

1985 May 23

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS LIVERDOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTRY OF EDUCATION,

Respondents.

(Case No. 292/82).

Educational Officers—Promotions—Merit—Qualifications—Seniority—Applicant superior in merit, possessing an additional qualification under the schemes of service, whereas the interested parties did not; and senior to the interested parties—Recommended by Head of Department but one of the interested parties was not—No special reasons given why his additional qualification and the recommendations of the Head of Department were disregarded—And mere reference to the reasons why the interested parties were selected does not amount to special reasoning—Seniority of the applicant could not have been disregarded even if all other factors were equal—Respondent failed in its paramount duty to select the best candidate and its decision is not duly reasoned—Annulled.

15 *Educational Officers—Promotions—Head of Department—Recommendations—Not recorded in the minutes so as to enable the Court to properly exercise its control.*

20 The applicant and the three interested parties were candidates for promotion to the post of Assistant Headmaster in the secondary education. Applicant and two of the interested parties were recommended for promotion by the Head of Department but the third interested party was

not. He was superior in merit than all the interested parties and possessed a qualification which under the schemes of service constituted an additional qualification. He was, also, senior to all interested parties, his seniority ranging from one year to two years and seven months. The respondent Commission promoted the three interested parties to the above post and though it gave reasons for selecting them it gave no reasons for disregarding applicant's additional qualifications and the recommendations of the Head of Department in his favour.

Upon a recourse by the applicant:

Held, that where a qualification is considered as an additional advantage under the schemes of service special reasons must be given why it was disregarded in cases where a person not possessing such a qualification is selected for promotion in preference of another possessing one; that the recommendations of the department concerned should not be disregarded without special reasons; that in considering promotions, merit, qualifications and seniority should be duly taken into account in that order; that mere reference to the reasons why the Committee selected the interested parties does not amount to the special reasoning required for disregarding the additional qualification of the applicant, especially in view of the fact that he was, also, recommended for promotion whereas one of the interested parties was not; that the seniority of the applicant could not have been disregarded, even if all other factors were equal; and that, therefore, the respondent Educational Service Committee failed in its paramount duty to select the best candidate for promotion and, further, its decision is not duly reasoned; accordingly the sub judice decision must be annulled.

Held, further, that the views expressed by the Head of the Department, who was present at the meeting, and might have contained the special reasoning required, are not recorded in the minutes so as to enable the Court to properly exercise its control.

Sub judice decision annulled.

Cases referred to:

Soteriadou v. Republic (1983) 3 C.L.R. 921 at p. 932;

HadjiSavva v. Republic (1982) 3 C.L.R. 76 at p. 78;

Larkos v. Republic (1982) 3 C.L.R. 513 at p. 519;

5 *Protopapas v. Republic* (1981) 3 C.L.R. 456;

Christodoulides v. Republic (1984) 3 C.L.R. 1340.

Recourse.

10 Recourse against the decision of the respondents to promote the interested parties to the post of Assistant Headmaster in the secondary education in preference and instead of the applicant.

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

15 L. LOIZOU J. read the following judgment. By this recourse the applicant challenges the validity of the promotion of Maria Neocleous, Maria Katzi and Maria Papaeti, to the post of Assistant Headmaster in the secondary education, published on the 10th July, 1982, in preference and
20 instead of him and prays for a declaration that the decision of the respondent Educational Service Committee in effecting such promotions is null and void and of no legal effect whatsoever.

25 The applicant as well as the interested parties are Philologists in the secondary education.

In 1982 there were certain vacancies in the post of Assistant Headmaster in the secondary education and in view of the impending promotions the Ministry of Education communicated by letter dated 5th July, 1982, to the Edu-
30 cational Service Committee the recommendations of the Director of the department concerned in alphabetical order. By the recommendations in question 17 educationalists, including the applicant and two of the three interested parties, namely, Maria Neocleous and Maria Katzi were re-

commended for the filling of the seven vacant posts. The third interested party Maria Papaeti was not amongst those recommended.

The Educational Service Committee met on the 9th July, 1982, and promoted seven candidates, two out of whom were not amongst those recommended. 5

The recourse is directed against the promotion of three out of the seven educationalists promoted, as shown above. The contentions of learned counsel for the applicant, which related to this and to another recourse (No. 349/82) which was later withdrawn, may be summarized in three main grounds i.e. that the Committee failed in its paramount duty to select the best candidates, that its decision is not duly reasoned and that the organ which took the decision was improperly constituted. It was argued by learned counsel for applicant that the applicant is superior to the interested parties both as regards merit and qualifications and is also senior to them and should, therefore, have been preferred to them. 10 15

In considering promotions, merit, qualifications and seniority should be duly taken into account in that order. (*Soteriadou v. The Republic* (1983) 3 C.L.R. 921, 932). 20

From the comparative table attached to the Opposition (Annex 'Z') it seems that the applicant was given 36 and 37 marks in his last two service reports, respectively whilst interested parties Neocleous and Katzi were given 35 and Maria Papaeti 36 in their last two reports, respectively. Applicant is, therefore, superior by an average of 1½ marks as compared to interested parties 1 and 2. In the case of interested party No. 3 Maria Papaeti applicant is slightly superior in marks (half to one mark). The applicant moreover, has been recommended for promotion whilst this interested party was not and this makes him superior to her, since the recommendation counts in his favour and goes to his merit. (See, *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76, 78; *Larkos v. The Republic* (1982) 3 C.L.R. 513, 519). 25 30 35

Coming now to the factor of qualifications it is shown from the same comparative table that all interested parties and the applicant are graduates of the University of Athens 40

but applicant possesses, in addition, a diploma in education of the University of Beirut.

Paragraph 4 of the scheme of service provides that

5 “Post-graduate studies abroad or an additional title of studies, preferably in Paedagogics or subjects related to the administration of schools, is considered as an additional qualification.”

10 It was held in a number of cases that where a qualification is considered as an additional advantage under the schemes of service special reasons must be given why it was disregarded in cases where a person not possessing such a qualification is selected for promotion in preference of another possessing one. (*Protopapas v. The Republic* (1981) 3 C.L.R. 456).

15 It was also held in the same case that the recommendations of the department concerned should not be disregarded without special reasons.

20 It is expressly admitted in the written address of learned counsel for the respondents that applicant’s diploma is an additional qualification under the scheme of service.

What falls for consideration in the present case is whether the sub judice decision is duly reasoned in the above respects.

25 The relevant decision of the Committee dated 9th July, 1982 (Appendix ‘E’ attached to the Opposition) which was taken by majority, but it is not stated therein how many of the members were in favour and how many against, reads as follows:

30 “The Educational Service Committee after considering the personal and confidential files of all the candidates for promotion to the post of Assistant Headmaster and bearing in mind the provisions of the Law and the schemes of service and after taking into account-

- 35 (a) Their merit, qualifications and seniority,
 (b) The recommendations of the Department of edu-

cation concerned as communicated in a document of the Directors of Secondary and technical education dated 5.7.1982 and the views of the said Directors who are present,

(c) The service reports, 5

Finds that the following masters are the most suitable for promotion to the post of Assistant Headmaster for the reasons stated for each one separately:

- 1.....
- 2..... 10
- 3.....
- 4. *Neocleous Maria:*

She has high marks (35, 35) and abundant school and out-of-school activities. During her long service as an Acting Assistant Headmistress (she was performing the duties of Assistant Headmistress either by an acting appointment or by interdepartmental arrangement since 1977) she has shown administrative abilities. In spite of the fact that an acting appointment neither constitutes a criterion for promotion nor does it bind the Committee, nevertheless, her excellent performance during the execution of her duties cannot be disregarded. She is recommended by the department concerned. 15

5. *Katzi Maria* 25

She has high marks (35, 35). During her long service as Acting Assistant Headmistress (more than six years, two of which in a disadvantageous post) she has distinguished herself especially in human relations and behaviour. In spite of the fact that an acting appointment neither constitutes a criterion for promotion nor does it bind the Committee, nevertheless, her excellent performance during the execution of her duties cannot be disregarded. She is recommended by the department concerned. 30

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6.....

7. *Papaeti Maria*

In spite of the fact that she is not recommended by the department concerned, the Educational Service Committee selects her because she has excellent marks (36, 36) and is especially distinguished in her competence for work and because she has abundant activity and is an important member of the staff of the school where she works.

10 ”

Mere reference to the reasons why the Committee selected the interested parties, does not, in my view, amount to the special reasoning required for disregarding the additional qualification of the applicant, especially in view of the fact that he was also recommended for promotion whereas one of the interested parties was not; that none of the interested parties possesses an additional qualification; and that he had higher marks than the interested parties, who, as stated by the Committee in their above decision were selected, inter alia, because of their high marks. What is more, the views expressed by the Head of the Department, who was present at the meeting, and might have contained the special reasoning required, are not recorded in the minutes so as to enable the Court to properly exercise its control.

Coming now to the factor of seniority, it is clear from the comparative table that the applicant is senior to all interested parties, his seniority ranging from one year to two years and seven months. His seniority could not have been disregarded, even if all other factors were equal. But, as I have already found, the applicant is superior to the interested parties both in merit and qualifications.

In the light of all the above I find that the Educational Service Committee failed in its paramount duty to select the best candidate for promotion and further, that its decision is not duly reasoned and that this recourse must succeed and the sub judice decision annulled on these grounds.

In view of the conclusion that I have reached I consider it unnecessary to deal with the last ground relating to the composition of the Committee especially in view of the fact that both counsel stated in their written addresses that they would elaborate on this ground at the oral clarifications stage, when the reserved judgment in a case in which this same ground was heard as a preliminary point of Law would be delivered, which they did not. But, in any case, the ground in question was decided against the applicant in that case by the said judgment. (See, *Christodoulides v. The Republic* (1984) 3 C.L.R. 1340). 5 10

In the result the sub judice decision is annulled. There will be no order as to costs.

*Sub judice decision
annulled. No order as to costs.* 15