

1986 November 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

MARINA POTOUDI AND OTHERS,

*Applicants,*

v.

THE PUBLIC SERVICE COMMISSION.

*Respondent.*

*(Cases Nos. 44, 45, 46, 78, 96, 106  
and 113/84).*

---

Public Officers—Appointments —Interviews, performance at—  
Absence of contemporaneous record relating to the evaluation of such performance—Interviews started on 14.6.1983 and continued till 29.6.83 and then there was a  
5 last interview on 25.7.83—The evaluation of the performance was recorded on 2.9.83—The number of candidates interviewed was 66—In the circumstances there is a probability that the respondent laboured under a misconception of fact—Said evaluation was the reason why  
10 the interested parties were preferred to the applicants—Sub judice appointments annulled.

Public Officers—Appointments—First entry post—Holding of a post on a temporary basis—Not an advantage for its holder in respect to appointment to such post—Therefore,  
15 evaluation of Head of Department of the Services of such holders cannot be relied upon by the P.S.C.—Such reliance may result in inequality.

By means of these recourses the applicants challenged the appointment of the interested parties in preference to them to the post of Press and Information Officer (English language). The applicants and the interested parties were  
20 among those candidates who, having been found to be

eligible for the post in question, were called for an interview before the respondent Commission.

The interviews started on the 14th June, 1983 and continued at small intervals till the 29th June, 1983, and then there was a last interview on the 25th July, 1983. At such interviews, 66 candidates were interviewed, not only in respect of the vacancies for English language, but for all other languages as well. There was no contemporaneous record of the performance of the candidates at the interviews. The evaluation of such performance, both by the Head of the Department and the respondent Commission took place on the 2nd September, 1983. The interested parties were rated in general as "very good" (three of them as "very very good"), whilst three of the applicants were rated as "nearly very good" and the remaining four as "good". It is obvious that the reason why the interested parties were preferred to the applicants was their such better rating of their performance at the interviews.

*Held, annulling the sub judice decision:* (1) The absence of a contemporaneous record of the performance of the candidates at interviews, has been the subject of comment in a number of cases and, in most of them, resulted in annulment of the decisions, where such interviews were amongst the various matters taken into consideration. The matter has been recently considered by the Full Bench in *The Republic v. Maratheftis and Another* (1986) 3 C.L.R. 1407.

(2) Notwithstanding the fact that the period which has elapsed was not so long as in the case of *Maratheftis and Another*, nevertheless, bearing in mind the fact that in *Maratheftis case* the Commission had to deal with eleven candidates only in respect of a particular post, whereas in the present case it had to deal with 66 candidates for a post which, though similar, nevertheless, it was grouped under separate headings for a number of languages, this Court has come to the conclusion that in the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and bearing in mind that more than two months

had elapsed from the interviews, except the last one, there exists, as in *Maratheftis* case, a good strong probability that the Commission was labouring under a material misconception due to inaccuracies which, because of the passage of time, might have crept in and distorted the evaluation of the performance of the candidates at the interviews, which amounts to a defective way of exercise of its discretionary power.

(3) In the light of the above the sub judice decision has to be annulled.

(4) Finally the contention of counsel for the respondents that the evaluation by the Head of the Department of candidates already serving on a temporary basis therein was a matter on which the respondent could rely in making its evaluation of the candidates at the interviews, cannot be maintained because in such a case such candidates would have been either in an advantageous or disadvantageous position vis a vis the other candidates which may result in unequal treatment (*Nicolaidou v. P.S.C.* (1985) 3 C.L.R. 2492 cited with approval).

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

**Cases referred to:**

- 25      *Republic v. Maratheftis and Another* (1986) 3 C.L.R. 1407;
- Bagdades v. The Central Bank* (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 and Others v. The Republic* (1983) 3 C.L.R. 842;
- Maratheftis and Another v. The Republic* (1986) 3 C.L.R. 533;
- Nicolaidou v. P.S.C.* (1985) 3 C.L.R. 2492.

**Recourse.**

Recourse against the decision of the respondent to appoint the interested parties to the post of Press and Information Officer (English and French languages) in preference and instead of the applicants. 5

*N. Papaefstathiou*, for the applicants in Cases Nos. 44/84, 45/84 and 46/84.

*A. S. Angelides*, for the applicants in Cases Nos. 96/84 and 106/84.

*A. Ladas*, for the applicant in Case No. 113/84. 10

*M. Papapetrou*, for the applicant in Case No. 78/84.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. Applicants in Cases Nos 44, 45, 46, 78, 106 and 113/84 challenge the decision of the respondent, published in the official Gazette of the Republic on 16.12.1983 by which the 16 interested parties whose names appear in the attached Appendix A, were appointed to the post of Press and Information Officer (English language) in preference to the applicants. 15 20

Applicant in Case No. 96/84 challenges the same decision concerning the appointment of the four interested parties whose names appear in the attached Appendix B, to the same post but for French language, in preference to him. 25

As all these recourses challenge the same administrative act and common questions of law are involved, I shall dispose of all of them by this judgment.

The facts are briefly as follows: 30

On the 21st May, 1982, a number of vacancies in the post of Press and Information Officer, which is a first entry post, were advertised in the official Gazette of the Republic. The applications of 208 candidates who applied for ap-

pointment were considered by the Departmental Committee, which was set up for such purpose, which with its report dated 4.3.1983, submitted a list of 77 candidates found by it to possess the qualifications required by the scheme of service, amongst whom the applicants and the interested parties.

The P.S.C., at its meeting of 23.4.1983, having considered the report of the Departmental Committee and all other material before it, found, amongst others, that certain of the candidates recommended by the Departmental Committee did not satisfy the requirements of the scheme of service and were thus ineligible for consideration and decided to carry out a further inquiry into the qualifications or experience of certain candidates.

The P.S.C. having concluded the examination of the eligibility of the candidates, proceeded to interview those found by it as eligible, amongst whom the applicants and the interested parties.

Finally, at its meeting of 2.9.1983, the P.S.C., having heard the views of the Head of the Department with regard to the performance of the candidates at the interview and at their work (in the cases of those serving in the Press and Information Office, either on contract or on secondment), proceeded to make its own evaluation of the candidates as to their performance at the interview, on the basis of the material before it and selected 17 candidates (English language), two (Russian language), one (Arabic language), one (Turkish language), three (German language), one (Spanish language), and five (French language), as the most suitable for appointment to the 30 vacant posts of Press and Information Officer. Twenty-eight of those selected accepted their offer for appointment and their appointment was published in the official Gazette of the Republic of the 16th December, 1983.

A number of legal grounds has been raised by counsel in these recourses the most material of which are:

- (a) The respondent failed to conduct a proper inquiry as to the possession by the candidates of the qualifications required under the scheme of service;
- (b) Undue weight

was attached to the performance of the candidates at the interviews and such performance was not recorded at the time of the interviews or immediately thereafter and no method of evaluation or marking was followed; (c) the respondent failed to give special reasons why it preferred certain of the interested parties, who were outsiders, to the applicants who were already serving in the department; (d) that the recommendations of the Head of Department on the performance of candidates and their work were not based on a full consideration after a proper inquiry; (e) the respondent exercised its discretionary power improperly as its decision was based, almost exclusively, on the short personal interviews with the result of disregarding the superiority of the applicants; (f) the sub judice decision is not duly reasoned and (g) the applicants were treated in a discriminatory manner.

Counsel for the applicant in Case No. 106/84 expounded in his written address on his contention that undue weight was attached to the performance of candidates at the interviews and argued that though the interviews took place considerable time prior to the final decision of the respondent, the respondent did not evaluate and record the performance of the candidates at the time of the interviews or soon thereafter, but did so on the date of its final decision which took place after the lapse of considerable time.

The same question has been considered by the Full Bench of this Court in Revisional Appeal No. 575, *The Republic of Cyprus v. Maratheftis and Another* (judgment in which was delivered on the 25th July, 1986, not yet reported)\*. The absence of any contemporaneous record of the Commission regarding the performance of the candidates when interviewed, in view of the long period which had intervened between the interviews and the recording of the evaluation by the Commission of the performance of the candidates was considered as a ground for annulling the appointment of the interested party to the post of Director of Higher and Highest Education.

\* Reported in (1986) 3 C.L.R. 1407.

As such decision was issued whilst I was preparing the judgment in the above recourses, I considered it necessary to re-open all these cases, in order to afford all counsel concerned the opportunity to advance further argument  
5 in the light of the decision of the Full Bench in the above Revisional Appeal.

Counsel for applicants in addressing the Court at the hearing of the cases when re-opened, submitted that the decision in R.A. 575 applied to the present case bearing  
10 in mind the fact that interviews play a material part in the case of first entry post. Counsel submitted that the reasons given for annulling the decision in R.A. 575. are applicable, a fortiori, to the present case where the number of the candidates interviewed was 66 in comparison with eight  
15 in R.A. 575.

Counsel further argued that the fact that some of the candidates were temporarily employed in the Department was not a matter which should have weighed either in favour or against them and in support of his contention he  
20 made reference to the case law of this Court.

Counsel for the respondent on the other hand attempted to draw a distinction between R.A. 575 and the present case by submitting that (a) in R.A. 575 there was no considerable difference in the evaluation of the candidates  
25 whereas in the present case there is such considerable difference in that all the applicants were evaluated as "good" whereas the interested parties were evaluated as "very good" or "excellent"; (b) in R.A. 575 the period which elapsed between the interviews and recording of the evaluation was more than five months whereas in the present  
30 case a period of one month and eight days had elapsed from the last interview and two months and 17 days from the first interview.

Counsel for the respondent laid stress to the fact that  
35 the Head of the Department was in a position to evaluate at any time the abilities of those of the candidates who were serving in his department and that the evaluation by the respondent in respect of such candidates coincided with that of the Head of the Department.

Counsel for applicants in reply to counsel for the respondent drew the attention of the Court to the fact that the evaluation of certain of the applicants and in particular applicants in Cases 45/84, 78/84 and 106/84, was “nearly very good”, as against some of the interested parties who were evaluated as “very good” and that the difference between “nearly very good” and “very good” is so minimal and these cases present no difference in this respect from R.A. 575. As to the contention of counsel concerning the evaluation of the Head of Department in respect of the candidates who were already in his department, he submitted that this is not a matter which should unduly weigh against other candidates in the case of a first entry post.

The absence of a contemporaneous record regarding the evaluation of the performance of candidates at interviews, has been the subject of comment in a number of cases of this Court and has resulted in most of them to the annulment of decision taken by the appointing organ in which such interviews were amongst the various matters taken into consideration in reaching the decisions challenged. (See, inter alia, *Bagdades v. The Central Bank* (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; *Demetriades & Others v. The Republic* (1983) 3 C.L.R. 842).

As I said earlier, the matter has been recently considered by the Full Bench in Revisional Jurisdiction Appeal No. 575, *The Republic of Cyprus v. Maratheftis and Another* (supra). The two applicants, respondents in the appeal, in the above case, challenged successfully before the trial Court the appointment of interested party Stavros Philipides, to the post of Director of Higher and Highest Education in the Ministry of Education. (See, *Maratheftis and Another v. Republic* (1986) 3 C.L.R. 533). The Republic appealed against the first instance decision.

The material facts in *Maratheftis* case, as briefly summarised in the judgment of the Full Bench, were as follows:



5 "All the candidates had been interviewed by the Commission at two consecutive meetings on the 15th and 16th July, 1983. On both occasions there was present the Director-General of the Ministry of Education who, together with the Chairman and Members of the Commission, put questions to the candidates.

10 No contemporaneous official record was made by the Commission as regards its own evaluation of the performance of the candidates at the interviews, but the Commission recorded in its minutes, on the 16th July 1983, the views of the Director-General of the Ministry of Education about the performance of the candidates when interviewed. He rated the interested party and the respondent Maratheftis, as well as two other candidates (Michaelides and Persianis), as 'very good' (πολύ καλός) and he rated respondent Psomas as 'good' (καλός).

20 The appellant Commission reverted on the 2nd August 1983 to the matter of filling the post in question but it did not record its own evaluation of the performance of the candidates at the interviews till its meeting on the 21st December 1983, that is after there had elapsed since the interviews more than five months. According to its minutes of the 21st December 1983 the Commission rated respondent Maratheftis and two other candidates (G. Christodoulides and Persianis) as having been 'very good' (πολύ καλός) at the interviews, respondent Psomas was rated as having been 'nearly very good' (σχεδόν πολύ καλός) and the interested party was the only one out of eleven candidates who was rated as having been 'very very good' (πέρα πολύ καλός)."

35 On the basis of the above facts, the Full Bench concluded as follows:

"We have reached the conclusion that in view of the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and, also, in view of the

period of more than five months which intervened between the interviews in July 1983 and the recording, on the 21st December, 1983, of the evaluation by the Commission of the performance of the candidates at such interviews, there exists a quite strong probability that the Commission, notwithstanding its undoubted good faith, was labouring under material misconceptions due to inaccuracies, which, because of the passage of time, may have crept in and distorted the evaluation of the performance of the candidates at the interviews; and the said probability is enhanced when in such evaluation there have been used only marginally different ratings such as 'very good' and 'very very good' in assessing the leading candidates.

5

10

15

Consequently, we have reached the conclusion that the selection of the interested party as better, in particular, to respondent Maratheftis, on the basis of the performance at the interviews, has to be treated as being the product of the exercise in a defective manner of the relevant discretionary powers of the appellant Commission and, for this reason, we have decided to annul the sub judice appointment of the interested party."

20

In the cases under consideration, the interviews started on the 14th June, 1983, and continued at small intervals, till the 29th June, 1983, and then there was a last interview on the 25th July, 1983. At such interviews, 66 candidates were interviewed in respect of the vacancies in the post in question, not only for English language but for all other languages as well. (French, German, Russian, Arabic, Spanish and Turkish).

25

30

It is obvious from the minutes of the sub judice decision that the reason that the interested parties were preferred to the applicants was their better performance at the interviews. It is also a fact that the interested parties were in general assessed as "very good" at the interview (with the exception of three who were assessed as "very very

35

good”) whilst three of the applicants were assessed as “nearly very good” and the remaining four as “good”.

5 It is an undisputed fact that there was no contemporaneous record of the performance of the candidates at the interviews either as a whole or in respect of the particular languages. The evaluation of the performance of the candidates of the interviews, both by the head of the Department and the respondent, took place on the 2nd September, 1983.

10 Notwithstanding the fact that the period which has elapsed was not so long as in the case of *Maratheftis and Another*, nevertheless, bearing in mind the fact that in *Maratheftis* case the Commission had to deal with eleven candidates only in respect of a particular post, whereas in the present  
15 case it had to deal with 66 candidates in a post which, though similar, nevertheless, it was grouped under separate headings for a number of languages, I have come to the conclusion that in the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and bearing in  
20 mind that more than two months had elapsed from the interviews, except the last one, there exists, as in *Maratheftis* case, a good strong probability that the Commission was labouring under a material misconception due to inaccuracies which, because of the passage of time, might  
25 have crept in and distorted the evaluation of the performance of the candidates at the interviews, which amounts to a defective way of exercise of its discretionary power.

30 For this reason I have come to the conclusion that the *sub judice* decision has to be annulled.

Before, however, concluding, I shall answer, briefly, the question as to whether in a first entry post the holding  
35 of a post on a temporary basis and the performance of a candidate holding such post during his service is a matter which should be held either in favour or against him. In this respect, I consider it sufficient to adopt what I have said in *Nicolaidou v. P.S.C.* (1985) 3 C.L.R. 2492 at p. 2499:

“The holding of a post on a temporary basis does not create an advantage in favour of its holder in the case of first entry posts. This would have amounted to a limitation of the prospects of candidates who are outside the service and to some extent it would have violated the principle of equality. (See, *Maratheftis v. The Republic* (1982) 3 C.L.R. 1088 at pp. 1094 and 1095; *Papantoniou v. The Republic* (1968) 3 C.L.R. 233 at p. 237).” 5

Therefore, the contention of counsel for the respondent at the evaluation by the Head of the Department, of the candidates serving in his department was a matter on which the respondent Commission could rely in making its evaluation of the candidates at the interviews cannot be maintained because in such case the candidates already serving on a temporary basis in the department would have been either in an advantageous or disadvantageous position as a vis the other candidates for whom no opinion could be expressed as to their previous service, which might have resulted in inequality of treatment. 10 15 20

Having concluded as above, I find it unnecessary to deal with the other grounds raised.

In the light of the above, these recourses succeed and the sub judice decision concerning the appointment of the interested parties, whose names appear in the attached appendices, to the post of Press and Information Officer hereby annulled but in the circumstances with no order as to costs. 25

*Sub judice decision annulled.*  
*No order as to costs.* 30

#### APPENDIX "A"

1. Ioulia Athanassiou.
2. Kyriacos Ch. Vrahimis.
3. Eleonora Gavrielidou.
4. Elengo A. Constantinou. 35
5. Christos K. Lambrias.

- 6 Andreas Lyrtsas
- 7 Marianna Mammidou
- 8 Chloi Chr Savvidou
- 9 Andreas O Christodoulou
- 5 10 Galatia Christodoulou (Constantinou)
- 11 Kyriaki Englezaki
- 12 Eleni Theodosiadou
- 13 Maria Simeou
- 14 Pavlos Takousis
- 10 15 Patricia HJ Soteriou
- 16 Andreas M Miltiades

---

*APPENDIX "B"*

- 1 Christophoros Christophorou
- 2 Yiolanda Makridou - Piskopou
- 15 3 Yiannoulla Koradjitou
- 4 Tamara Terzian