

1986 August 6

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ANTONIOS KALLIS AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION.

*Respondent.*

(Cases Nos. 561/83, 4/84).

*Educational Officers—Promotions —Interviews, performance at —Evaluation of, made four months after the interviews of a great number of candidates and immediately after the recommendations of the Department of Elementary Education were heard by the Commission—Sub judice promotions annulled.* 5

*Educational Officers—Promotions—Misconception of fact—Commission labouring under impression that applicant in 561/83 received 36 and 37 marks in his last two reports, whereas applicant had been finally accorded higher marks —Ground of annulment.* 10

*Educational Officers —Promotions —Discretion, wrong exercise of—Seniority treated as overriding merit and qualifications in a manner amounting to wrong exercise of the discretionary power of the Commission.* 15

*Educational Officers —Promotions —Interviews, performance at —Undue weight attached—Ground of annulment.*

*Educational Officers —Promotions —Recommendations by the two General Inspectors who, in effect, were acting jointly as Head of the Department of Elementary Education— Submission that their recommendations did not convey the views of the Department rejected.* 20

The applicants in these recourses challenge the promotion of the interested parties to the post of Headmaster "A" in elementary education. The relevant interviews were held by the respondent Commission on the 16th, 17th, 5 18th, 19th, 20th and 21st of May 1983, but no contemporaneous record regarding the evaluation of the performance of the candidates was kept. On the 16.9.83, that is after four months, the Commission heard the views of the two General Inspectors of Elementary Education, who 10 were, in effect, acting jointly as the Head of the Department and after their departure proceeded to evaluate the performance of the candidates at the interview. The two applicants, who had not been recommended by the two Inspectors, were rated as "good" (applicant in 561/83) 15 and "very good" (applicant in 4/84) whereas the interested parties, who had been recommended by the two Inspectors, were rated as "excellent".

It must, also, be noted that: (a) Applicant in 561/83 was treated as having received 36 and 37 marks respectively 20 in the last two confidential reports, whereas in fact he had been given higher marks by a Committee of Inspectors. The report of such Committee was ready by the 19.7.83, but was not placed before the respondent Commission. (b) As regards applicant 2 the respondent Commission recorded in its minutes of 16.9.83 that he had additional 25 qualifications and received high marks, but he was junior to those selected for promotion, he had not been recommended for promotion and he was found to have been only "very good" when interviewed.

*Held, annulling the sub judice decision:* (1) The submission of counsel for applicants that the aforesaid recommendations could not be treated, as conveying the views of the Department of Elementary Education, cannot 30 be accepted.

(2) It must have been humanly impossible for the members of the respondent Commission not to have been influenced, when evaluating the performance of a great number of candidates at the interviews which had been held 35 four months before the evaluation, by the views of the two General Inspectors. The situation is similar to that in 40

*Kinanis v. The Educational Service Commission* (1986) 3 C.L.R. 151. The promotions of all interested parties have to be annulled on this ground.

(3) In the case of applicant in Recourse 561/83 there is an additional ground of annulment, namely that the respondent Commission laboured under a material misconception of fact as regards the correct marks finally accorded to the applicant. 5

(4) In the case of applicant in Recourse 4/84 the sub judge promotions have to be annulled on the following additional grounds namely: (a) That the Commission treated seniority as overriding merit and qualifications in a manner amounting to a wrong exercise of its discretion, and (b) that undue importance was given to the impressions from the interviews in preference to qualifications and merit. 10 15

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

Cases referred to:

*Kinanis v. The Educational Service Commission* (1986) 3 C.L.R. 151; 20

*The Republic v. Maratheftis* (1986) 3 C.L.R. 1407;

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

*Loizidou - Papaphoti v. Educational Service Commission* (1984) 3 C.L.R. 933; 25

*Georghiou v. The Republic* (1985) 2 C.L.R. 2105;

*Kinanis v. The Educational Service Commission* (1986) 3 C.L.R. 1705;

*Tapacoudis v. The Republic* (1981) 3 C.L.R. 9; 30

*Hadji Ioannou v. The Republic* (1983) 3 C.L.R. 286;

*Pсарus v. The Public Service Commission* (1985) 3 C.L.R. 229;

*Christou v. The Republic* (1985) 3 C.L.R. 2237;

*Republic v. Zachariades* (1986) 3 C.L.R. 852; 35

*Livadas v. The Republic* (1985) 3 C.L.R. 506;

*Lakatamitis v. The Public Service Commission* (1985) 3  
C.L.R. 2269.

**Recourses.**

5        Recourses against the decision of the respondent to  
promote the interested parties to the post of Headmaster  
A in the Elementary Education in preference and instead  
of the applicant.

*C. Clerides*, for the applicant in Case No. 561/83.

10        *A. S. Angelides*, for the applicant in Case No. 4/84.

*E. Papadopoulou (Mrs.)*, for the respondent.

*N. Cleridou (Mrs.)*, for interested parties A. Papalysan-  
drou and L. Clerides.

*Cur. adv. vult.*

15        TRIANTAFYLIDIS P. read the following judgment. By  
means of the present two recourses, which have been heard,  
and are being determined, together because they are closely  
related to each other, the applicant in case No. 561/83  
20        (to be referred to hereinafter as "applicant 1") challenges  
the validity of the promotion to the post of headmaster A  
in elementary education of four headmasters, and the ap-  
plicant in case No. 4/84 (to be referred to hereinafter as  
"applicant 2") challenges the validity of the promotion  
25        to such post of the aforementioned four headmasters and,  
also, of another nine headmasters (all the headmasters whose  
promotions are being challenged in these two cases to be  
referred to hereinafter as the "interested parties").

In the course of the final hearing of these recourses case  
No. 4/84 was withdrawn, and consequently dismissed, in  
30        so far as interested party L. Clerides was concerned.

The sub judice promotions were effected by means of  
a decision taken on the 16th September 1983 by the res-  
pondent Educational Service Commission.

The relevant administrative process began before the

Commission on the 22nd April 1983 and on the 16th, 7th, 18th, 19th, 20th and 21st May 1983 the Commission interviewed headmasters in elementary education who were candidates for promotion to the post of headmaster A; and among them were the applicants and the interested parties in the present proceedings. 5

At the time no contemporaneous official record was made regarding the evaluation by the Commission of the performance of the candidates when interviewed.

As regards the consequences which the absence of a contemporaneous official record entails in relation to the reliability of subsequent, after some time, evaluation of the impressions from interviews of candidates it is useful to refer to, inter alia, *Kinanis v. The Educational Service Commission*, (1986) 3 C.L.R. 151, and to the judgment delivered on the 25th July 1986 in *The Republic v. Maraheitis*, (R.A. 575) and not yet reported.\* 10 15

After four months, on the 16th September 1983, the Commission reverted to the matter when it effected the sub judice promotions to the post of headmaster A. 20

The Commission heard, first, on that date, the recommendations of two General Inspectors for Elementary Education who, as the post of Director of Elementary Education was vacant were, in effect, acting jointly as the Head of the Department of Elementary Education. 25

I should state at this stage that I do not agree with the submission of counsel for the applicants that the recommendations of the two General Inspectors could not be repeated, in the circumstances of this case, as conveying the views of the Department of Elementary Education (and see, in this respect, inter alia, *Stylianou v. The Educational Service Commission*, (1984) 3 C.L.R. 776, 785, 786, *Loizidou-Papaphoti v. The Educational Service Commission*, (1984) 3 C.L.R. 933, 937, 938, *Georghiou v. The Republic*, (1985) 3 C.L.R. 2105, 2114, 2115, as well as *Kinanis v. The Educational Service Commission* (R. A. 35

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

396) in which judgment was delivered on 30th April 1986 and is not yet reported).\*

Then, after the said two General Inspectors had left the meeting, the members of the respondent Commission, who had just heard who were the candidates who were recommended for promotion by the General Inspectors, proceeded to evaluate the performance of all the candidates at the interviews four months earlier on the basis of unofficial notes which the members of the Commission had kept regarding such interviews.

All the interested parties, who were among those recommended for promotion by the General Inspectors, were evaluated by the Commission on the 16th September 1983 as having been "excellent" at the interviews, whereas the two applicants, who were not among those recommended for promotion by the General Inspectors, were evaluated, respectively, as having been "good" and "very good" when interviewed, and, then, the Commission considered the suitability of the candidates on the basis of the material before it and decided to promote only the interested parties, and not any one of the two applicants.

In the light of the foregoing it seems to me that it must have been humanly impossible for the members of the respondent Commission, whose good faith I have no reason at all to doubt, not to be somehow influenced by the recommendations of the two General Inspectors which immediately preceded the evaluation by the Commission of the performance at the interviews, four months ago, of a great number of candidates; and, as it appears from the relevant minutes of the Commission, the performance at the interviews, coupled with the recommendations of the two General Inspectors, were treated by the Commission as decisive factors in choosing for promotion the interested parties, instead of the applicants and other candidates.

In my view the situation in the present cases is closely similar to that in *Kinanis v. The Educational Service Commission*. (1986) 3 C.L.R. 151. and, therefore, for the rea-

---

\* Reported in (1986) 3 C.L.R. 1705

sons given in my judgment in that case, which I adopt *mutatis mutandis* for the purposes of the present cases, I have decided to annul the promotions of all interested parties in these two cases; and it is to be noted that since only recourse No. 4/84 has been withdrawn as against interested party L. Clerides, and since recourse No. 561/83 has not been withdrawn as against him, his promotion has to be annulled as well. 5

As far as applicant 1 (applicant in case No. 561/83) is concerned there is an additional reason for which the promotions of the four interested parties, which are challenged by him, should be annulled, namely that, as it appears from the material before me, he was treated by the respondent Commission as having received 36 and 37 marks out of 40 in relation, respectively, to the last two occasions on which his performance as a headmaster was evaluated, whereas it is now an admitted fact that at the material time there was not before the Commission a special report prepared by a committee of Inspectors which had upgraded the evaluation of his performance and accorded him higher marks than the aforementioned. This report was ready as early as the 19th July 1983, and was countersigned on the 12th September 1983 by one of the General Inspectors for Elementary Education and, consequently, it ought to have been brought urgently to the notice of the respondent Commission, especially as the General Inspector concerned knew that this applicant was at the time a candidate for promotion and might have not been recommended for promotion obviously because the recommendations were made while having in mind the lower marks which were initially accorded to this applicant. 10  
15  
20  
25  
30

In these circumstances I am of the view that in selecting for promotion the most suitable candidates the respondent Commission exercised its discretionary powers without full knowledge of all material facts, because it was labouring under a material misconception as regards the correct marks finally accorded to applicant 1. Consequently, as already stated, the promotions of the four interested parties which 35

are challenged by the recourse of applicant 1 have to be annulled for this reason, too.

As regards applicant 2 (applicant in case No. 4/84) the Commission recorded in its minutes of the 16th September 5 1983 that he had additional qualifications and had received high marks but that he was junior to those who were selected, instead of him, for promotion, that he had not been recommended for promotion by the two General Inspectors and that he was found to have been only "very good" 10 when interviewed

In this reasoning of the Commission there are to be found, in my opinion, the following two flaws which vitiate its sub judice decision

First, the Commission treated seniority as overriding 15 qualifications and merit in a manner amounting to a wrong exercise of its relevant discretionary powers (see, inter alia, in this respect, *Tapacoudis v. The Republic*, (1981) 3 C.L.R. 9, 12, 13, *Hadjiloannou v The Republic*, (1983) 3 C.L.R. 286, 297, *Psaras v. The Public Service Commission*, 20 (1985) 3 C.L.R. 229, 241, *Christou v. The Republic*, (1985) 3 C.L.R. 2237, 2242, as well as *The Republic v. Zachariades*, (R.A. 439) in which judgment was delivered on the 13th January 1986 and is not reported yet) \*

Secondly, it appears clearly that undue importance was 25 given to the impressions from the interviews in preference to qualifications and merit (see, inter alia, in this respect, *Livadas v The Republic*, (1985) 3 C.L.R. 506, 511 and *Lakatamius v The Public Service Commission*, (1985) 3 C.L.R. 2269, 2272)

30 I find, therefore that the promotions of the interested parties which are challenged by the recourse of applicant 2 have to be annulled for the additional reasons just stated hereinbefore in this judgment

---

\* Reported in (1986) 3 C.L.R. 852



For all the foregoing reasons these two recourses succeed and the promotions challenged by them are declared to be null and void; but I shall not make any order as to costs.

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

**5**