

1985 April 6

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. ANDREAS NICOLAOU,
2. KYPROS GREGORIADES,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 206/81).

Public Officers—Promotions—Annulment—Reconsideration of the matter by the Commission under a composition different from the one which took the annulled decision—Candidates not interviewed but their performance at the original interview, as conveyed to the Commission by one of its members, taken into consideration—Course adopted not open to the Commission in exercising properly its powers as a collective organ—Sub judice promotions annulled.

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The applicants challenged the decision of the respondent Public Service Commission, taken on the 2nd May 1981, to promote, instead of them, the interested parties in these proceedings, to the post of Postal Superintendent in the Department of Posts. The sub judice decision was reached by the respondent Commission after a reconsideration of the matter of the promotions to the post concerned as a result of the annulment of previous promotions by the judgment given in an earlier recourse of the applicants in the present case. The decision of the Commission about the promotions which were annulled had been taken by the Commission on the 16th July 1975. It was not disputed that on that occasion the composition of the Commission was different from the composition of the Commission when

it reached on the 2nd May 1981 the sub judice decision.

The Commission, without interviewing the candidates when it decided on the 2nd May 1981 to promote the interested parties, used as a criterion for their selection the impressions which they had created when they were interviewed on 16th July 1975 and which were conveyed to the Commission by one of its members, Mr. Louca, who was the only one of the members of the Commission on the 2nd May 1981 who was also a member of the Commission on the 16th July 1975.

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Held, that the Commission adopted a course which was not open to it in exercising properly its functions as a collective organ and consequently its sub judice decision must be annulled (*Safirides v. Republic* (1983) 3 C.L.R. 763 and on appeal (1985) 3 C.L.R. 163 followed).

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Sub judice decision annulled.

Cases referred to:

Nicolaou v. Republic (1981) 3 C.L.R. 73;

Safirides v. Republic (1983) 3 C.L.R. 763 at p. 768;

Republic v. Safirides (1985) 3 C.L.R. 163.

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Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Postal Superintendent in the Department of Posts in preference and instead of the applicants.

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E. Lemonaris, for the applicants.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants challenge the decision of the respondent Public Service Commission, taken on the 2nd May 1981, to promote, instead of them, N. Christofides, E. Georghallides and G. Kazantzis, who are interested parties in these proceedings, to the post of Postal Superintendent in the Department of Posts.

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Its sub judice decision was reached by the respondent Commission after a reconsideration of the matter of the promotions to the post concerned as a result of the annulment of previous promotions by the judgment given in an earlier recourse of the applicants in the present case (see *Nicolaou v. The Republic*, (1981) 3 C.L.R. 73).

The decision of the Commission about the promotions which were annulled by the judgment in the *Nicolaou* case, supra, had been taken by the Commission on the 16th July 1975.

It is not disputed that on that occasion the composition of the Commission was different from the composition of the Commission when it reached on the 2nd May 1981 its now sub judice decision.

In the relevant minutes of the Commission for the 2nd May 1981 it was recorded that Mr. Y. Louca, one of its members who had participated in the meeting of the Commission on the 16th July 1975, informed the Commission that at the then interviews Georghallides, Kazantzis and Christofides had created the best impressions.

Thus, the Commission, without interviewing the candidates when it decided on the 2nd May 1981 to promote the interested parties, used as a criterion for their selection the impressions which they had created when they were interviewed on 16th July 1975 and which were conveyed to the Commission by one of its members, Mr. Louca, who was the only one of the members of the Commission on the 2nd May 1981 who was also a member of the Commission on the 16th July 1975.

In *Safirides v. The Republic*, (1983) 3 C.L.R. 763, this Court has stated the following (at p. 768):

“In my view, therefore, since the respondent Commission decided not to interview the candidates on the 12th August 1980 it could not, in the proper exercise on that occasion of its relevant powers, use, as one of the criteria for selecting for promotion the interested party, the impressions regarding the candidates—including the applicant and the said interested party—which were formed at interviews of the candi-

dates by a differently composed Commission on the 22nd September 1977 and which were recorded then in the minutes of the Commission.

Consequently, the respondent Commission has on the 12th August 1980 adopted a course which was not open to it in the proper exercise of its relevant powers, in that it was incompatible with the requirements of the correct functioning of a collective organ and of good administration generally, with the result that the process of selecting for promotion the interested party is vitiated by a material irregularity and has to be annulled on this ground, without there being necessary to deal with any other reason for its annulment which has been put forward by counsel for the applicant.”

When the *Safirides* case, supra, came up on appeal before the Full Bench of this Court (see *The Republic of Cyprus v. Safirides*, R. A. 332, which was determined on the 17th January 1985 and has not been reported yet)* Loris J. said the following:

“Learned counsel for the appellant submitted that the impressions formed and recorded by the former P.S.C. on 22.9.77 constituted ‘facts’ which could be relied upon by the latter P.S.C. on 12.8.80 in the same way as all other material facts which appear in the administrative files.

With respect, we find ourselves unable to agree with the submissions of learned counsel for the appellant. We hold the view that impressions formed by a collective organ at interviews of candidates do not constitute ‘facts’; they constitute the subjective evaluation ‘connected with the persons of which the collective organ concerned is composed at the material time’ as the learned President of this Court observed; and such material cannot be used, some three years later, by a differently constituted organ which is expected to exercise its own discretion for the selection of the most suitable candidate for appointment or promotion.”

Also, in the same case, Pikis J. stated the following:

* Now reported in (1985) 3 C.L.R. 163.

5 "It emerges that the Public Service Commission
rested their decision on material that was not properly
before them. And as such it was liable to be set aside
as founded on inadmissible facts. Moreover, it was
liable to be set aside for another reason as well, abdi-
cation or alienation of their discretionary powers. In
effect, they relied for their decision on the subjective
evaluations of persons other than themselves, default-
ing thereby in the discharge of their duty to address
10 personally their minds to the facts and come to a
decision, a sine qua non for a valid exercise of dis-
cretionary powers."

15 In the present case there emerges clearly from the rele-
vant minutes of the respondent Commission that in reach-
ing it sub judice decision the Commission was influenced
to a material extent by the views conveyed by one of its
members, Mr. Louca, regarding the interviews held on the
16th July 1975.

20 In accordance, therefore, with the *Safirides* case, supra
(in the first instance and on appeal), it has to be found that
the Commission adopted a course which was not open to
it in exercising properly its functions as a collective organ
and consequently its sub judice decision must be annulled.

25 Thus, the present recourse succeeds, but without any
order as to its costs.

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