

1986 March 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS SIMILLIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 12/80).

Educational Officers—Promotions—High office—Appointing Authority vested with wide discretionary power—Striking superiority—Reasoning

The promotions of the interested parties Stavrinou and Georghiadou to the post of Headmaster A Elementary Education as from 15.9 1973, the promotion of interested party Polymniou to the same post as from 1.1.78 and the promotions of the remaining interested parties to the same post as from 15.9.78 were annulled by this Court in Recourses 546/73, 548/73 and 487/79 on the basis of the ratio decidendi in *Michaeloudes and Another v. The Republic* (1979) 3 C.L.R. 56 to the effect that regulations 26, 28 and 29 of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Relevant Matters) Regulations, 1972 - 1974 were ultra vires s 35 of the Public Educational Service Law 10/69. The present applicant was applicant in recourses 548/73 and 487/79.

As a result of the said annulments the respondent Commission re-examined the matter and effected the sub judice promotions. The applicant contended, inter alia, that

the confidential reports that could materially be taken into consideration were those of 1973.

Held, dismissing the recourse: (1) The material date as regards the confidential reports that could have been taken into consideration is 1973 in so far as interested parties Georghiades and Stavrinou are concerned, whereas for interested party Polymniou the material date related to 1978 and for the remaining interested parties the 15.9 78.

(2) The applicant, in order to be successful, has to establish striking superiority, mere superiority not being sufficient. More so in the present case, where, by reason of the fact that the sub judice post is a high office in the Educational Structure the appointing authority is vested with quite wide discretionary powers (*Frangos v. The Republic* (1979) 3 C.L.R. 312 applied). The applicant failed to establish such striking superiority over the interested parties.

(3) There is ample reasoning in the files relating to the present case to justify the conclusion that the sub judice decision is duly reasoned.

Recourse dismissed.

No order as to costs.

Cases referred to:

Michaeloudes and Another v. The Republic (1979) 3 C.L.R. 56;

Evangelou v. The Republic (1965) 3 C.L.R. 292;

Frangos v. The Republic (1979) 3 C.L.R. 312;

Decision 2338/64 of the Greek Council of State.

Recourse.

Recourse 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.

Applicant appeared in person.

G. Erotokritou (Mrs.), Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that "the act and or decision of the respondents to promote Georghios Michael, Kyriakos Nicolaides, Michael Tsoulouftas, Michael Polymniou, Michael Stavrinou, Katina Georghiadou, to the post of Headmaster A, of Schools of Elementary Education instead of the applicant is null and void and with no legal effect".

The applicant was at the time of the sub judice decision a Headmaster of Elementary Education together with the six interested parties who were preferred by the respondent Commission and promoted to Headmaster A, a promotion post, as per the Scheme of Service, exhibit 9.

There is a long history behind this case which I took over and which until then was dealt with a number of other cases which were withdrawn as the applicants in those cases, including the present applicant, had in the meantime been promoted and unlike this applicant they thought it unnecessary to proceed with the case any further.

The Supreme Court by its judgment in Recourses 570/73 and 539/73 reported as *Michaeloudes and Another v. The Republic* (1979) 3 C.L.R. 56, declared on the 27th January 1979 regulations 26, 28 and 29 of the Educational Officers' (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Relevant Matters), Regulations 1972 - 1974 as ultra vires to the provisions of section 35 of the Public Educational Service Law 1969 (Law No. 10 of 1969). On the 2nd October, 1979 upon a statement made by counsel for the respondent Commission in the light of the judgment in the *Michaeloudes* case (supra) the decisions of the respondent Commission challenged by recourse No. 487/78 of the present applicant was annulled.

On the 16th November 1979, the respondent Commission re-examined the matter of the promotions that had

thus been annulled and took the sub judice decision. The relevant minutes read as follows:

5 *"Promotions:* The Educational Service Commission having in mind: (a) The judgment of the Supreme Court dated 27th January 1979 in Recourses Nos. 530/73, 539/73 of Sofoklis Michaeloudes and Evdokia Evangelidou by which Regulations 26, 28 and 29 of the Educational Officers' Regulations of 1972 and 1974 were declared void as being ultra vires in relation to the provisions of section 35 of the Public Educational Service Law, 1969, (b) the judgment of the Supreme Court dated 2nd October 1979 in Recourse No. 487/79 of Panayioti Similli, by which there were annulled for the aforesaid reasons the following promotions to the post of Headmaster A, Schools of Elementary Education, as from 1st January 1978, Michael Polymniou and as from 15th September, 1978 Georghiou Michael, Michael Tsoulofta and Kyriakou Nicolaides, (c) letter dated 1st May, 1979 of the advocate of the Commission, in Recourses under Nos. 546/73 and 548/73, by Panayiotis Mezou and Panayioti Similli in which interested parties are those promoted to the post of Headmaster A, as from 10th September 1973: Argyros Constantinou, Andreas Chr. Ioannou, Andreas Papavarnavas, Katina Georghiadou, Georghios Trifillis, Yiangos Kyriakou. Christalleni Kanari and Michael Stavrinou and whose promotions are annulled for the above reasons.

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 decided to re-examine the whole subject.

35 The Educational Service Commission having studied the material documents to be found in the personal files and confidential reports of the applicants in the aforesaid recourses as well as of the interested parties as they appeared to be at the time of the taking of the annulled or challenged decisions, and having taken into consideration the criteria prescribed by section 35 of Law 10/1969, that is, merit. qualifica-

tions and seniority, as well as the confidential reports about all those interested parties and the recommendations of their Inspector and exercising the discretionary power given to it by the Law, decides that the following be promoted as follows:

"(1) to the post of Headmaster A of Schools of Elementary Education.

(a) *as from 15th September 1973,*

Argyros Constantinou, Andreas Chr. Ioannou, Andreas Papavarnavas, Katina Georghiadou*, Georghios Trifillis, Yiangos Kyriakou, Chrystalleni Kanari, Michael Stavrinou*,

(b) *as from 1st January, 1978,*

Michael Polymniou*,

(c) *As from 15 September 1978,*

Georghios Michael*, Michael Psoulofiyas, Kyriakos Nicolaides*,

2.

"

The omitted part of the said minutes refer to promotions to the post of Assistant Headmaster of Schools of Elementary Education with which we are not concerned in these proceedings. Furthermore for the sake of easy identification of the interested parties I have marked with an asterisk those whose promotion is challenged by the present recourse.

The legality of the sub judice decision is challenged on the grounds (a) that the respondent Commission failed to select the most suitable candidate for the post, (b) that it failed to carry out due inquiry and (c) that the decision is not duly reasoned. It was contended by the applicant that the confidential reports that could materially be taken into consideration were those for 1973. This, however, was only in respect of interested party Katina Georghiadou and Michael Stavrinou whose promotions were challenged by recourses Nos. 548/73 and 549/73 filed by the appli-

5 cant whereas for Michael Polymniou the material date
related to 1978 for the remaining interested parties is
the 15th September 1978. I do not intend to enter into
the details of the confidential reports of the candidates as
they have all been made exhibits in the case, but it may be
helpful to refer to their seniority and overall length of
service and to point out that interested party Michael Stav-
rinou has the longest service, having entered the service in
1950, also that interested parties Michael Tsouloftas and
10 Michael Polymniou entered the service in 1953, Katina
Georghiadou and the applicant in 1954 and interested party
Kyriakos Nicolaidis in 1956. As regards their seniority by
reference to the last date of their promotion, the applicant
is senior to all having been promoted to the post of Head-
15 master on the 1st September 1965, whereas interested
parties Michael and Polymniou a year later and Nicolaidis
and Georghiadou two years later and whilst Tsouloftas on
the 1st September 1972.

20 As regards the first ground of law, in order that an ap-
plicant may be successful he has to establish striking su-
periority, mere superiority not being sufficient (see *Evan-
gelou v. The Republic* (1965) 3 C.L.R. 292). This the
applicant has failed to do. More so as in the present case
applies what was held in *Frangos v. The Republic* (1979)
25 3 C.L.R. 312, by reference to the Decision of the Greek
Council of State No. 2338/1964, that in selecting the
most suitable candidate for appointment to high office in
the administrative structure—and the sub judice post is
no doubt a high office in the Educational Structure—the
30 appointing authority is vested with quite wide discretionary
powers.

As regards the ground of lack of due reasoning it has
been held time and again that the reasoning of an admi-
nistrative decision can be supplemented from the material
35 in the file and there is ample reasoning in the files relating
to the present case to justify the conclusion that the sub
judice decision is in the circumstances duly reasoned. The
ground of the alleged failure of the respondent Commission
to carry out due or proper inquiry cannot really be consi-

dered as having any merit as all relevant material was before the respondent Commission and it is stated by it to have been considered when reaching the sub judice decision.

For all the above reasons the recourse is dismissed but 5
in the circumstances there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*