

1986 March 27

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 136
OF THE CONSTITUTION

MICHALAKIS MARATHEFTIS AND ANOTHER,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondents.

(Cases Nos. 570/83, 79/84).

Educational Officers—Promotions—Scheme of Service—Due inquiry—Failure to carry out a due inquiry as to the qualifications of candidates—A ground of annulment sufficient by itself.

5 Applicants' main point in the above recourses, whereby
the promotion of the interested party to the post of Di-
rector of Higher and Tertiary Education (a first entry and
promotion post) is challenged, is that the respondent Com-
mission failed to carry out a due inquiry as to the required
10 qualification by paragraph 2 of the Scheme of Service, i.e.
Post-graduate qualification obtained after at least one
year's studies abroad in a subject related to education or
the duties of the post.

15 In the relevant minutes of the respondent Commission
it is stated that the Commission considered that all candi-
dates possessed the qualifications required by the scheme
of service.

20 *Held*, annulling the sub judice decision: (1) The inter-
pretation and application of a scheme of service is a matter
falling within the competence of the appointing authority,
which, however, should be exercised after a sufficient in-

quiry is carried out. The Court can only examine whether on the material before the appointing authority, it could reasonably have come to the conclusion it reached. Failure to carry out a due inquiry is a ground of annulment sufficient by itself.

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(2) In this case it does not appear that the Commission embarked into details as regards the evaluation of the qualifications of the candidates and that it carried a due inquiry as to whether such qualifications satisfied the requirements of the scheme of service. The mere statement in the minutes that the candidates possessed the qualifications is not sufficient to satisfy the Court that a due inquiry was carried out or that the conclusion was reasonably open to the Commission.

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(3) The fact that the interested party was holding at the material time a post for which the same qualification was required does not absolve the Commission from its duty to satisfy itself that in the present instance, for this particular post, the interested party was qualified for promotion.

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

Cases referred to:

Papapetrou v. The Republic, 2 R.S.C.C. 61;

Georgiades v. The Republic (1967) 3 C.L.R. 653;

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Mikellidou v. The Republic (1981) 3 C.L.R. 461;

Mytides v. The Republic (1983) 3 C.L.R. 1096;

Stylianou v. The Republic (1980) 3 C.L.R. 11;

Antoniou v. The Republic (1978) 3 C.L.R. 308;

HadjiPaschali v. The Republic (1980) 3 C.L.R. 101.

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Recourses.

Recourses against the decision of the respondents to promote the interested party to the post of Director of

Higher and Tertiary Education in the Ministry of Education in preference and instead of the applicants.

A. S. Angelides, for the applicants.

5 N. Charalambous, Senior Counsel of the Republic,
for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By means of the present recourses the applicants are challenging the decision of the respondent Public Service Commission to
10 promote, instead of them, Stavros Philippides (to be referred to hereinafter as the "interested party") to the post of Director, Higher and Tertiary Education, in the Ministry of Education, which is a first entry and promotion post

15 Both recourses were heard together as they present common legal issues and one judgment is going to be delivered in respect to both of them.

On the 14th May, 1982, the respondent Commission decided to publish in the Official Gazette the vacancy in the post concerned and allowed three weeks for the submission
20 of applications. In response to the advertisement thirteen applications were submitted which, together with all other relevant material, were forwarded to the Director-General of the Ministry of Education who was the Chairman of the Departmental Committee (hereinafter called the "Committee")
25 constituted under the provisions of s. 36 of the Public Service Laws 1967 to 1983.

On the 9th April, 1983, this Committee submitted its report to the respondent Commission and by it, it recommended four candidates as suitable for promotion to the
30 post concerned. Amongst them was applicant M. Maratheftis and the interested party.

At its meeting of the 24th July, 1983, the respondent Commission considered the report of the Committee and decided to call for interview all the candidates, which were
35 found by the Committee as satisfying the requirements of

the relevant scheme of service, i.e. eleven candidates, including the two applicants and the interested party.

The interviews of the candidates were concluded on the 16th July, 1983, and, subsequently, the Director-General of the Ministry of Education was called in by the respondent Commission to express his opinion and views in respect of the performance of the candidates during the interviews. The Commission then adjourned further consideration of the matter so as to be enabled to obtain from the Ministry of Education information as regards the seniority of the candidates.

As all the candidates, except applicant A. Psomas and another person, were educationalists and as in the confidential report files of some of the candidates there were no recent confidential reports, the Commission asked from the Director-General of the Ministry of Education further information about the performance of the candidates for the last two years. This information was supplied to the Commission on the 29th November, 1983.

On the 21st December, 1983, the respondent Commission, after studying all relevant material placed before it, decided that on the basis of the established criteria as a whole, i.e. merit, qualifications and seniority, the interested party St. Philippides was superior to the other candidates and promoted him to the post concerned.

One of the submissions put forward by counsel for the applicants, and which I find to be the main one, is that the respondent Commission had failed to carry out a due inquiry as to the possession by the interested party of the required qualification by paragraph 2 of the relevant scheme of service, i.e. «Μεταπτυχιακόν προσόν αποκτώμενον κατόπιν ενός τουλάχιστον έτους έκπαιδεύσεως εις τὸ έξωτερικόν εις θέμα συναφές προς τήν έκπαίδευσιν ή τὰ καθήκοντα της θέσεως». ("Post-graduate qualification obtained after at least one year's studies abroad in a subject related to education or the duties of the post").

It is not in dispute that the interested party obtained in 1957 a degree in Mathematics from the University of Thes-

saloniki in Greece and that in 1963 he obtained a diploma in "Paedagogy" after attending a two years' course at what is described as a "Secondary Education Teachers' Training College in Greece". The interested party possesses a certificate for attending the International Teacher Development Program in Administration at the Oregon State University in 1970 and from September 1970 to February 1971 he attended an in-service training fellowship in Mathematics at the United States Office of Education.

10 In arguing that the interested party was not qualified for promotion counsel for the applicants submitted that on the correct interpretation of the relevant scheme of service, the Commission could not reasonably have come to the conclusion that the diploma in "Paedagogy" possessed by the applicant is a post-graduate qualification satisfying the requirements of the relevant scheme of service because such diploma is of a standard lower than that of a University degree standard, in that such a diploma can be obtained not only by teachers of secondary education but, also, by elementary education school teachers.

The interpretation and application of a scheme of service is a matter falling within the competence of the appointing authority which, however, should be exercised after a sufficient inquiry into all material considerations is carried out (see, inter alia, *Papapetrou v. The Republic*, 2 R.S.C.C. 61, *Georghiades v. The Republic*, (1967) 3 C.L.R. 653, *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461, and *Mytides v. The Republic*, (1983) 3 C.L.R. 1096). In this respect the Court can only examine whether, on the material before it, the appointing authority could reasonably have come to the conclusion that a candidate possesses the relevant qualifications (see, in this respect, *Stylianou v. The Republic*, (1980) 3 C.L.R. 11 and the *Mikellidou* case, supra).

35 It has, also, been judicially established that failure of an administrative organ to carry out a due inquiry is a ground of annulment sufficient by itself (see, inter alia, *Antonioni v. The Republic*, (1978) 3 C.L.R. 308, *HadjiPachali v. The Republic*, (1980) 3 C.L.R. 101 and the *Mikellidou* case, supra).

In the relevant minutes of the respondent Commission, dated the 21st December, 1983, it is stated that the Commission considered that all candidates possessed the qualifications required by the scheme of service for the post concerned.

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In the circumstances of the present case, however, and, in particular, from the contents of the relevant minutes of the Commission, it does not appear that the Commission embarked into details as regards the evaluation of the qualifications possessed by the candidates and that it carried out a due inquiry as to whether such qualifications satisfied the requirements of the relevant scheme of service. A mere statement in the minutes of the Commission that the candidates possessed the required by the scheme of service qualifications is not sufficient to satisfy me that a due inquiry was carried out into this aspect of the case or that it was reasonably open to the Commission to have come to such conclusion.

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The fact that the interested party was holding at the material time a post for which the same qualification was required does not absolve the Commission from its duty to satisfy itself that in the present instance, for this particular post, the interested party was qualified for promotion.

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In view of the foregoing, the sub judice promotion of the interested party has to be annulled.

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In the result, the present recourses succeed, but with no order as to their costs.

Sub judice promotion annulled.

No order as to costs.