

1986 March 24

[TRIANTAFYLLIDES, P., SAVVIDES, LORIS. STYLIANIDES.
KOURRIS, JJ.]

ANDREAS CHRISTODOULIDES AND ANOTHER,

Appellants-Applicants.

v.

THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 426).

Administrative Law—General principles—Promotions—Taking into consideration views expressed by Head of Departments—Failure to record such views—Such failure offends against principles of proper administration and deprives
5 *decision of an essential part of its reasoning.*

This is an appeal from the judgment of a Judge of this Court, whereby the recourses of the appellants against the promotion of the interested party to the post of Headmaster in Secondary Education were dismissed.

10 In reaching the sub judge decision the respondent Commission took, inter alia, into consideration the views, which were orally expressed before the Commission by the Heads of the Departments of Secondary Education and of Technical Education and which were not recorded in
15 the minutes of the Commission.

Held, allowing the appeal and annulling the sub judge decision, that the failure to record the said views not only has offended against basic principles of proper administration, but has also deprived such decision of an essential
20 part of its reasoning, thus making judicial control impossible.

Appeal allowed.

No order as to costs.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 7th November, 1984 (Revisional Jurisdiction Cases Nos. 481/82 and 508/82)* whereby appellants' recourses against the promotion of the interested party to the post of Headmaster in the Secondary Education were dismissed. 5

A. S. Angelides, for the appellants.

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

Cur. adv. vult. 10

TRIANAFYLLIDES P. read the following judgment of the Court. This is an appeal against the first instance judgment (see *Constantinides v. The Republic*, (1984) 3 C.L.R. 1408) of a Judge of this Court who has dismissed the recourses (Nos. 481/82 and 508/82) of the appellants against the promotion to the post of Headmaster in Secondary Education of Demetrios Philippides, which was decided by the respondent Commission on the 9th July 1982. 15

The salient facts of, and the issues arising in, this case are most adequately set out in the judgment of the learned trial Judge and we need not repeat them once again. 20

It is necessary, however, to draw attention to the fact that, as it appears from the minutes of the respondent Commission dated 9th July 1982, in reaching its sub judice decision the Commission took into account not only the merits, the qualifications and the seniority of the candidates, the confidential reports about them, and the recommendations of the Heads of the Departments of Secondary Education and of Technical Education, which were set out in a document dated the 5th July 1982—which is before us—but, also, views which were expressed orally by the said two Heads of Department, who were present at the meeting of the Commission on the 9th July 1982, and such views were not recorded at all in the minutes of the Commission. 25
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* Reported in (1984) 3 C.L.R. 1408.

The failure to record the said views of the Heads of Department, which obviously were factors which have materially influenced the Commission in reaching its sub judice decision, not only has offended against basic principles of proper administration, but has also deprived such decision of an essential part of its reasoning, thus rendering proper judicial control impossible.

Had it not been for this, fatal in our opinion, defect of the sub judice decision we might, otherwise, have been inclined to say that the selection of the interested party for promotion was reasonably open in law and in fact to the respondent Commission and that neither of the appellants has been shown to be strikingly superior to the interested party; and we might add, furthermore, that we have, in any event, reached the conclusion that the way in which the relevant scheme of service was applied, in finding that the interested party had an additional qualification, was reasonably open to the Commission.

In view, however, of the aforementioned fatal defect of the sub judice decision we have no other alternative but to allow on this ground the present appeal and annul such decision accordingly; without any order as regards the costs of this appeal.

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