

1985 June 29

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALEXANDROS KINANIS AND OTHERS,

Applicants,

v.

1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTRY OF EDUCATION,

Respondents.

(Cases Nos. 438/83, 547/83).

*Educational Officers—Promotions—Interviews, performance at—
Record of impression about a candidate when interviewed
should be made—Recommendation by the Head of the
Department based inter alia on the views of the General
Inspector of Secondary Education as regards the perfor-
5 mance of the candidates at the interviews—The combina-
tion of the following two factors, namely that the evalua-
tion of the performance of the candidates by the Com-
mission was preceded by the said recommendation and
10 that such evaluation was made two months after the inter-
views took place, lead in the circumstances to the conclu-
sion that the Commission was influenced by such recom-
mendation—The administrative process was not consonant
with proper administration and, in all probability, resulted
15 in material misconceptions as to the performance of the
candidates when interviewed.*

The applicants and the interested parties were amongst
the sixty Assistant Headmasters of Secondary Education
who were interviewed by the respondent Commission from
20 the 4th to the 8th July 1983 for the purpose of promotions
to the post of Headmasters.

On 2.9.83 the Head of the Department of Secondary

Education stated to the Commission that in cooperation with the General Inspector of Secondary Education "who had been present at the interviews of the candidates" and having taken into account all data in the possession of his Department he was recommending for promotion nine of the candidates. The interested parties were amongst those recommended, but not anyone of the applicants. 5

After the said recommendation the Commission proceeded at the same meeting of 2.9.83 to evaluate, making use of notes, which, however, were not reproduced in the minutes and were not produced before the Court, the performance of the candidates at the interviews. The Commission rated the performance of the interested parties as excellent, the performance of applicants Kinanis and Stylianou as very good and the performance of the remaining two applicants as good. 10 15

On 3.9.83 the Commission decided to promote the interested parties. In the minutes of the meetings when the interviews took place there does not appear any contemporaneous record of the impression formed as regards the performance of those interviews. The performance at the interviews was one of the factors taken into account in reaching the sub judge promotions. 20

Held, annulling the sub judge decision (1) In the way the recommendation of the Head of the Department was framed it is plainly obvious that one of the factors taken into consideration were the views of the General Inspector of Secondary Education. 25

(2) The need for recording sufficiently but not in detail the impression formed about a candidate when interviewed was pointed out in a number of cases (*Stylianou v. The Educational Service Commission* (1984) 3 C.L.R. 933 distinguished). 30

(3) The combination of the following two factor's namely that the evaluation of the performance of the candidates at the interviews was made after the lapse of two months and that such evaluation by the Commission was preceded by the recommendation of the Head of the 35

5 Department, which had been based inter alia on the performance of the candidates at the interviews, leads to the conclusion that, most probably, it was in all good faith, humanly impossible for the members of the Commission
10 not to be influenced to a certain extent by the recommendation of the Head of the Department, which had been based inter alia on the views of the said General Inspector. (The question whether each of the said factors would be sufficient by itself to vitiate the sub judice decision is left open.)

(4) In the light of the above the administrative process was not consonant with proper administration and has, in all probability, resulted in material misconceptions regarding the performance of the candidates when interviewed.

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

20 *Observations by the Court:* Three of the applicants were later promoted to the post of Headmaster as from 1.9.84. Quite rightly counsel for the respondents did not submit that they were deprived of their legitimate interest in the present case. Indeed as they were promoted with effect from a date which is a year after the promotion of the interested parties, they still have a legitimate interest to pursue this recourse.

25 Cases referred to:

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

Karageorghis v. The Republic (1982) 3 C.L.R. 435;

Georghiou v. The Republic (1983) 3 C.L.R. 17;

30 *Demetriades v. The Republic* (1983) 3 C.L.R. 842;

Themistocleous v. The Republic (1985) 3 C.L.R. 1070;

Makrides v. The Educational Service Committee (1983) 3 C.L.R. 750;

35 *HadjiAntoni v. The Educational Service Committee* (1983) 3 C.L.R. 1145;

Loizidou-Papaphoti v. The Educational Service Commission
(1984) 3 C.L.R. 933;

Stylianou v. The Educational Service Commission (1984)
3 C.L.R. 776.

Recourses.

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

L. Papaphilippou with *Ph. Valiandis*, for the applicants in Case No. 438/83. 10

A. S. Angelides, for the applicant in Case No. 547/83.

R. Vrahimi, for the respondents in Case No. 438/83.

M. Florentzos, Senior Counsel of the Republic, for the respondents in Case No. 547/83. 15

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. The four applicants in these cases (*A. Kinanis*, *Th. Sofocleous* and *Th. Stylianou* in case 438/83, and *A. Photiou* in case 547/83) challenge the promotions, as from the 5th September 1983, to the post of Headmaster of Secondary Education of *A. Panayi*, *A. Constantinides*, *A. Chrysostomou* and *D. Rousounides*, who are interested parties in the present proceedings. 20

The applicants in case 438/83 challenge the promotions of all four of the said interested parties, whereas the applicant in case 547/83 challenges the promotions of only two of them, *Panayi* and *Rousounides*. 25

As it appears from its relevant minutes the respondent Educational Service Commission interviewed from the 4th to the 8th July 1983 about sixty Assistant Headmasters of Secondary Education, who were candidates for promotion to the post of Headmaster; and among them were the applicants and the interested parties. 30

On the 2nd September 1983 the Head of the Department of Secondary Education, who was present at the meeting on that date of the respondent Commission, stated that, in cooperation with the General Inspector of Secondary Education “who had been present at the interviews of the candidates” and having taken into account all data in the possession of his Department, he was recommending for promotion nine of the candidates. Among them were included the four interested parties, but not any one of the applicants.

In the way in which the recommendation of the Head of the Department of Secondary Education was framed it was, I think, plainly obvious that one of the factors which had been taken into account were the views of the General Inspector of Secondary Education about the performance of the candidates when interviewed in July 1983.

Then the Head of the Department of Secondary Education and the General Inspector of Secondary Education left the aforesaid meeting of the respondent Commission which proceeded, at that same meeting, to evaluate the performance of the candidates at the interviews in July 1983: and in this connection the members of the Commission made use of notes which they had kept but which were not reproduced in the minutes of the Commission and were not produced before me in these proceedings.

The Commission evaluated the performance at the interviews of all the interested parties as “excellent”, the performance of applicants Kinanis and Stylianou as “very good” and the performance of applicants Sophocleous and Photiou as “good”.

On the following day, the 3rd September, the Commission decided to promote the four interested parties and, as it appears from its relevant minutes, one of the factors which was taken into account by it in reaching its sub judice decision was the performance of the candidates at the interviews.

In the minutes for the meetings of the Commission on the 4th, 5th, 6th, 7th and 8th July 1983, when the candidates were interviewed, there does not appear at all any

contemporaneous record of any kind as regards either the impressions formed by the members of the Commission about the performance of the candidates when interviewed or the evaluation of such performance.

The need for recording sufficiently the impressions formed about a candidate when interviewed was pointed out in, inter alia, *Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417, 428, *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435, 460, *Georghiou v. The Republic*, (1983) 3 C.L.R. 17, 34, *Demetriades v. The Republic*, (1983) 3 C.L.R. 842, 853, and *Themistocleous v. The Republic*, (Case No. 123/81 reported in (1985) 3 C.L.R. 1070); and in the latter two of the above cases, *Demetriades* and *Themistocleous*, there was stressed, also, the significance of the length of time which had intervened between the interviews of candidates and the decisions for promotion which were being challenged in those cases.

It is to be noted, however, that in *Makrides v. The Educational Service Committee*, (1983) 3 C.L.R. 750, 761, *HadjiAntoni v. The Educational Service Committee*, (1983) 3 C.L.R. 1145, 1154, and *Loizidou-Papaphoti v. The Educational Service Commission*, (1984) 3 C.L.R. 933, 940, it was stated that the impressions formed at the interviews of candidates need not be recorded in detail.

It is to be derived from *Stylianou v. The Educational Service Commission*, (1984) 3 C.L.R. 776, 787, that the impressions about the candidates when interviewed could be recorded by the Educational Service Commission even when dealing afresh with the matter of promotions which had been annulled as a result of a recourse for annulment. The *Stylianou* case is, in my view, distinguishable from the present case because in the initial decision for the promotions which had been annulled the impressions from the interviews were not recorded and so they were recorded in the new decision of the Commission when it re-examined the matter of such promotions; and, thus, it was an instance of "better late than never" compliance with the requirements of proper administration.

In the present case the evaluation of the performance of the candidates at the interviews which took place in the

first week of July 1983 was made at a meeting of the respondent Commission on the 2nd September 1983. As already stated at that meeting and prior to such evaluation the Commission heard the Head of the Department of Secondary Education stating that in cooperation with the General Inspector of Secondary Education "who had been present at the interviews of the candidates" he was recommending for promotion nine candidates; and, in my view, the members of the respondent Commission must have understood that this recommendation was based on, among other factors, the performance of the candidates at the interviews in July 1983.

I leave open the issue of whether had it been only the fact that the respondent Commission made the evaluation of the performance of the candidates at the interviews after the lapse of two months I would have regarded this by itself as a factor vitiating the administrative process leading up to the promotions of the interested parties.

Also I leave open the issue of whether I would have regarded it by itself as a factor vitiating such process the fact that the said evaluation by the Commission was preceded by the recommendations of the Head of the Department of Secondary Education which had been based on, inter alia, the performance of the candidates at the interviews.

The combination, however, of the aforementioned two factors has led me to the conclusion that, most probably, it was, in all good faith, humanly impossible for the members of the respondent Commission, when making their own evaluation of the performance of the candidates at the interviews, two whole months after such interviews, not to be, notwithstanding their best intentions, inescapably influenced to a certain extent by the just previously made recommendations of the Head of the Department of Secondary Education, which had been based on, among other things, the views of the General Inspector of Secondary Education who had been present at the said interviews. At that time the impressions of the members of the Commission about the performance of the candidates when interviewed were no longer vivid in their minds and they were merely

dead letter on notes kept by them which were not produced before me in these proceedings because, apparently, they never had the status of official records; and the most proximate and decisively influential element before them were the aforementioned recommendations of the Head of the Department of Secondary Education which were linked to the performance of the candidates when interviewed in July 1983.

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It is thus not surprising at all, and on the contrary quite natural, that among the thirteen candidates who were rated by the Commission as having been "excellent" when interviewed were all the nine candidates who had been recommended by the Head of the Department of Secondary Education, including the four interested parties in the present proceedings.

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As already stated in this judgment the performance of the four applicants at the interviews was rated as follows: of Kinanis and Stylianos "very good" and of Sofocleous and Photiou "good"; and it is to be clearly derived from the relevant minutes of the respondent Commission, dated 3rd September 1983, that the "excellent" performance of the interested parties and the less than "excellent" performance of the applicants at the interviews were factors which were taken into account in selecting for promotion the interested parties instead of the applicants.

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In the light of all the foregoing I find that the particular administrative process of promoting the interested parties was not consonant with proper administration and has, in all probability, resulted in material misconceptions regarding the performance of the candidates when interviewed, about which I cannot speculate, and which render defective the exercise of the relevant discretionary powers of the respondent Commission. Consequently the sub judice promotions have to be annulled.

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After judgment was reserved in these cases the Court was informed in writing by counsel for the respondents in case 438/83 that applicants Kinanis, Stylianos and Sofocleous were promoted to the post of Headmaster as from the 1st September 1984.

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5 Counsel for the respondents did not ask to be heard as regards the issue of whether the promotions of the said three applicants deprived them of their legitimate interest in the matter and I think that quite rightly she did not adopt such a course because the applicants in question were promoted with effect from a date which is a year after the promotion of the interested parties and. thus, they still have a legitimate interest to pursue their recourse.

10 In the result these recourses succeed, but I will not make any order as to the costs of these proceedings.

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