

1985 March 28

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

KYRIACOS CHR. KYRIACOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.**(Case No. 382/78).*

Educational Officers—Promotions—Post of Inspector of Secondary Education for French—Head of Department—Recommendations—Consistent with the material in the file—Rightly taken into consideration—Performance at the interview—Though desirable for reasons to be given about such performance, sufficient material before the Court to test the correctness of the sub judge decision and the validity of the reasons given therein—Demetriades and Others v. Republic (1983) 3 C.L.R. 842 distinguished—Both applicant and interested party highly qualified.—But the latter had a much longer service as educationalist in French, had acquired a longer experience and was at a higher level in the hierarchical ladder than the applicant—Selection being one in the higher hierarchy in the service discretion of respondent a wide one—Applicant has not shown striking superiority over the interested party. 5 10 15

Administrative Law—Administrative acts or decisions—Reasoning may be found either in the decision itself or in the official records.

Educational Officers—Promotions—Prejudicial report in the personal file of the applicant made by interested party at a time when there was no vacancy in the sub judge post—Effect. 20

The applicant and the interested party were candidates for promotion to the post of Inspector of Secondary Education 25

for French. The Educational Service Committee promoted the interested party to the above post and hence this recourse.

5 Both the applicant and the interested party were highly qualified and they satisfied the scheme of service. The interested party, however had a much longer service as educationalist in French and had acquired a longer experience not only from the stand point of a teacher of French but also of Assistant Headmaster, discharging the duties of
10 Inspector for French which were assigned to him for five years and then as special advisor to the Ministry for the teaching of French lessons. In the hierarchical ladder he was at a higher level than the applicant; and he was moreover recommended by the Head of Department as being the best for promotion to the above post. Whilst
15 the interested party was serving, on secondment, as Inspector for French from September 1973 till September 1976 he made a report* about the applicant which was prejudicial to him.

20 *Counsel for the applicant mainly contended:*

- (a) That the contents of the above report were prejudicial against the applicant and it was made with the intention of degrading the applicant, thus cleaning the way from a future competitor in a case of promotion.
- 25 (b) That the opinion expressed by the Head of the Higher and Secondary Education, at the meeting concerning the interested party, should not have been taken into consideration, as no reasons are given why he considered the interested party better than the applicant.
- 30 (c) That though the respondent Committee referred to the impression they formed about the candidates at the interview, nothing was recorded as to the weight they gave to the personality, alertness of mind and general knowledge on the questions put to them, and therefore,
35 the correctness of this decision could not be tested by this Court.
- (d) That the sub judice decision lacked due reasoning.

* The report is quoted in full at pp. 837-838 post.

Held, (1) that since at the material time when the report complained of was made, there was no vacancy in the post of Inspector of French lessons and the interested party who was holding a higher post than that of the applicant had already submitted an application for promotion to the post of Headmaster in respect of which he could not have the applicant, who was not holding the post of Assistant Headmaster and was on a lower scale, as a prospective competitor so that he might have thought to diminish the chances of the applicant for promotion, contention (a) cannot stand.

(2) That the opinion of the Head of the Department especially when specialised knowledge and ability are required, is a matter which should be seriously taken into consideration and in case the Public Service Commission or the Educational Service Committee cannot act on such recommendation, the reasons for not adopting same should be clearly recorded in the minutes; that since the Head of Department had the right to attend the meeting of the Committee and express his views (see proviso to section 4(2) of Law 10/69); that since he had personal knowledge of the work of both candidates, in his capacity as Head of the Higher and Secondary Education, in addition to the contents of their personal files; and that since his opinion was consistent with the material in the file concerning the applicant and the interested party, such opinion was rightly taken into consideration; accordingly contention (b) must fail.

(3) That there is nothing in the minutes indicating that undue weight has been given to the personal interview outweighing the picture presented by the material which was before the respondent Committee concerning the two candidates; that in the circumstances of the present case, however desirable it might have been if reasons were given about the performance at the interview, this fact is not considered by itself as sufficient for annulling the sub judice decision; that from the contents of their personal files and bearing also in mind the recommendation of the Head of the Department, there is sufficient material before this Court to test the correctness of the sub judice decision and the validity of the reasons given therein and the impression formed at the interview is not in-

consistent in the present case with the decision as to the best candidate for selection, (*Demetriades and Others v. The Republic* (1983) 3 C.L.R. 842 distinguished); accordingly contention (c) must fail.

5 (4) That the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto; that the facts relevant to the merit, qualifications and seniority of the candidates emerge clearly from the files that were before the respondent
10 Commission and the contents of such files may supplement the reasoning of the respondent Committee; accordingly contention (d) must, also, fail.

Held, further, that, in any event, the applicant has not shown striking superiority over the interested party to enable this Court to treat the appointment of the interested party in preference to him as unjustified; that in the circumstances of the case the respondent Committee exercised its discretion, which in the circumstances was wide as the selection for appointment was one in the higher
15 hierarchy in the service, in the proper way in selecting the most suitable candidate for appointment and there is no reason to interfere with the exercise of such discretion; accordingly the recourse must fail.
20

Recourse dismissed.

25 *Cases referred to:*

- Paraskevopoullou v. Republic* (1980) 3 C.L.R. 647;
Koufettas v. Republic (1983) 3 C.L.R. 1252 at p. 1267;
Protopapa v. Republic (1981) 3 C.L.R. 456;
Theodossiou v. Republic, 2 R.S.C.C. 44;
30 *Pissas v. Republic* (1974) 3 C.L.R. 476 at pp. 480, 481;
Petrides v. Public Service Commission (1975) 3 C.L.R. 284 at p. 288;
Georgiou v. Republic (1983) 3 C.L.R. 17 at p. 33;
Makrides v. Republic (1983) 3 C.L.R. 750;

Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417;

Demosthenous v. Republic (1973) 3 C.L.R. 354 at p. 364;

Ierides v. Republic (1980) 3 C.L.R. 165 at p. 183;

Triantafyllides and Others v. Republic (1970) 3 C.L.R.
233 at p. 245; 5

Demetriades and Others v. Republic (1983) 3 C.L.R. 842;

Papaleontiou v. Republic (1967) 3 C.L.R. 624.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Inspector of Secondary Education for French in preference and instead of the applicant. 10

E. Odysseos, for the applicant.

A. S. Angelides, for the respondent.

Cur. adv. vult. 15

SAVVIDES J. read the following judgment. Applicant by this recourse challenges the promotion of Michael Matsis, the interested party, in the post of Inspector of Secondary Education for French. 20

Applicant is an educationalist and he has been in the permanent employment of the Republic, since 1970. Prior to that date, for a period of four years, he was employed in a private school. On 12th May, 1978, the post of Inspector of Secondary Education, 1st Grade for French lessons, was published in the Cyprus Gazette of the 12th May, 1978. The scheme of service for the filling of such post, appeared in the same advertisement. The said post was a first entry post. It was one of the conditions of the scheme of service that the post was restricted to educationalists of at least 10 years satisfactory educational service. 25 30

Applicant and interested party were amongst the five candidates who applied for the filling of such post. The Educational Service Committee at its meeting of 16.8.78

after examining the applications, concluded that only three out of the five candidates possessed the necessary qualifications under the scheme of service for appointment to such post and decided to call them for an interview; the applicant and interested party were amongst the three candidates selected for interview.

On 23.8.78, the Educational Service Committee interviewed the applicant and the interested party only, as the third candidate did not attend such interview. Present at the interview was the Head of the Higher and Secondary Education, Mr. Leonidas Koullis, both for the purpose of the interview and for giving his opinion to the respondent Committee about the candidates. According to the minutes of the meeting, Mr. Koullis expressed the opinion that out of the two candidates, the interested party was the best for appointment to the said post. Then, the Committee proceeded on the material before it, to the selection of the best candidate. The record of the minutes of the meeting in question, which is before me, reads as follows:

"The Committee having considered the material in the personal and confidential files of the candidates, and having taken into consideration, merit, qualification and seniority of the candidates, the opinion expressed by the Head of the Higher and Secondary Education, as well as the impression they formed about the candidates during the personal interview, decided unanimously that Mr. Michael Matsis is the most suitable candidate for the post of Inspector.

Therefore, the Committee has decided to appoint him in the post of Inspector of Secondary Education 1st Grade (for French) as from 1st September, 1978."

The above decision was communicated to the applicant by letter dated 24th October, 1978 by the Chairman of the respondent Committee. As a result, applicant filed the present recourse, whereby he applies for the following relief:

(a) Declaration of the Court that the decision of the Respondents contained in the letter of the Chairman of the Educational Service Committee No. P.M.P. 3893 dated 24th August, 1978, not to appoint the applicant in the

post of Inspector of Secondary Education, is null and void and of no legal effect.

(b) Further and/or in the alternative declaration of the Court that the omission of the Respondents to appoint the applicant in the said post is null and void and of no legal effect and that what has been omitted to be done, should be done. 5

(c) Further and/or in the alternative, declaration of the Court that the decision of the Respondents to appoint in the said post the interested party, that is, Mr. Michael Matsis instead of the applicant, is null and void and of no legal effect. 10

The legal grounds set out in support of the application, are the following:

(1) The sub judge decision and/or omission of the Respondents is null and void and illegal, due to misconception of material facts and/or due to wrong assessment of the qualifications, experience, seniority and ability of the applicant. 15

(2) The decision for the appointment of the interested party was based on wrong facts and/or on facts which were wrongly valued, in that the interested party does not satisfy the requirements under the scheme of service and he has less qualifications, experience, seniority and ability compared to the applicant. 20 25

(3) The act and/or decision of the respondents was taken in abuse and/or in excess of power and/or in wrong exercise of discretion.

(4) The decision of the respondents is not duly reasoned.

The application was opposed and by the opposition it is contented that the respondent Committee acted lawfully and in the proper exercise of its discretion, having examined carefully all the material facts and circumstances of the case. 30

When the case came up for directions before the Court, counsel for applicant requested particulars concerning the 35

statement of Mr. Koullis at the meeting of the respondent Committee when the sub judice decision was taken.

As a result, directions were made and an affidavit was filed by Mr. Koullis, the material part of which under
5 para. 6, reads as follows:

“At the said meeting I expressed my opinion, having taken into consideration the service and the qualifications of each one of the candidates in their totality, as it emanates from the personal files and also the
10 general opinion and knowledge which I have formed about them which I have acquired and bearing in mind the scheme of service, I considered Mr. Michael Matsis as more suitable for the filling of the post.”

Counsel for applicant by his written address made extensive reference to the qualifications of the applicant and his professional career and also to the qualifications and career of the interested party, in support of his contention that the applicant had longer experience in the teaching of French and better qualifications than the interested party.
15 Counsel for applicant further drew the attention of the Court to the fact that whilst interested party was seconded from his post as the Headmaster of the Institute for Foreign Languages to the post of Inspector for French as from September, 1973, till September, 1976, he made the following report about the applicant which appears in the
20 applicant's personal file.
25

“Organic post B 12 held as from 1st May, 1975—
Commercial Lyceum.

He is highly distinguished in respect of

- 30 (a) Organisation, administration and public relations.
(b) General conduct.
(a) *Organisation*: Remarkable organising and administrative abilities.
Improvement on the subject of public relations.
35 (b) *General conduct and activity*—he contributes in the promotion of the operation of the school. He has shown wide activity in the fields of civil defence and

scouting. Nevertheless, there is still room for improvement concerning his general conduct as well as his activity in connection with French. (The attendance of organised paedagogic seminars will prove very useful). It is the case of a very able teacher who can develop into an excellent teacher. Regarding his qualifications, it must be noted that due to his Ph.D. Degree, after a thesis with the University of Lille, Mr. Kyriacou was promoted from Class B to Class A Teacher of French. This must be a substantial benefit for the teacher taking into consideration the fact that he was allowed by the said University to submit a thesis.

- (a) Without possessing the basic element of category A such as licence of B.A. or a corresponding diploma of a Greek or any other University, and
 - (b) without actual presence and regular attendance of the lessons in the said University.
- Similar is the case of Miss Maria Paraskevopoullou teacher of French.

Therefore, bearing in mind the above, it should not, in my opinion, be given additional excessive value to doctorate degrees and this, to avoid any injustice to the colleagues who are scientifically and paedagogically very well qualified."

Then, the following additional remark was recorded in hand-writing:

"Concerning his conduct, I wish to mention an incident when, this year, a student of his, namely Gregoris Michaelides, (a student of his for private lessons) failed at the examinations of the Alliance, examinations for which the responsible Committee were Mr. Christodoulou and I, Mr. Kyriacou came to me and he referred to me in an unacceptable and improper way that 'the grades of the said student should be raised'. Such effort, however, went in vain."

In commenting on the above report, counsel for applicant submitted that such report was prejudicial to the applicant and might have affected the respondent Committee when

taking the sub judge decision. He submitted that such report was wrong in the following respects:

5 (a) That although the opinion of the interested party about the applicant was that he had remarkable organising and administrative abilities, he reported him as requiring improvement in the topic of public relations, a subjective comment, which cannot be judicially tested.

10 (b) Though the opinion of the interested party about the applicant was that applicant was a very able teacher who could evolve into an excellent one, he made comments regarding the doctorate degree of the applicant which were prejudicial for the applicant.

15 (c) He made an addition to his typewritten report in his *handwriting prejudicial to the applicant, indicating an intention to eliminate the applicant, as a future competitor of his for the post of Inspector.*

20 Counsel contended that this report might have influenced the respondent Committee in selecting the best candidate and that what the Committee ought to have done was to direct further inquiry by an independent person concerning the two candidates.

25 Furthermore, he submitted that the opinion expressed by the Head of the Higher and Secondary Education, Mr. Koullis, at the meeting concerning the interested party, should not have been taken into consideration, as no reasons are given why he considered the interested party better than the applicant.

30 Another ground, counsel submitted, why the sub judge decision should be annulled, is because though the respondent Committee refers to the impression they formed about the candidates at the interview, nothing is recorded as to the weight the respondent Committee gave to the personality, alertness of mind and general knowledge on the questions put to them, and, therefore, the correctness
35 of their decision cannot be tested by this Court. Counsel further added that the respondent Committee by making reference to the material contained in the personal and confidential files of the candidates, their merit, qualification and seniority, they mention nothing in the said deci-

sion as to the comparison made between the two candidates which lead the Committee to reach such decision. Counsel concluded that the decision of the respondent Committee should be annulled for lack of due reasoning.

Counsel for the respondents contended that the sub 5
judice decision was properly taken and that the respondent
Committee acted in compliance with the Law and after it
had been satisfied that both candidates were eligible for
appointment under the scheme of service. He submitted
that taking into consideration the fact that the post in 10
question was a post in the high hierarchy in the service, the
respondent Committee had a wider discretion than in
normal cases. All the particulars as to their merit, quali-
fication and seniority appear in the files and, furthermore,
particulars of their qualification and service appear in 15
their respective applications. All this material was before
the respondent Committee and was considered before the
sub judice decision was taken. He submitted that the rea-
soning, if not sufficiently stated in the decision, may be
supplemented from the respective files concerning the ap- 20
plicant. Counsel added that the attendance of Mr. Koullis
and the expression of an opinion by him is in accordance
with the provisions of the Law and the established pra-
ctice. In respect of the report of the interested party con-
cerning the applicant, counsel submitted that at the mate- 25
rial time when this report was made, there was no vacant
post of Inspector of Secondary Schools and interested par-
ty had no motive to make any adverse comment against
the applicant. He further submitted that both the merit,
qualification and seniority of the applicant were by far 30
higher than those of the interested party. Counsel also
argued that it was not necessary for the respondent to
record more particulars about the performance of the two
candidates at the interview. Finally, he contended that the
applicant failed to prove striking superiority over the 35
interested party and concluded his address by submitting that
the respondent Committee took into consideration all re-
levant criteria in accordance with the Law and the scheme
of service and that the decision reached was properly
taken. 40

Before considering the issue before me, I have to give

a brief history of these proceedings which were filed in 1978 and ended in 1984.

This case was originally fixed for hearing on the 13th June, 1979 when on the joint application of both counsel
5 it was adjourned on several occasions pending the outcome of Case No. 374/78 which was challenging the same promotion. On the 19th February, 1980, counsel for applicant applied for a further adjournment for mention, and by making reference to Case No. 374/78 stated that
10 if the applicant in that case was successful and the promotion of the interested party was annulled, there was no reason for him to pursue this recourse, a course which he should only have to follow if the other case was dismissed. Judgment in Case No. 374/78 was delivered in December,
15 1980 (*Paraskevopoulou v. The Republic* (1980) 3 C.L.R. 647) whereby such recourse was dismissed. At the request of counsel for applicant this case was fixed on the 7th January, 1981, when directions for written addresses were made. A number of adjournments followed, due to the
20 failure of counsel for applicant to file his written address, as directed, on the ground that he required more time to inspect, the files, or for reason of long absence abroad, or due to illness, or in view of negotiations which were in process according to him with the object of settlement. The
25 written address of counsel for applicant was finally filed after a delay of 15 months. There was a further delay for securing the attendance of Mr. Koullis for the purpose of cross-examination by counsel for applicant, on the affidavit sworn by him in support of the opposition and
30 the hearing of evidence and of any clarifications was finally concluded on the 27th March, 1984 when judgment was reserved.

The personal files of the applicants and the interested party have been produced in this case and they contain voluminous material concerning each one of them and their qualifications.
35 As to their qualifications, from what appears in the files, they both possess high educational qualifications and a Ph. D. Degree. Their qualifications extend over a number of pages and I need not enumerate in detail their qualifications.
40 What may be briefly stated is that they are both highly qualified and they satisfy the scheme of service. I

consider it, however, necessary to give a brief summary of the educational career of the applicant and the interested party and their evolution in the service.

Applicant:

Applicant obtained his first qualifications enabling him to be registered as a qualified teacher, in 1966. On the 10th June, 1966, he applied to the Ministry of Education for registration as a qualified teacher and his application was approved. As a result, a professional permit was granted to him for a period of one year on probation as teacher of Class B and by virtue of that, he was appointed at the Nicosia College, a private school, for the year 1966-1967. Such permit was renewed annually and the applicant continued to be employed at the same school till the end of the school year 1970. On 4.9.1970 he was appointed on probation as a teacher of French with the Ministry of Education and in such capacity he served at the B. Gymnasium, Morphou and the Technical School of Morphou. When his probationary period was completed, he applied to be inspected for the purpose of permanent appointment. From what appears in his personal file 3893, under blue 93, Inspector Constantinides, an Inspector of Secondary Education, was instructed to inspect the applicant. Mr. Constantinides made a query on the letter, by which he was asked to inspect the applicant whether it was proper for him to make a report about the applicant once he was not specialised in the matter and he stressed the need for filling the post of Inspector of French lessons as such matter was of considerable importance. The appointment of the applicant was confirmed on 19.12.72 on Scale B 8.

On 23.4.1974, applicant, who had in the meantime obtained his Ph. D. Degree, applied to be upgraded to Scale B 10, and he was so upgraded on 6.5.1974. On the 10th January, 1976 he was upgraded to Scale B 12 as from 1.5.1975 a post which he was holding at the material time when the sub judice decision was taken.

Interested party:

Interested party joined the educational service on 20.8.1959, when he was first appointed as a teacher. After gradual evolution, on 5.12.1969 he was upgraded to post on Scale B 12. On 20.1.1970, he was appointed as Acting Assist-

ant Headmaster for a period of one year which was renewed till 31.8.1972. On 15.7.72 he was promoted to Assistant Headmaster on Scale B. 13. On 22nd August, 1972, he was partly assigned to the Ministry of Education for the performance of the duties of Inspector of Secondary Education for French for the school year 1972-1973, obviously after the remark made by Inspector Constantinides, that for the inspection of teachers of French, an expert was required to perform such duties in the absence of an organic post, in addition to the post he was holding at the Institute of Foreign Languages. Such assignment was renewed for the following year. On 10th November, 1973 he was offered a full assignment to perform the duties of Inspector of French in all secondary education schools, till February, 1977, when he was seconded to the post of Special Advisor for French Lessons in the Ministry of Education. In answer to a letter sent by the interested party in which he was complaining against such secondment, and expressing also the fear that there was a tendency of degrading the teaching of French in public schools. a letter was sent on the 20th April, 1977 by the Head of Higher and Secondary Education, to the contents of which reference should be made, as they indicate the opinion of the Department, about the interested party. It reads as follows:

"I have instructions to refer to your letter dated 28th February, 1977 to the Director of Education, and wish to observe the following:

- (a) Your secondment in the post of special advisor for the lesson of French cannot be considered as degrading. On the contrary, it is made as a recognition of your offer concerning the lesson of French.
- (b) It cannot be considered as a degrading of the French language, once the hours of teaching will not be changed.
- (c) We believe that your educational activity will continue with the same interest as this will have very favourable repercussions in the education generally, and particularly the methods of teaching of foreign languages."

What is apparent from a comparison of their career as educationalist is that interested party had a much longer service as educationalist in French and had acquired a longer experience not only from the stand point of a teacher of French but also of Assistant Headmaster, discharging the duties of Inspector for French which were assigned to him for five years and then as special advisor to the Ministry for the teaching of French lessons. In the hierarchical ladder he was at a higher level than the applicant.

When applicant was first appointed in the public service on probation the applicant was exercising the functions of an Acting Assistant Headmaster on Scale B 12 and when the appointment of the applicant was confirmed on Scale B 8 the interested party was holding the organic post of Assistant Headmaster on Scale 13 and at the time he was also discharging the duties of an Inspector for French which were assigned to him in the absence of an organic post at the time.

I come next to consider the complaint of the applicant concerning the report about him which was prepared by the interested party whilst the latter was performing the duties of Inspector of French lessons, in that its contents are prejudicial against the applicant and that it was made with the intention of degrading the applicant, thus clearing the way from a future competitor in case of promotion. I find myself unable to agree with such contention. At the material time the interested party was holding an hierarchical higher permanent post on Scale B 13, whereas the applicant was on Scale B 12. The report speaks very favourably about the abilities of the applicant. Concerning applicant's complaint about the part of the report which refers to the standard of the applicant in matters of public relations and the allegation of his counsel that the opinion on such matter is a subjective one the correctness of which cannot be tested, if one examines the contents of the voluminous personal files which are before me, and, in particular, the personal file of the applicant No. 3893/2 at Blue 15, there is a report of the Headmistress of the Pancyprian Gymnasium where the applicant was posted, in which the opinion of the interested party about him as to matters of public relations is confirmed.

In the said letter, it is mentioned that in the presence of his French colleagues, he degrades them, criticises them as being of lower standard than himself and as a result his whole conduct since the day of his posting at the Pancy-
 5 prian Gymnasium creates problems which could have been avoided if he could show spirit of co-operation and understanding with his colleagues.

At the material time when the report complained of was made, there was no vacancy in the post of Inspector of
 10 French lessons and the interested party who was holding a higher post than that of the applicant had already submitted an application for promotion to the post of Headmaster in respect of which he could not have the applicant, who was not holding the post of Assistant Headmaster
 15 and was on a lower scale, as prospective competitor so that he might have thought to diminish the chances of the applicant for promotion.

Reference is made by both counsel in their address to an evaluation report about the applicant and the interested
 20 party prepared by an independent committee consisting of three inspectors appointed by the Ministry of Education in 1977. According to such report (see Blue 23 in file P.M.P. 3893) applicant was evaluated as follows:

	1. Professional qualification	8
25	2. Ability in his work (Teaching ability, devotion, yield	8
	3. Organisation—Administration—Public relations	9
	4. General conduct and Activities	9
30		—
	Total	34

Interested party on the other hand, was evaluated as follows:

	1. Professional qualifications	10
35	2. Ability in his work	9
	3. Organisation etc.	8
	4. General conduct and activities	9
		—
	Total	36

40 Applicant complained against his evaluation and after

examination of his complaint his evaluation was reviewed by the addition of one mark to each one of items 1 and 4, thus making the total to 36.

As to the opinion expressed by the Head of the Higher and Secondary Education Mr. Koullis, at the meeting at which the sub judice decision was taken, and which was one of the factors taken into consideration by the respondent Committee, Mr. Koullis had, according to his evidence, personal knowledge of the work of both candidates, in his capacity as Head of the Higher and Secondary Education, in addition to the contents of their personal files. It has been held by this Court that when the recommendations of the Head of a Department are inconsistent with the overall picture presented by the material contained in the personal and confidential files, such recommendations should not be taken into consideration (*Koufettas v. The Republic* (1983) 3 C.L.R. 1252, 1267.). In the present case, such opinion is consistent with the material in the files concerning the applicant and the interested party.

The Head of the Department, Mr. Koullis, was bound to attend the meeting once he was invited by the respondent Committee to be present and express his views before it (see, inter alia, *Protopapa v. The Republic* (1981) 3 C.L.R. 456 in which reference is made to *Michael Theodossiou and the Republic*, 2 R.S.C.C. 44).

The opinion of the Head of the Department, especially when specialised knowledge and ability are required, is a matter which should be seriously taken into consideration and in case the Public Service Commission or the Educational Service Committee cannot act on such recommendation, the reasons for not adopting same should be clearly recorded in the minutes. As stated in the case of *Pissas and The Republic* (1974) 3 C.L.R. 476 at pp. 480, 481:-

“It is a well settled principle of Administrative Law, and there is a line of decisions of this Court bearing on this issue, that the recommendation of a Head of a Department, especially when specialized knowledge and ability were required, was a most vital consideration not lightly to be disregarded, and if the Public Service Commission felt that it could not act on such

5 recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission for the protection of the legitimate interests, under Article 151 in conjunction with Article 146 of the Constitution, of the candidates concerned. 'Failure to do so', as stated in the case of *Theodossiou and The Republic*, 2 R.S.C.C. p. 44 at p. 48—'would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power.'

10 (see, also, *Petrides v. The Public Service Commission* (1975) 3 C.L.R. 284 at p. 288, *Georghiou v. The Republic* (1983) 3 C.L.R. 17 at p. 33, *Makrides v. The Republic* (1983) 3 C.L.R. 750).

20 Furthermore, under the proviso to sub-section (2) of section 4 of the Public Educational Service Law, 1969 (Law 10 of 1969), Mr. Koullis, as the Head of a Department of the Ministry of Education, had the right to attend the meeting of the Committee and express his views.'

25 It is well settled and has been judicially pronounced in a number of cases that the paramount duty of a collective organ in effecting appointments and promotions is the selection of the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates according to the needs of the scheme of service (see, inter alia, *Bagdades and The Central Bank of Cyprus*, (1973) 3 C.L.R. 30 417). It also emanates from our case Law that in relation to selection for appointment in the higher hierarchy of service the appointing organ is vested with wide discretion. In *Demosthenous v. The Republic* (1973) 3 C.L.R. 354, A. Loizou, J. at p. 364, had this to say in this respect:

40 "It is useful also to point out that in relation to the selection of appointees in the higher hierarchy in the Service, the administrative organ entrusted with such a selection, has a wide discretion. (Vide *Frangos v. The Republic* (1970) 3 C.L.R. 312 at p. 343 and

Decision No. 2338/64 of the Greek Council of State).”

In *Demosthenous* case, the appointment challenged was that of Inspector of Elementary Education for general subjects, a first entry post. 5

In *Ierides v. The Republic* (1980) 3 C.L.R. 165 at p. 183, Triantafyllides, P. in delivering the judgment of the Full Bench said:

“... and it must not be lost sight of, in this connection, that, as fairly conceded by counsel for the appellant, when selection is made for a post so very high up in the public service, such as in the present case, the appointing organ has a very wide discretion indeed (see, inter alia, *Frangos*, supra, at p. 343 and the decisions of the Council of State in Greece in cases 1542/1967 and 1543/1967.” 10 15

Counsel for applicant has made extensive reference to the case Law of this Court in support of his contention that the sub judice decision should, in addition to the other reasons given by him, be annulled for lack of due inquiry, defective reasoning and failure to record in the minutes the way the respondent Committee made its assessment of the interviews. It has to be observed that each case has to be decided on its own merits and in the light of all material circumstances pertaining to it. The duty of the Court is to examine whether in the particular case, any of the well established principles of administrative Law, has been violated. 20 25

I come now to consider the contention of counsel for applicant that particulars of the interviews have not been set out in the decision. As to the object of interviews and the weight to be attached to them, in *Andreas Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 233, Triantafyllides J. as he then was, had this to observe at p. 245: 30 35

“It should be observed that it was not right to treat the performance at the interviews as something apart from the merits, qualifications and experience of the candidates; it was only a way of forming an

opinion about the possession by the candidates of the said basic criteria and not the most safe way because, inter alia, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit.”

The Court in *Triantafyllides* case (supra), after hearing the evidence of the Head of the Department, found that both the Head of the Department and the Public Service Commission had in fact considered the interested party as the most suitable for appointment, on the basis of his performance at the interview and lost completely sight of the fact that the Head of the Department of the interested party had only a few months ago described him in a confidential report about him, as not being fit yet for promotion due to the lack of sufficient training and experience.

In *Petrides v. The Republic* (1981) 3 C.L.R. 57 in which the above dictum in *Triantafyllides* case was adopted, the decision was annulled on the ground that as it appeared from the comments about the performance of the candidates at the interviews and the reasons given, as recorded in the minutes of the meeting at which the sub judice decision was taken, “undue weight of the performance of the candidate during the interview was given.”

In *Demetriades and Others v. The Republic* (1983) 3 C.L.R. 842, I treated the absence of any record in the relevant minutes of the meeting, as to the performance and the view formed by the Educational Service Committee from the interviews of the candidates, as one of the grounds for annulling the decision. That case is distinguishable from the present one, as there was a very large number of people who were interviewed for the filling of 54 posts, at intervals of 17 months from the first to the last interview and at meetings in which some of the members of the Committee were absent and in fact had not interviewed the candidates. And also due to the fact that in the minutes it was recorded that they had taken a “special account of the excellent impression which the members of the Committee had for their personality,” with-

out having recorded anything in respect of such conclusion to enable the Court to test same. In the present case there were only two candidates who were interviewed on the same day which was the day when the decision was taken, and at a time when the respondent Committee had before it all material concerning them, from which conclusions could be drawn as to their merit, qualification and seniority. I consider this case distinguishable as there is nothing in the minutes indicating that undue weight has been given to such personal interview outweighing the picture presented by the material which was before the respondent Committee concerning the two candidates. In the circumstances of the present case, however desirable it might have been if reasons were given about the performance at the interview, I do not consider this fact by itself as sufficient for annulling the sub judge decision. From the contents of their personal files and bearing also in mind the recommendation of the Head of the Department, there is sufficient material before me to test the correctness of the sub judge decision and the validity of the reasons given therein and the impression formed at the interview is not inconsistent in the present case with the decision as to the best candidate for selection.

As to the complaint of the applicant that the decision is not duly reasoned, it is well established that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto (*Papaleontiou v. The Republic* (1967) 3 C.L.R. 624).

The facts relevant to the merit, qualification and seniority of the candidates emerge clearly from the files that were before the respondent Commission and the contents of such files may supplement the reasoning of the respondent Committee.

On the material before me and bearing in mind the professional career of the applicant and the interested party as already explained, and also any other relevant material which appears in the files and also the assessment of an independent committee of Inspectors which was carried out in respect of the two candidates in 1976 which puts both candidates on equal footing, I have not been satisfied

that the applicant is better in merit than the interested party.

5 As to their qualifications as mentioned earlier, they both were fully qualified under the scheme of service and they were treated so by the respondent Committee.

10 Regarding seniority, the interested party was in the Educational Service for a much longer period than the applicant and was on a higher scale in the hierarchy of the service. In any event, the applicant has not shown striking superiority over the interested party to enable this Court to treat the appointment of the interested party in preference to him as unjustified.

15 In the circumstances of the case, I find that the respondent Committee exercised its discretion, which in the circumstances was wide as the selection for appointment was one in the higher hierarchy in the service, in the proper way in selecting the most suitable candidate for appointment and I find no reason to interfere with the exercise of such discretion. The recourse, therefore, fails, - but in
20 the circumstances I make no order for costs.

Recourse dismissed.

No order as to costs.