1984 June 8, 1985 January 31

[TRIANTAFYLLIDES, P., A. LOIZOU, SAVVIDES, LORIS, PIKIS, JJ.]

AVGI SOTERIADOU,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 322).

DEMOS PISSOURIOS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 330).

THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

PHILIPPOS MICHAELIDES,

Respondent.

(Revisional Jurisdiction Appeal No. 331).

Practice—Appeal—Adjournment—Application to adjourn hearing of appeal, made on date of hearing for the purpose of

filing a cross appeal—No satisfactory explanation given for the long and apparently unjustified delay—Application refused—Principles on which proceedings should be adjourned.

Public Officers—Promotions—Confidential reports—Tainted with bias—Must be disregarded—Biased reports before the Commission when it reached sub judice decision without knowing that they were biased—Impossible to speculate what the decision of the Commission might have been had it known that the confidential reports were the product of bias—Therefore a material factor not within the knowledge of the Commission at the material time—And it was not, and could not have been, taken into consideration—Exercise of its discretionary powers rendered defective—Moreover by taking into consideration the said report, it acted under a material misconception of fact, the effect of which is the annulment of the sub judice decision.

Public Officers—Promotions—Confidential reports—Recent confidential reports—In determining the merits of candidates for promotion their whole career has to be examined—And greater weight may be attached to recent confidential reports.

Administrative Law—Discretionary powers—Defective exercise—Through acting under a material misconception of facts—And because a material factor was not within the knowledge of the respondent at the relevant time and, therefore, it was not, and could not have been, taken into consideration.

The appellant in Appeal 322 ("Soteriadou") sought the annulment of the promotions of the interested parties to the post of Senior Agricultural Officer. The trial Judge found that her confidential reports for the years from 1968 to 1974 were tainted with bias and lacked impartiality but that in so far as the reports for the years from 1976 to 1980 were concerned there was no evidence to support the charge of bias. The trial Judge held, however, that even if only the reports from 1975 onwards were to be taken into consideration the appellant was not strikingly superior, not even superior, to the interested parties and

for this reason he did not annul their promotions. Hence the above appeals.

The judgment appealed from was delivered on the 29th July, 1983, the appeal was filed on the 23rd August and was fixed for hearing on the 2nd May, 1984. At the outset of the hearing of the appeal Counsel for the Republic intimated her intention to file a notice of cross-appeal, under Order 35, rule 10 of the Civil Procedure Rules and applied for adjournment in order to be enabled to do so by the filing, also, of an application for extension of or abridgment of time.

Held, (I) on the application for adjournment:

Per A. Loizou, J. delivering the ruling of the Court, that no satisfactory explanation has been put forward to justify the long and apparently unjustified delay; that, therefore, the application should be refused on the ground that it came too late in the day; that in deciding to adjourn or not proceedings, a Court has to bear in mind the interests of all concerned, desirability of the speedy determination of litigation and the avoidance of undue delays which in the long run cannot but undermine the course of justice.

Held, (II) on the merits of the appeal of Soteriadou:

Per Triantafyllides, P., A. Loizou J. concurring with the result and Savvides J. concurring:

That it would be safer to hold that the recourse of Soteriadou should succeed because the biased reports even though somewhat remote in point of time from the sub judice decision of the respondent Commission, were apparently before the Commission when it reached its said decision without knowing that they were tainted with bias and it is impossible to speculate what the decision of the Commission might have been had it known that confidential reports describing the appellant as "an irresponsible officer" were the product of bias; that this is, indeed, a situation in which a material factor was not within the knowledge of the respondent Public Service Commission at the relevant time and, therefore, it was not, and could

not have been, taken into consideration; and that, consequently, the exercise of its discretionary powers was, for that reason, rendered defective.

Per A. Loizou.: That in determining the merits of civil servants for the purpose of promotion, the whole career of candidates has to be examined and all the factors referring to the seniority, ability and merits of a candidate and not those of a certain period or of a certain category, have to be taken into consideration.

Per Savvides, J.: That since from what appears in the minutes of the respondent Commission when the sub judice decision was taken "The Commission considered the essential elements from the personal files of the candidates and the confidential reports on them...." and that since there is nothing in the minutes indicating that in considering the personal files they relied on the recent reports and that in the case of the appellant they ignored reports dating back before 1975, one cannot safely conclude that the biased reports before 1975 which, according to the learned trial Judge, presented "a gloomy picture of an irresponsible officer" were overlooked by the respondent Commission or that they did not influence their judgment against the appellant; that in the absence of any such record in the minutes, this Court would have indulged in speculations in making any finding that the P.S.C. ignored such reports or was not influenced by them; that in the circumstances of the present case the possibility cannot be excluded that the respondent Commission was influenced by such adverse reports which were tainted with bias and, by taking them into consideration, they have acted under a material misconception of fact, the effect of which is the annulment of the sub judice decision.

Per Pikis, J.: Loris J. concurring: That as a matter of principle a report on a public officer, tainted with bias, must be disregarded in the interest of justice for every purpose; that consideration of inadmissible confidential reports inexorably leads to a misconception of material facts, facts bearing on the merits of a candidate; that the misconception was all the greater in this case, because, notwithstanding the adverse character of the reports,

appellant Soteriadou was never given a chance to contradict them; that the appointing body must, in evaluating the merits of a candidate for promotion, have regard to their entire career; that of course, greater weight may be attached to recent confidential reports likely to offer a guide to present-day performance of a candidate; that, however, one must not underestimate the value of the record of an officer over the years as an objective pointer to his capabilities and devotion to duty; that because of the consideration of inadmissible material, highly prejudicial to appellant Soteriadou, the respondents misconceived the facts in relation to her suitability for appointment; that the misconception was devastating for the appellant and was material in every sense for the assessment of her suitability for promotion, that it would be a matter of speculation what the respondent would have done had they conceived the facts properly; that presumably, they would seek to fill the gap that would be created by the exclusion of the biased reports, by holding further inquiries into the capabilities and performance of appellant Soteriadou; and that in the end there is no alternative but to allow the appeal of appellant Soteriadou and set aside the appointments of the interested parties.

Per Loris, J.: That the situation becomes more gloomy if we take into consideration that all this adverse material was never communicated to the officer concerned, in flagrant violation of the provisions of s. 45(4) of Law 33/67 (the Public Service Law).

Appeal allowed.

Cases referred to:

Williams & Glyn's Bank Plc v. Kouloumbis and Another (1984) 1 C.L.R. 380;

Theodorides v. Ploussiou (1976) 3 C.L.R. 319 at pp. 330, 331;

Soteriadou and Others v. Republic (1983) 3 C.L.R. 921 at p. 953;

Soteriou v. Greek Communal Chamber (1966) 3 C.L.R. 83 at pp. 104, 105;

Iordanou v. *Republic* (1967) 3 C.L.R. 245 at p. 256;

Xapolytos v. Republic (1967) 3 C.L.R. 703 at pp. 709, 710;

Tryfon v. Republic (1968) 3 C.L.R. 28 at p. 42;

HjiKyriakou v. *Council of Ministers* (No. 2) (1968) 3 C.L.R. 63 at p. 69;

Frangides v. *Republic* (1968) 3 C.L.R. 90 at p. 102;

Makris v. Republic (1968) 3 C.L.R. 508 at pp. 513, 514;

Kephala v. Republic (1969) 3 C.L.R. 127 at p. 133;

Andreou v. *Republic* (1973) 3 C.L.R. 101 at p. 108;

Loizides v. Republic (1984) 3 C.L.R. 960 at p. 965;

Georghiades and Another v. Republic (1975) 3 C.L.R. 143 at p. 151;

HadjiGregoriou v. Republic (1975) 3 C.L.R. 477 at p. 482;

Christou v. Republic (1980) 3 C.L.R. 433 at p. 439;

Petsas v. Republic, 3 R.S.C.C. 60;

Ioannou v. *Republic* (1976) 3 C.L.R. 431; (1977) 3 C.L.R. 61;

Papantoniou and Another v. Republic (1983) 3 C.L.R. 64;

Georghiou v. Republic (1975) 3 C.L.R. 153 and on appeal (1976) 3 C.L.R. 74.

Application.

Application by Counsel appearing for the Republic, the respondent in Revisional Appeal No. 322, for an order extending or abridging the time within which to file a notice under Order 35, rule 10 of the Civil Procedure Rules to vary the judgment of the trial Judge.

L. N. Clerides, with E. Protopapa (Miss), for appellant in R.A. 322.

A. Markides, for appellant in R.A. 330.

E. Papadopoullou (Mrs.), for the appellant in R.A. 331 and respondent in R.A. 322 and R.A. 330.

K. Chrysostomides with Sp. Kokkinos, for the respondent in R.A. 331.

G. Triantafyllides, for interested party G. Neocleous.

P. Petrakis, for interested parties P. Marcou, G. Grivas and P. Kalimeras.

Cur. adv. vult

TRIANTAFYLLIDES P.: The Ruling of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: At the outset of the hearing of these appeals counsel for the Republic in Revisional Appeal 322 has intimated to us her intention to file a notice under Order 35, rule 10, of the Civil Procedure Rules, to vary the judgement of the learned trial Judge in one respect with which her side was at disagreement, though the ultimate result of the recourse was in favour of the Republic.

Under the said rule a respondent who: "Intends upon the hearing of the appeal to contend that the decision of the Court should be varied, he shall give a written notice of his intention, specifying in what respects he contends that the decision should be varied, to any parties or person who may be affected by his contention, and to the Registrar of the Court of Appeal. Such notice shall set forth fully the respondent's grounds and reasons therefor for seeking to have the decision varied on appeal. The notice given to the Registrar shall be filed by him with the record of the appeal. The notice required by this rule shall be not less than a six days' notice in the case of an appeal from a judgment (whether final or interlocutory) or final order, and not less that a two days' notice in the case of an appeal from an interlocutory order; but these times may be varied by order of the President of the Court of Appeal, an office copy of which shall be served with the notice aforesaid. The omission to give such notice shall not diminish the powers conferred by rule 8 of this Order upon the Court

of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs".

The consideration of various ancillary issues that arise when this rule is invoked in a revisional appeal brought us to the end of the day and at outset of to-day's hearing of Revisional Appeal 322, which, if granted, would inevitably cause the adjournment of another two appeals tried together. The reason given for such adjournment was that they would on her side consider the possibility of taking the necessary, under the said Rules, procedural steps for the filing of such a notice including if necessary, an application for extension or abridgment of time. We had the opportunity of perusing this notice, not yet filed, for the purposee of acquainting ourselves with its objects but we are not, at this stage, prepared to make any comment.

The judgment appealed from was delivered on the 29th July, 1983. The appeal was filed on the 23rd August and same was fixed for hearing on the 2nd May, 1984. No satisfactory explanation has been put forward to justify the long and apparently unjustified delay. Only the date before yesterday this Court had the opportunity to rule in Civil Appeals 6718 - 6740 *(Williams & Glyn's Bank plc v. Panayiotis Kouloumbis of Greece and The ship* "MARIA") that such applications for the adjournment of the appeal for the purpose of taking the necessary procedural steps, abridgment or extension of time etc., in order to file a notice under Order 35, rule 2, should be refused on the ground that it came too late in the day and that was not a sufficient reason to justify the exercise of this Court's discretion inasmuch as the hearing of appeals should in no way be postponed by such last minute applications. In deciding to adjourn or not proceedings, a Court has to bear in mind the interests of all concerned, desirability of the speedy determination of litigation and the avoidance of undue delays which in the long run cannot but undermine the course of justice.

For these reasons we refuse the application for adjournment and we shall proceed to hear the appeals as they stand.

Application dismissed.

Appeals.

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (Stylianides, J.) given on the 29th July, 1983 (Revisional Jurisdiction Cases Nos. 476/81, 13/82 and 141/82)* whereby the recourses of appellants in Revisional Jurisdiction appeals Nos. 322 and 330 were dismissed and the recourse of appellant in Revisional Juridiction No. 331 succeeded and the promotion of interested party Demos Pissourios was annulled.

L. N. Clerides with E. Protopapa (Miss), for appellant in R.A. 322.

A. Markides, for appellant in R.A. 330.

E. Papadopoullou (Mrs.), for appellant in R.A. 331 and for respondent in R.A. 322 and 330.

K. Chrysostomides with Sp. Kokkinos, for the respondent in R.A. 331.

G. Triantafyllides, for interested party G. Neocleous.

P. Petrakis for interested parties P. Markou, G. Grivas and P. Kalimeras.

Cur. adv. vult.

The following judgments were read:

TRIANTAFYLLIDES P.: These three appeals were heard together in view of their closely related nature.

They have all been made in relation to a first instance judgment of a Judge of this Court by means of which there were determined together the following three recourses, under Article 146 of the Constitution, against promotions to the post of Senior Agricultural Officer: Recourse 476/81 by the appellant in R.A. 322, recourse 13/82 by the respondent in R.A. 331 and recourse 141/82 by the appellant in R.A. 330. By virtue of the said judgment recourses 476/81 and 141/82 were dismissed and recourse 13/82 succeeded to the extent of annulling the promotions to the post in

* Reported in (1983) 3 C.L.R. 921.

question of interested parties Neocleous and Kalimeras.

By means of her recourse (476/81) the appellant in R.A. 322 had sought the annulment of the promotions to the said post of twelve Agricultural Officers, including interested parties Neocleous, Kalimeras, Marcou and Grivas; and after the dismissal of her recourse she is still seeking, by means of her appeal (R.A. 322), the annulment of all the said promotions except those of I. Parissinos and K. Savvides in relation to whom her counsel has stated that she is not pursuing her appeal.

By means of his recourse (No. 13/82) the respondent in R.A. 331 had sought the annulment of the promotions to the post in question of interested parties Neocleous, Kalimeras and Marcou and, as already stated, his recourse succeeded only in so far as the promotions of Neocleous and Kalimeras were concerned. Against the annulment of such promotions there was filed by the Public Service Commission appeal R.A. 331.

By means of his recourse (No. 141/82) the appellant in R.A. 330 had sought the annulment of the promotions to the post concerned of interested parties Neocleous and Marcou and after his recourse was dismissed he filed appeal R.A. 330.

Interested party Neocleous has filed an appeal too, R.A. 327, against the annulment of his promotion as a result of the determination of recourse 13/82 and this appeal was fixed for hearing together with the three appeals in relation to which this judgment is now being delivered. After, however, it was objected by counsel appearing for the successful applicant in the said recourse (13/82), Ph. Michaelides—who is, also, the respondent in R.A. 331—that an appeal (R.A. 327) could not have been filed by interested party Neocleous since he had not elected to take part on his own in the proceedings before the trial Judge, counsel appearing for such interested party withdrew his appeal, which was accordingly dismissed; but his counsel was allowed to be heard as appearing for an interested party in relation to R.A. 331.

I do think that counsel for Neocleous rightly withdrew

R.A. 327 inasmuch as, in view of the fact that his client did not elect to take part on his own in the proceedings before the trial Judge though he had been duly notified about his right to do so, he did not appear to be entitled, in the light of *Theodorides v. Ploussiou*, (1976) 3 C.L.R. 319, 330, 331, to file separately appeal R.A. 327.

It is to be noted, too, that in the course of the hearing of appeal R.A. 330 counsel appearing for the appellant stated that he continued to challenge only the promotion of interested party Neocleous.

The first instance judgment of the learned trial Judge is to be found reported as *Soteriadou and others v. The Republic*, (1983) 3 C.L.R. 921, and the judgment which I am now delivering in these appeals should be read together with the said judgment of the trial Judge; and, therefore, it is not necessary to repeat now once again all the salient facts of these cases which have been stated very painstakingly and lucidly in the judgment of the trial Judge.

A central issue in these proceedings has been whether or not the evaluation of the appellant in R.A. 322 (Soteriadou) in confidential reports which were prepared about her by two Directors of the Department of Agriculture in respect of two periods, from 1968 to 1974 and from 1976 to 1980, were incorrect because they were tainted with bias.

The trial Judge found that there was no evidence to support the charge of bias in so far as the reports for the years from 1976 to 1980 were concerned, but that the reports for the years from 1968 to 1974, which were prepared by a different officer as Director of Agriculture, were tainted with bias and lacked impartiality. The trial Judge held, however, that even if only the reports from 1975 onwards were to be taken into consideration the appellant was not strikingly superior, not even superior, to the interested parties and for this reason be did not annul their promotions (see *Soteriadou*, supra, at p. 953).

Counsel appearing for the Public Service Commission, the appellant in R.A. 331, sought to secure an adjournment during the hearing of these appeals in order to be

enabled to file a cross-appeal against that part of the judgment of the trial Judge by means of which it was found that the confidential reports from 1968 to 1974 about the appellant on R.A. 322 were tainted with bias, but this Court, in the light of all relevant considerations, refused such adjournment and the cross-appeal was not filed.

I am in full agreement with the findings of the trial Judge regarding the issue of biased confidential reports concerning the appellant in R.A. 322; and, on the basis of such findings, I have eventually reached the conclusion that it would be safer to hold that the recourse of this appellant (476/81) should succeed on that ground, because such reports, even though somewhat remote in point of time from the sub judice decision of the respondent Commission, were apparently before the Commission when it reached its said decision without knowing that they were tainted with bias; and it is impossible to speculate what the decision of the Commission might have been had it known that confidential reports describing the appellant in R.A. 322 as "an irresponsible officer" were the product of bias.

This is, indeed, a situation in which a material factor was not within the knowledge of the respondent Public Service Commission at the relevant time and, therefore, it was not, and could not have been, taken into consideration; consequently, the exercise of its discretionary powers was, for that reason, rendered defective (see, in this respect, inter alia, *Soteriou v. The Greek Communal Chamber*, (1966) 3 C.L.R. 83, 104, 105, *Iordanou v. The Republic*, (1967) 3 C.L.R. 245, 256, *Xapolytos* v. *The Republic*, (1967) 3 C.L.R. 703, 709, 710. *Tryfon v. The Republic*, (1968) 3 C.L.R. 28, 42, *Hadjikyriakou v. The Council of Ministers (No. 2)*, (1968) 3 C.L.R. 63, 69, *Frangides v. The Republic*, (1968) 3 C.L.R. 90, 102, *Makris v. The Republic*, (1968) 3 C.L.R. 508, 513, 514, *Kephala v. The Republic*, (1969) 3 C.L.R. 127, 133, *Andreou v. The Republic*, (1973) 3 C.L.R. 101, 108 and *Loizides* v. *The Republic*, (1984) 3 C.L.R. 960, 965).

I have, therefore, reached the already indicated earlier conclusion that on that ground R.A. 322 should succeed

and that the promotions to the post of Senior Agricultural Officer of all the interested parties should be annulled, except those of Parissinos and Savvides against whom R.A. 322 was not pursued.

Regarding the fate of R.As. 330 and 331, which were heard together with R.A. 322, I wish to observe the following:

The appellant in R.A. 330 challenged the dismissal of his own recourse (141/82) against the promotions of interested parties Neocleous and Marcou, but during the hearing of his appeal he limited its scope to only in so far as Neocleous was concerned. The promotion of Neocleous has been annulled due to the outcome of R.A. 322, but, in fairness to all concerned, I should state that I would not otherwise have been prepared to allow R.A. 330 in relation to the promotion of Neocleous, because I have not been persuaded that the trial Judge was wrong in dismissing the recourse of this appellant.

As regards R.A. 331, by means of which the Public Service Commission has appealed against the annulment of the promotions of interested parties Neocleous and Kalimeras, it should be stated that had the promotions of these two interested parties not been annulled through the outcome of R.A. 322, I would have been inclined to allow R.A. 331 in so far as it relates to the annulment of the promotion of Neocleous and to dismiss it only in relation to the annulment of the promotion of Kalimeras.

In the result R.A. 322 succeeds and R.As. 330 and 331 have to be dismissed in view of the outcome of R.A. 322.

A. Loizou J.: I find myself in agreement with the result arrived at in these appeals and I do not wish to disturb the pleasant unanimity reached, though I have had some hesitation as regards the issue of bias and lack of impartiality regarding the confidential reports concerning the appellant in Revisional Appeal 322.

Faced on appeal with this finding of fact made by the learned trial Judge, and bearing in mind that any doubt should be resolved in favour of an applicant, I feel that in fairness to all concerned the respondent Commission should be seized of the matter afresh and consider the situation in the light of such finding. More so as in determining the merits of civil servants for the purpose of promotion, the whole career of candidates has to be examined and all the factors referring to the seniority, ability and merits of a candidate and not those of a certain period or of a certain category, have to be taken into consideration. This principle was expounded in *Iosif Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143 at p. 151 which was affirmed on appeal by the Full Bench, but the case is reported as *Andreas Hadji-Gregoriou* v. *The Republic* (1975) 3 C.L.R. 477 at p. 482.

As regards the other two appeals I have nothing to add.

SAVVIDES J.: I have given anxious consideration as to the fate of the present appeals and after consultation and exchange of views with my brother Judges sitting in these appeals I have decided to agree with the outcome of these appeals and to associate myself with the judgment of the learned President of this Court, just delivered, which I had the opportunity of reading in advance.

The learned trial Judge in his elaborate judgment has very carefully considered all issues raised before him and has made a lucid exposition of the law on the principles which should guide the Public Service Commission in effecting promotions as well as the effect on a decision of the existence of bias of one or more persons participating in the decision making process. On the question of bias the learned trial Judge had this to say: (see *Soteriadou and others v. The Republic* (1983) 3 C.L.R. 921 at pp. 944, 945):

> "Bias of one or more of those participating in the decision taking process or affecting the material on which the decision is based renders the decision vulnerable on the ground of unfairness. The confidential reports on all officers are prepared and submitted to

the Commission annually in a prescribed manner. (Section 45 of Law No. 33/67). They reflect the merit to a considerable degree of the officer and the Commission is bound to have due regard to the annual confidential reports on the candidates in making a promotion. (Section 44, para. (3) of Law No. 33/67). Therefore, if it is proved that the reporting officer had personal animosity or was motivated by extraneous factors, then, depending on its nature and circumstances giving rise to it, it is taken into consideration whether a case of bias is established.

It is a basic principle of administrative law that the organs participating in a particular administrative process must appear to act with impartiality and this cannot be so when there exist any special ties or relationship which admittedly relate to the persons involved in such process. (See, inter alia, the Decision of the Council of State in Greece in Case No. 3350/70, adopted by the Full Bench of our Supreme Court in the case of *Christou* v. *Republic*, (1980) 3 C.L.R. 437)."

I fully agree with the learned trial Judge on his exposition of the principles as to the effect of bias. The learned trial Judge, very rightly, reached the conclusion that on the totality of the material before him "it can safely be inferred that the reports of Mr. Papasolomontos were tainted with bias and lacked impartiality."

As noted in the judgment of the trial Court during the period between 1968 and 1974 when Mr. Papasolomontos was the reporting officer of appellant in R.A. 322, obviously as a result of grudge between him and the appellant, the appellant who till 1968 was reported as of "excellent intelligence" dropped into "average" and further characterised as "irresponsible" in the discharge of her duties. A striking example of bias on the part of Mr. Papasolomontos is the report of 1970 in which the appellant was marked by him on four items as fair, three items as good and two items as very good to which the countersigning officer manifested his disagreement by reporting that "She is a very good officer with excellent

record. Her performance if lacking, is due to personal grounds beyond her control. Inspite of that she has shown devotion to duty and interest in her work.

The learned trial Judge having taken into consideration the reports for the appellant for the years 1975 and onwards which were not made by Mr. Papasolomontos and which on the basis of his findings were not tainted by bias and those of the interested parties, came to the conclusion that the appellant did not prove striking superiority over the interested parties. The learned trial Judge in adopting such course must have born in mind the practice of the Public Service Commission in the majority of cases which came before this Court to make the assessment of candidates on the basis of the most recent confidential reports for such candidates, and this, obviously, due to the fact that the performance of a public officer may change to better or worse with the lapse of time.

From what appears in the minutes of the respondent Commission when the sub judice decision was taken "The Commission considered the essential elements from the personal files of the candidates and the confidential reports on them....." There is nothing in the minutes indicating that in considering the personal files they relied on the recent reports and that in the case of the appellant they ingnored reports dating back before 1975. Therefore, one cannot safely conclude that the reports before 1975 which, according to the learned trial Judge, presented "a gloomy picture of an irresponsible officer" were overlooked by the respondent Commission or that they did not influence their judgment against the appellant. In the absence of any such record in the minutes, this Court would have indulged in speculations in making any finding that the P.S.C. ignored such reports or was not influenced by them.

In the circumstances of the present case, and for the reasons I have tried to explain, I cannot exclude the possibility that the respondent Commission was influenced by such adverse reports which were tainted with bias and, by taking them into consideration, they have

acted under a material misconception of fact the effect which is the annulment of the sub judice decision.

In the result, Revisional Appeal 322 is allowed. The sub judice decision is annulled to the extent of all interested parties with the exception of Parissinos and Savvides against whom the appellant has not pursued her appeal. As to the fate of the related Revisional Appeals 330 and 331, I adopt what has been just pronounced by the learned President of this Court in his judgment. In the circumstances there will be no order for costs.

PIKIS J.: There are many overlapping issues in the three appeals under examination. In order to ascertain the central issues and marshal the facts in a coherent order, it is necessary to refer to the history of the proceedings in some detail, both at the administrative level as well as before the trial Court. This exercise will help in the classificaton of the issues, it will indicate their relative importance and suggest the order in which they must be resolved, normally established by the impact of the different issues on the outcome of the proceedings.

Following personnel reorganization introduced at the Ministry of Agriculture and Natural Resources, a request was made to the Public Service Commission, by the appropriate authority, to fill twelve posts of Senior Agricultural Officer. A departmental committee, set up under the provisions of s. 36 of the Public Service Law — 33/67, under the chairmanship of the Director of the Department of Agriculture, adjudged all twenty-four candidates as eligible and suitable for appointment. Their report was submitted to the Public Service Commission who embarked on the decision-taking process without delay. They invited, in the first place, the views of the Director of the Department of Agriculture, pursuant to the provisions of s.44(3) of the Public Service Law, in his capacity as head of the department where the vacant posts fell to be filled. After hearing his recommendation, they deliberated with a view to completing the selection process.

The Director of the Department of Agriculture recommended twelve of the candidates, that is, a number equal to the posts to be filled, as best suitable for appointment.

Apart from the recommendations of the Director and the report of the departmental committee, the Public Service Commission had before them the personal files and confidential reports of all the candidates. After examining the sum total of the material before them, including personal files and confidential reports, they espoused the views of the Director, subject to one exception: They chose candidate Ioannis Kyriacou in preference to candidate Panayiotis Michaelides who carried the recommendations of the Director, for two reasons. Because of —

(a) His substantial seniority of a length of about five years and,

(b) his superior academic qualifications.

Philippos Michaelides challenged the appointment of two of the twelve selected candidates, namely, Panayiotis Kalimeras and Georghios Neocleous (Recourse No. 13/82).

Another unsuccessful candidate, namely Demos Pissourios, questioned the appointment of Georghios Neocleous and Petros Marcou (Recourse No. 141/82).

A third unsuccessful candidate, namely Mrs. Avgi Soteriadou, challenged the appointment of every candidate selected in preference to her. Subsequently, she confined the challenge to eleven of them, abandoning the recourse against Kypros Savvides who retired shortly after his promotion to Senior Agricultural Officer and, subsequently, against Ioulios Parissinos. By far the most serious aspect of her case, were allegations that Mr. Papasolomontos, her reporting officer for the period 1968 — 1974, was actuated by malice towards her, and the evaluation made of her services ought to have been disregarded on grounds of bias. Also biased, in her contention, was his successor, Mr. Louca, her reporting officer after 1974, and the person who opined as the head of the Department of Agriculture at the time the appointments were made. Bias in his case was alleged to arise in an indirect way as a reflection of his friendship with Mr. Papasolomontos who became the Director-General of the Ministry of Agriculture and Natural Resources.

Rightly, the learned trial Judge made a contempora-

neous inquiry into the three recourses and gave one judgment in the joint cause of the validity of the sub judice decision. A number of points were taken at the trial affecting the validity of the decision, both formal and substantive. The composition of the departmental committee, as well as the attendance of the Director of the Department of Agricultural before the Public Service Commission, were impugned as irregular on account of the structure of the Department of Agriculture, the relationship, in terms of hierarchy, of the candidates to the Director of the Department, and the effect of the regulations relevant to the composition of departmental committees. In terms of exercise of the discretionary powers of the Public Service Commission, apart from the allegations of Mrs. Soteriadou allegedly erasing the substratum of the decision, it was also challenged on grounds of inadequate reasoning and defective inquiry into the competing merits of the candidates.

In a careful judgment, the learned trial Judge dealt in detail with every aspect of the three recourses, noting the separate features of each one of them, before concluding his decision. He dismissed formal objections directed against the validity of the composition of the departmental committee, and the propriety of the participation of the Director of the Department of Agriculture in the decision-taking process.

The greatest part of the judgment is devoted to the examination of the case of bias, and analysis of the evidence adduced on the subject, tending on the one hand to establish the existence of facts giving rise to bias and, on the other, to contradict the evaluation of her services by Mr. Papasolomontos, as an additional factor indicative of bias. After duly directing himself to the burden cast on a litigant to substantiate allegations of bias*, he found the case of bias against Mr. Papasolomontos incontrovertibly proven. There was bitter acrimony between Mrs. Soteriadou and Mr. Papasolomontos accentuated by a series of charges and countercharges affecting the integrity and devotion to duty of the two officers that left no doubt in

* **Christou v. The Republic** (1980) 3 C.L.R. 433, 439.

the mind of the learned trial Judge about the existence of bias. Tested from whatever angle, the learned trial Judge concluded, Mr. Papasolomontos was biased against Mrs. Soteriadou, a fact reflected in the evaluation made of her services as a reporting officer between the years 1968 — 1974. As noted in the judgment at times, the bias was carried to bizarre effects by downgrading, inter alia, over the years her intelligence that dropped, according to his reports, from " 'Very Good' 'Excellent' ", to "Average". In respect of at least one year, notably 1971, the report was plainly adverse and, as such, ought to have been communicated to the officer reported upon, in accordance with s. 45(4) of the Public Service Law — 33/67, something that was omitted to be done.

A body of evidence built up by the testimony of colleagues and collaborators at work of Mrs. Soteriadou, conveyed a bright picture of the quality of her services at work, in contrast to the gloomy one painted by the reports of Mr. Papasolomontos. This, no doubt, lent further support to allegations of bias on the part of Mr. Papasolomontos.

On the other hand, charges of bias levelled against Mr. Louca, were held to be unsubstantiated. The fact of his friendship with Mr. Papasolomontos could not of itself support the case for bias. With this approach of the trial Court, we are wholly in agreement. Friendship to someone does not, we may point out, of itself suggest common interest in the pursuit of an acrimonious dispute by anyone of the friends with a third party.

Notwithstanding his findings of bias and consequential unreliability of the reports of Mr. Papasolomontos on Mrs. Soteriadou for a substantial periol of her career, the learned trial Judge dismissed her recourse on the ground that the remaining confidential reports on the applicant, not tainted with bias, did not make out a case of striking superiority. The recourse of Mr. Pissourios was dismissed as ill founded, while that of Mr. Michaelides was sustained. In the latter case, it was held the reasoning of the Public Service Commission was inadequate and to whatever extent it could be discerned from the minutes of the Commission

it was contradicted by the written records. In sum, it was unpersuasive as to the reasons of preference of Mr. Neocleous and Mr. Kalimeras to applicant Michaelides. This ends our summary of the history of the proceedings, hopefully illustrative of the issues in dispute.

The unsuccessful applicants, as well as the interested parties whose appointments were annulled, appealed against the decision of the trial Court. By far the most serious issue argued on appeal, was that revolving round the implications of the consideration given by the Public Service Commission to reports on Mrs. Soteriadou tainted with bias. If the appeal of Mrs. Soteriadou is successful, the sub judice decision must be annulled in its entirety. If that is to be the case, it will be unnecessary to explore the remaining issue in the appeals, except, perhaps, broadly indicate what their outcome would be, leaving the ground as clear as possible for the Public Service Commission to come to grips with the matter ab initio. For this reason, I shall deal first with the appeal of Mrs. Soteriadou, concentrating on the issue of bias. The finding of the trial Court, that Mr. Papasolomontos was biased against Mrs. Soteriadou and that the confidential reports on her were the product of bias, was not challenged on appeal. A belated attempt made on behalf of the Attorney-General to contest this finding, found no favour with the Court. Thus, we shall proceed to examine the implications of bias, accepting, as we must, the finding on the subject of the trial Court that is not an issue in the appeal.

BIAS—Implications from consideration of a biased report:

As a matter or principle, a report on public officer, tainted with bias, must be disregarded in the interest of justice for every purpose. All the more so, if the victim of bias had no opportunity to controvert the biased report, that is indeed the case before us. Relying on a biased report, especially where bias arises from adversity, as in this case, is tantamount to putting the fate of one officer in the hands of his opponent. Elemental principles of justice warrant its exclusion. We have it on authoritty as well, that a biased report by one public officer on another,

must be disregarded*. Now, the consequences stemming from the production of a biased report before the Public Service Commission, inevitably depend on the use made of and the weight attached to it. In the case of *Petsas,* it had no impact on the validity of the decision of the Commission in view of positive evidence coming from a member of it that no reliance whatever was placed on it. In this case, the opposite is true.

It is expressly stated in the minutes of the decision of the respondent Commission, that they paid due consideration to all the confidential reports on the applicant, including the biased reports of Mr. Papasolomontos, that covered a long period of her career, extending to six years. The facts relevant to bias were mostly before the Commission, such as the recrimination between Mrs. Sotiriadou and Mr. Papasolomontos. So, unlike the case of *Petsas,* we have it from the Commission itself that they founded their decision, inter alia, on the inadmissible and highly prejudicial reports of Mr. Pepasolomontos. The reports of Mr. Papasolomontos were basically adverse, both in relation to the abilities of Mrs. Soteriadou, as well as her devotion to duty. Her sense of responsibility and devotion to duty were expressly doubted. In all probability, these reports dissipated in the mind of the Public Service Commission the inferences they were likely to draw from the excellent reports on Mrs. Soteriadou by the predecessor of Mr. Papasolomontos, namely Mr. Michaelides.

Very probably, it is because of the reports of Mr. Papasolomontos, that they made no reference whatever in the final process of selection to the candidature of Mrs. Soteriadou, notwithstranding her seniority by a margin of ten or more years over every other candidate. We have it from the decision of the Commission itself that marked seniority was a factor to which they specifically directed their attention. In the case of candidate Kyriacou, his seniority of a length of five years was found to constitute a valid reason for deviating from the recommendations

* Christoforos G. Petsas v. Republic (Public Service Commission), 3 R.S.C.C. 60.

of the departmental head.

The inevitable inference is that not only the respondents took into consideration the inadmissible reports but attached to them impartance as well. To that extent, they misconceived the facts relevant to the suitability of Mrs. Soteriadou, for appointment. The trial Court sustained the sub judice decision despite the misconseption as to the facts inherent in the decision of the Commission. As noted, he upheld the decision by asking himself the following question: Did the confidential reports of the applicant, excluding those tainted with bias, make out a case of striking superiority? In our judgment, the approach of the learned trial Judge was, with respect, wrong. He posed the wrong question. The question that ought to have been asked, was whether the misconception, by the Commission, of the facts relevant to the suitability of Mrs. Soteriadou for appointment, was material for their decision. Confidential reports offer the best indication and constitute the first guide for evaluating a candidate's merits*. Consequently, consideration of inadmissible confidential reports inexorably leads to a misconception of material facts, facts bearing on the merits of a candidate. The misconception was all the greater in this case, because, notwithstanding the adverse character of the reports, Mrs. Soteriadou was never given a chance to contradict them. The evidence given before the Court on the capabilities of Mrs. Soteriadou, paints a picture of her totally different from that drawn in the report of Mr. Papasolomontos. It is settled, the appointing body must, in evaluating the merits of a candidate for promotion, have regard to their entire career. ** Of course, greater weight may be attached to recent confidential reports likely to offer a guide to present-day performance of a candidate. However, one must not underestimate the value of the record of an officer over the years as an objective pointer to his capabilities and devotion to duty.

Because of the consideration of inadmissible material,

* See, Niki Ioannou v. The Republic (1976) 3 C.L.R. 431, and Niki Ioannou v. The Republic (1977) 3 C.L.R. 61: Papantoniou And Another v. The Republic (1983) 3 C.L.R. 64.

** See, Odysseas Georghiou v. The Republic (1975) 3 C.L.R. 153 (and on appeal, (1976) 3 C.L.R. 74).

highly prejudicial to Mrs. Soteriadou, the respondents misconceived the facts in relation to her suitability for appointment. The misconception was devastading for the appellant. The misconception was material in every sense for the assessment of her suitability for promotion. I would not expect any authority to appoint somebody reported upon, as Mrs. Soteriadou was by Mr. Papasolomontos, as irresponsible in the discharge of her duties. It would be a matter of speculation what the respondents would have done had they conceived the facts properly. Presumably, they would seek to fill the gap that would be created by the exclusion of the biased reports, by holding further inquiries into the capabilities and performance of Mrs. Soteriadou. Nor can I predict whether Mrs. Soteriadou would have been selected in preference to anyone of the interested parties.

In the end, there is no alternative but to allow the appeal of Mrs. Soteriadou and set aside the appointments of the interested parties. Having so decided, it is unneccessary, as already indicated, to express an opinion on the remaining issues raised in the appeal of Mrs. Soteriadou, or discuss in any detail the issues in the other two appeals argued before us.

In the result, Revisional Appeal No. 322 is allowed. The sub judice decision is annulled, except with regard to the appointment of two of the interested parties, namely, Parisinos and Savvides. The remaining appeals, as well as the recourses that preceded them, are, in consequence of the decision given, deprived of their subject matter—See, *Kikas and Others v. Republic* (1984) 3 C.L.R. 852.

In the interest of completeness and fairness, we may record we would incline to allow the appeal of the Republic against the decision of the trial Court annulling the appointment of G. Neocleous, while we would dismiss the appeal against the appoinment of interested party Kalimeras. In this regard, I associate myself with the observation made by Triantafyllides, P. In view of the outcome of Revisional Appeal No. 322 and consequential annulment of all appointments, except those

of Parisinos and Savvides, it is unnecessary to probe the matter further.

Order accordingly—There will be no order as to costs.

LORIS J.: I had the opportunity of reading in advance the judgment prepared by my brother Judge Pikis and I am in full agreement with him.

It was found by the trial Judge and it could not be successfully challenged on appeal that the confidential reports of Mr. Papasolomontos as regards Mrs. Avgi Soteriadou (Appellant in R.A. 322) were tainted with bias and should therefore be disregarded by the Public Service Commission. Instead it is clearly stated in the decision of the respondent Commission that all the confidential reports on the applicant, including those of Mr. Papasolomontos, were taken into consideration; it is therefore abundantly clear that the P.S.C. acted inter alia on the inadmissible reports of Mr. Papasolomontos who went as far as downgrading even the intelligence of this appellant, (it is significant to note that her "intelligence" in the reports dropped vertically from "excellent" to "average") whilst she was characterised in the reports as 'irresponsible' in the discharge of her duties. Under the circumstances if the facts stated in the aforesaid reports were true one should not only refrain from considering her promotion but should consider seriously her dismissal from the service forthwith.

And the situation becomes more gloomy if we take into consideration that all this adverse material was never communicated to the officer concerned, in flagrant violation of the provisions of s. 45(4) of Law 33/67 (the Public Service Law).

I do not thing I should go further; I would allow Revisional Appeal 322; and I would annul the relevant sub judice decision except with regard to the appointment of the interested parties Parisinos and Savvides.

TRIANTAFYLLIDES P.: In the result appeal R.A. 322 is allowed and appeals R.As. 330 and 331 are dismissed with no order as to their costs.

Revisional Appeal 322 allowed. Revisional Appeals 330 and 331 dismissed. No order as to costs.