7, 8, 13 and 16 and more or less equal with interested parties 2, 5 and 9; the applicant is somewhat better in merit only as regards interested party No. 15 (34 and 34 marks for the last 2
30 years); in connection with interested party No. 15 it must be noted though that he possesses two additional qualifications i.e. Postgraduate course in the University of Nancy (65/66) and the University of Wales (76/77) as against only 1 additional qualification of applicant (Post-graduate
35 course in Greece 76/77).

The applicant is somewhat senior to 4 out of the sixteen

interested parties (his seniority ranging from 1 month (interested party No. 3) to 1 year and 5 months (interested party No. 1) whilst all the remaining 12 interested parties are substantially senior to the applicant.

Generally speaking the overall picture of the applicant did not establish striking superiority over those selected, therefore I hold the view that the decision of the respondent Commission should not be interfered with by this Court. 5

In the result this recourse fails as well.

Case No. 178/84: The applicant as well as all eighteen interested parties in this case were recommended by the respective Department of Education for promotion. 10

As regards merit the applicant was marked with 36 - 36 (for the last two years). He is equal in merit with interested parties 4, 14 and 18 and more or less equal with the remaining interested parties with the exception of interested party 12 (Dermosoniades) who was marked 34 - 34 for the same period; in this respect it must be noted that the said interested party has 2 additional qualifications (Nancy University for the year 65/66 and Wales University 76/77) whilst the applicant has no additional qualification whatever. 15 20

Apart from the additional qualifications of I.P. 12 mentioned above it may as well be added here that interested parties 7, 8 and 14 as well possess additional qualifications whilst the remaining interested parties possess only the basic qualifications required by the scheme of service. 25

In connection with seniority I have carefully considered the picture before me and I shall confine myself in mentioning this much; the applicant was emplaced on scale B 12 as from 1.9.70 whilst I. P. No. 10 namely Michael Sofocleous was emplaced on the same scale as late as 1.12.1974. I hold the view that such a seniority of 4 years and 3 months is of a strikingly superior nature and in view of the fact that the applicant and the said interested party have more or less same merit (rather the applicant is better merited with his 36 - 36 marks as against 35 - 35 of the interested party) and the same qualifications, the seniority 30 35

of the applicant should prevail (*Partellides v. The Republic* (1969) 3 C.L.R. 480.

In the result the recourse of the applicant succeeds only against interested party No. 10 namely Michael Sofocleous.

5 *Case No. 190/84*: The applicant in this recourse as well as all 12 interested parties were recommended by the respective Department of Education, for promotion.

10 As regards merit all the interested parties with the exception of I.P. 5 and I.P. 12 are better rated than the applicant; I.P.s 5 and 12 were marked with 33 marks as against 34 of the applicant. In my opinion, however, any margin that might be found to exist in favour of the applicant, over the aforesaid interested parties concerned, should only be described as mere superiority and it could never
15 come anywhere near to being considered as striking superiority. (*Evangelou v. Republic* (1965) 3 C.L.R. 292).

It is true that the applicant has an additional qualification whilst only interested parties 4, 5, 8 and 10 possess such a qualification but I am inclined to the view that additional qualifications "do not indicate by themselves striking superiority" (*Elli Loizidou - Papaphoti v. E.S.C.* (1984) 3 C.L.R. 933).

25 In connection with seniority it is apparent that all interested parties are senior and most of them substantially senior than the applicant.

In view of the above I hold the view that the sub judice decision of the respondent Commission was reasonably open to it.

30 *Case No. 191/84*: The applicant in the present recourse as well as all the sixteen interested parties were recommended by the respective Department of Education for promotion.

35 The applicant is inferior in merit compared to interested parties 3, 7 and 15 and he is equal or more or less equal with the remaining.

He is possessed with an additional qualification whilst

only interested parties 9, 10, 11, 14 and 15 are so possessed.

All interested parties are senior to the applicant and such seniority is ranging from two to five years.

The applicant thus failed to prove "striking superiority" and the present recourse is doomed to failure as well. 5

Case No. 196/84: The applicant in this recourse is equal or more or less equal in merit with the 14 interested parties; he was recommended for promotion by the respective Department of Education and all the interested parties were so recommended as well. 10

The applicant has an additional qualification whilst only interested parties 4, 9 and 14 are so possessed with an additional qualification.

All the interested parties with the exception of I.P. No. 10 are senior to the applicant; the seniority of the applicant over I.P. No. 10 is only 3 months. 15

In the circumstances I hold the view that the applicant has failed to prove striking superiority over the interested parties, his additional qualification not indicating by itself striking superiority over the interested parties not possessed with such an additional qualification. 20

This recourse therefore fails.

In connection with all the present recourses it was forcefully argued by counsel for applicants that the sub judice decision of the respondent Commission should be annulled on the additional ground that the Commission failed to give special reasoning for ignoring the additional qualification of the applicants in reaching at their decision. 25

It is true that "where certain additional qualification is required under the scheme of service, special reasoning must be given in cases where a person not possessing such qualification was selected in preference to another possessing one, as to why such qualification was disregarded. (*Protopapas v. The Republic* (1981) 3 C.L.R. 456.) 30

In the case of the *Republic v. Petrides* (1984) 3 C.L.R. 378 it was held that "in the case in hand, however, both 35

the applicant and the interested parties possessed the additional qualifications and so no specific reference was required to be made by the Public Service Commission in its decision to the additional qualification of the applicant.”.

5 In the same case reference was made with approval to the judgment of A. Loizou J. in the case of *Petrides and Another v. The Republic* (1982) 3 C.L.R. 914 where at p. 924 our learned brother stated the following:

10 “In any event when the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the scheme of service in relation to each of them and his qualifications. Once therefore this additional qualification was part of those required under the scheme of service, and the respondent Commission stated that
15 it had inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission. There is, on
20 the contrary, nothing to suggest that they omitted to examine same.

The case therefore of *Tourpeki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquiry and gave sufficient reasons on the subject.”

25 In the case of *Skarparis v. The Republic*, (1978) 3 C.L.R. 106 at p. 116 the learned President of this Court held that: “The recommendation of the Ministry concerned
35 —the Head of the Department—constitutes a very good reason for not preferring a candidate in spite of his post-graduate qualification.”

In the recourses under consideration it must be borne in mind that:

(a) Both applicants in both recourses 91/84 and 189/84

were neither recommended by the respective Department of Education for promotion, nor did they possess additional qualifications envisaged by the relevant schemes of service whilst all the interested parties in both recourses were so recommended and further many interested parties in both aforesaid recourses were possessed with such additional qualifications. 5

(b) The applicants in recourses 178/84 and 181/84 in spite of the fact that they were recommended by the respective Department of Education for promotion did not possess any additional qualifications whilst all the interested parties in both these recourses had the recommendation in question and quite a number of them had also an additional qualification from those enumerated in the scheme of service. 10 15

(c) All the additional qualifications of the applicants in cases Nos. 161/84, 183/84, 190/84, 191/84 and 196/84 as well as those of all interested parties (which possessed same) in all cases (i) were qualifications referred to in the scheme of service, (ii) were placed before the E.S.C. together with the basic qualifications, the service reports etc., of each one of the candidates, according to the presumption of regularity. 20

(d) When the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the scheme of service in relation to each one of them and his qualifications. 25

In view of the above, by way of answering to the argument advanced by learned counsel for applicants in connection with the special reasoning, I shall confine myself in repeating verbatim what has been stated in the case of *Makrides v. Republic* (1983) 3 C.L.R. 750 at p. 760. 30

“It is clear, therefore, that in the circumstances of this case, the subject decision is duly and cogently reasoned, its reasoning being supplemented from the material in the file in all respects and it would have been futile to expect more express reference to the additional qualification of the applicant when there 35

were so many factors in the file establishing overwhelming superiority on the part of the interested parties that were promoted instead of him. I would have expected express reference to the reasons for disregarding what is an additional qualification in cases where there were not so many apparent reasons in the file.”

I shall now proceed to examine the last complaint of the applicants, notably the retrospectivity of the sub judice decision.

It is true that as a rule administrative acts cannot validly be given retrospective effect; but it is also correct to mention that there are certain exceptions to the above established principle. (Vide Stassinopoulos on the Law of Administrative Acts 1951 p. 370—Kyriakopoulos, on Greek Administrative Law, 4th edition, Vol. 2 p. 400—Conclusions from the Jurisprudence of the Greek Council of State 1929 - 1959 at p. 197—vide also *Morsis v. The Republic* (1965) 3 C.L.R. 1, *Georghiades v. Republic* (1966) 3 C.L.R. 153, *HjiGregoriou v. The Republic* (1968) 3 C.L.R. 326, *Afxentiou v. P.S.C.* (1973) 3 C.L.R. 309, *Panayides v. Republic* (1973) 3 C.L.R. 378 (F.B.)).

One of the exceptions to the Rule against retrospectivity, appearing in the Conclusions from the Jurisprudence of the Greek Council of State 1929 - 1959 at p. 197 under paragraph (γ) reads as follows:

“On the annulment of an administrative act by the Council of State for formal reasons, for example for lack or insufficiency of reasoning or for defective constitution of a collective organ, the results of the new act since it relates to the same subject-matter as the annulled one and once it is decided within reasonable time from the original one and on the basis of the same facts and law, it can relate back to the time of the original act (vide decisions 551, 1691/1952, 543, 1016/54).”

As already stated, all the interested parties were promoted originally to the post of Assistant Headmaster in the Secondary Education on 2.11.81; by virtue of the de-

cision of the Court in *Demetriades and Others v. Republic* (1983) 3 C.L.R. 842 the aforesaid promotions were annulled "for lack of due reasoning and wrong exercise of discretion." It is clear from perusal of the report in question that the aforesaid decision was pronounced on preliminary issues and that the learned trial Judge did not go into merits of the decision of the respondent Commission dated 2.11.81. 5

In the circumstances I hold the view that all the present cases fall within the exception referred to above; therefore all promotions made with retrospective effect as from 15.11.81 were validly made, in this respect. 10

In the result recourses under Nos. 91/84, 161/84, 181/84, 183/84, 189/84, 190/84, 191/84 and 196/84 are hereby dismissed; no order as to their costs.

Recourse under No. 178/84 succeeds only as against interested party No. 10 namely Michael Sofocleous for the reasons stated above; the sub judice decision in case No. 178/84 as far as the interested party therein named—Michael Sofocleous—is concerned is hereby annulled. Case No. 178/84 against all remaining interested parties is hereby dismissed. 15 20

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

Recourse 178/84 succeeds in part. 25
All other recourses dismissed.