

1987 July 24

[TRIANTAFYLIDIS, P., DEMETRIADES, LORIS,
STYLIANIDES, KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
PUBLIC SERVICE COMMISSION,

Appellant,

v

MICHAEL PANAYIOTIDES,

Respondent

(Revisional Jurisdiction Appeal No 589)

5 *Public Officers — Appointments/Promotions — Interviews — Group interviews —
Save in exceptional cases personal interview have to be conducted with one
candidate at a time — In this case even if it might be said that no undue weight
was attached to the performance of the candidates at the interview, the
method used (group interview) was fraught with the risk of unjust and unsafe
findings, rendering defective the exercise of the discretionary power of the
Commission*

10 *Public Officers — Appointments/Promotions — Public Service Commission —
Whether empowered to hold interviews — Notwithstanding absence of an
express statutory provision, there has been established a long practice to
interview candidates, which has been approved by the case law as a method,
though not exclusive, of helping in the evaluation of candidates from the
point of view of merit and to a certain extent qualifications*

15 *Public Officers — Appointments/Promotions — Interviews, performance at —
Undue weight — Ground of annulment — But facts of a particular case may
justify attachment of great importance to such performance*

20 *Public Officers — Appointments/Promotions — Interviews, performance at —
Head of Department evaluating such performance — Such evaluation is a
factor, but not an independent criterion to be made part of the final reasoning*

This is an appeal from a judgment of a Judge of this Court, whereby the
appointment of interested party Ketonis to the post of Registrar (Orthopaedic)
in the Medical and Public Health Services was annulled on the ground that the
appellant Commission attached undue weight on the performance of
candidates at the interviews

The 7 candidates for the post were interviewed by the Commission on 23.7.83 by way of a «group interview».

At the Commission's next meeting, which was held on 2.8.83, the Director of Medical and Public Health Services, who was present at the interview, evaluated the performance of the candidates thereat, describing the respondent (applicant in the recourse) as «nearly very good» and the interested party as «very very good».

Then the Commission, bearing in mind the Director's said evaluation, evaluated, also, the performance of the candidates, and described the respondent «as nearly very good» and the interested party as «very very good».

As it appears from the reasoning of the sub judge decision respondent's slight superiority in merit and seniority were neutralised by the impression made by the interested party at the interview.

It must be noted that one of the issues raised in the course of the hearing of this appeal is whether the Commission is empowered to hold interviews of candidates.

Held, *dismissing the appeal*: (1) Long before the enactment of the Public Service Law 33/67 it has been accepted that the Public Service Commission or other appointing authority could interview candidates in the process of evaluating their suitability. The only direct reference to interviews that can be found in Law 33/67 is in section 35(6) (Interviews of candidates for specialized posts by Advisory Committees). From comparison of section 35(6) and section 35(4) it is clear that interviews should not be confused with oral or written examinations.

Notwithstanding the absence of an express statutory provision, a practice has been established to interview candidates for the purpose of evaluating their suitability and this practice has received repeatedly express recognition by the case law as a course, which is open to the Commission or other appointing body, but which the Commission is not bound to adopt in all cases

(2) The performance of the candidates at the interview «is a process helping in the evaluation of candidates, mainly from the point of view of merit and, also, to a certain extent of qualifications as well» (*Zachariades v. Republic* (1986) 3 C.L.R. 852 adopted).

(3) Though this Court has repeatedly annulled promotions or appointments on the ground that undue weight was given at the performance of the candidates at the interview, the fact that great importance was attached to such performance is not, necessarily, a ground of annulment, because the adoption of such a course may be warranted by the circumstances of the particular case.

(4) The adoption of the course of interviewing all seven candidates for the three vacant posts together in a group was unsafe and unsatisfactory.

5 Save in exceptional circumstances, in which there is to be ascertained, as the factor relevant to the duties of the post in question, the physique or appearance of candidates, there should not be conducted group interviews, because interviews cannot be turned in this way to personality contests.

10 (5) This Court fails to see how after interviewing 7 candidates in a group the Commission could safely described a candidate as «nearly very good» and another as «very good» and on the basis of such a distinction find that the slight superiority in merit and seniority of the one was neutralised by the performance of the other at the interview.

15 (6) The evaluation of the performance of the candidates by the Head of the Department was only a factor to be used by the Commission in making its evaluation and not an independent criterion to be relied upon as part of the reasoning of the sub judge decision.

(7) Even if it might be said that the Commission did not attach any undue weight to the performance of the candidates, nevertheless the manner of the interview was fraught with the risk of unsafe and unjust findings, in a manner rendering defective the exercise of the relevant discretionary powers.

20 *Appeal dismissed. Order of £100.- issued by trial Judge in favour of respondent set aside. No order as to the costs of either the first*
 25 *instance trial or the appeal.*

Cases referred to:

- Panayiotides v. The Republic* (1986) 3 C.L.R. 525;
Petsas v. The Republic, 3 R.S.C.C. 60;
Neophytou v. The Republic, 1964 C.L.R. 280;
 30 *Kyriacou v. The Cyprus Broadcasting Corporation* (1965) 3 C.L.R. 482;
Frangoulides (No.1) v. The Republic (1966) 3 C.L.R. 20;
Christofi v. The Republic (1967) 3 C.L.R. 615;
Pierides v. The Republic (1971) 3 C.L.R. 233;
Panayiotou v. The Republic (1968) 3 C.L.R. 639.
 35 *Triantafyllides v. The Republic* (1970) 3 C.L.R. 235;
Constantinides v. The Republic (1973) 3 C.L.R. 508;

<i>Myrtois v The Republic</i> (1975) 3 C L R 58, and on appeal (1975) 3 C L R 484,	
<i>Duncan v The Republic</i> (1977) 3 C L R 153,	
<i>Chrstodoulou v The Cyprus Telecommunications Authority</i> (1978) 3 C L R 61,	5
<i>Panayidou v The Republic</i> (1978) 3 C L R 144,	
<i>Stylianou v The Public Service Commission</i> (1980) 3 C L R 11,	
<i>Savva v The Republic</i> (1980) 3 C L R 675,	
<i>Marathevtou v The Republic</i> (1982) 3 C L R 1088,	
<i>Piendou v The Republic</i> (1983) 3 C L R 1,	10
<i>Smymios v The Republic</i> (1983) 3 C L R 124,	
<i>Makndes v The Republic</i> (1983) 3 C L R 622,	
<i>Mytides v The Republic</i> (1983) 3 C L R 1096,	
<i>Papadopoulos v Republic</i> (1983) 3 C L R 1423,	
<i>The Republic v Petndes</i> (1984) 3 C L R 378,	15
<i>Chrstoudias v The Republic</i> (1984) 3 C L R 657,	
<i>Lozidou-Papaphoti v The Educational Service Commission</i> (1984) 3 C L R 933,	
<i>Kynacou v The Republic</i> (1985) 3 C L R 830,	
<i>Ioannides v The Republic</i> (1985) 3 C L R 2450,	20
<i>Nicolaidou v The Public Service Commission</i> (1985) 3 C L R 2492,	
<i>Clendes v The Republic</i> (1985) 3 C L R 2594,	
<i>Yenakntou v The Republic</i> (1985) 3 C L R 2731,	
<i>Stephanou v The Republic</i> (1986) 3 C L R 779,	
<i>Kalos v The Republic</i> (1986) 3 C L R 942,	25
<i>The Republic v Zachanades</i> (1986) 3 C L R 852,	
<i>The Republic v Marathefts</i> (1986) 3 C L R 1407	

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J) given on the 3rd April, 1986 (Revisional 30

Jurisdiction Case No. 482/84*) whereby the decision of the appellant to promote the interested party to the post of Registrar (Orthopaedic) in the Medical Services was annulled.

5 *N. Charalambous, Senior Counsel of the Republic, for the appellant.*

G. Triantafyllides, for the respondent.

K. Talarides, for the interested party.

Cur. adv. vult.

10 TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant Public Service Commission, which was the respondent in the first instance proceedings before the learned trial Judge, has appealed against his judgment in recourse No. 482/84, under Article 146 of the Constitution, by means of which there was
15 of Registrar (Orthopaedic) in the Medical and Public Health Services, as from 15 August 1983.

The said recourse was filed by the respondent to this appeal who was the applicant in that recourse.

20 The trial Judge annulled the appointment of the interested party on the ground that the Public Service Commission had given undue weight to the performance of the candidates for the post in question when they were interviewed by it.

25 The judgment of the trial Judge is reported as *Panayiotides v. The Republic*, (1986) 3 C.L.R. 525, and there are to be found therein the salient facts of this case which, consequently, do not have to be repeated in the present judgment.

30 In the course of the arguments in this appeal there was raised, first, the issue of whether the respondent Public Service Commission was empowered to conduct interviews of the candidates concerned in relation to the making of the sub judice appointment.

35 Long before the enactment of the Public Service Law, 1967 (Law 33/67), it appears to have been accepted that the Public Service Commission, or other appointing authorities, were entitled to interview candidates in the process of evaluating their

* Reported in (1986) 3 C.L.R. 525.

suitability, even though there did not exist at the time a specific statutory provision providing for such interviews; and, actually, interviews of candidates became such a regular feature that in *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, it was held that «the mere fact that the Commission did not call the candidates for an interview does not involve a wrong exercise of discretion».

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The *Petsas* case was followed in *Neophytou v. The Republic*, 1964 C.L.R. 280, 296, *Kyriacou v. The Cyprus Broadcasting Corporation*, (1965) 3 C.L.R. 482, 513, *Frangoulides (No. 1) v. The Republic*, (1966) 3 C.L.R. 20, 27, *Christofi v. The Republic*, (1967) 3 C.L.R. 615, 620 and *Pierides v. The Republic*, (1971) 3 C.L.R. 233, 244.

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In *Panayiotou v. The Republic*, (1968) 3 C.L.R. 639, 642, the following were stated:

«As the persons to be appointed were to work as nursing staff, and especially at the Psychiatric Institution, it is obvious that their personalities were important factors to be weighed by the Respondent Commission; nurses dealing with patients have to possess a suitable personality in many material respects. So, rightly, in my view, the Commission paid due regard to the evaluation of the candidates made through the interview and was, to a certain extent, guided accordingly in reaching its decision; in the present instance I would say that the results of the interviews were more important than they would have ordinarily been.»

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The *Panayiotou* case related to appointments made immediately after the enactment of Law 33/67.

There does not appear to exist in Law 33/67 a specific provision empowering the Public Service Commission to conduct interviews of candidates for appointment or promotion and the only direct reference to interviews is to be found in the proviso to section 35(6) of Law 33/67 in relation to advisory committees for specialized posts.

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It is clear from a comparison of the provisions of subsections (4) and (6) of section 35 that interviews should not be confused with oral or written examinations.

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However in Circular 490, which was issued on 20 March 1979, and which contains regulatory provisions made by the Council of

Ministers under section 36 of Law 33/67 in relation the Departmental Committees set up to advise the Public Service Commission in respect of appointments or promotions to non specialized posts, there is to be found (in paragraph 7) express provision regarding the power of the Public Service Commission to interview candidates, whether or not they have been recommended by a Departmental Committee.

Notwithstanding the absence of express statutory provision in Law 33/67, or in any other relevant enactment, empowering the Public Service Commission to interview candidates, there has been established a practice of the Public Service Commission to interview candidates for the purpose of evaluating their suitability and this practice has received repeatedly express recognition in the case-law of this Court as a course which is open to the Commission, or other appointing authority, but which the Commission is not bound to adopt in all cases (see, for example, in this respect, *Triantafyllides v. The Republic*, (1970) 3 C.L.R. 235, 245, *Constantinides v. Republic* (1973) 3 C.L.R. 508, 516, *Myrriotis v. The Republic*, (1975) 3 C.L.R. 58, 68, and on appeal (1975) 3 C.L.R. 484, *Duncan v. The Republic*, (1977) 3 C.L.R. 153, 163, *Christodoulou v. The Cyprus Telecommunications Authority*, (1978) 3 C.L.R. 61, 67, *Panayidou v. The Republic*, (1978) 3 C.L.R. 144, 153, *Stylianou v. The Public Service Commission*, (1980) 3 C.L.R. 11, 16, *Savva v. The Republic*, (1980) 3 C.L.R. 675, 691, *Marathevtou v. The Republic*, (1982) 3 C.L.R. 1088, 1093, *Pieridou v. The Republic*, (1983) 3 C.L.R. 1, 6, *Smyrnios v. The Republic* (1983) 3 C.L.R. 124, 135, *Makrides v. The Republic*, (1983) 3 C.L.R. 622, 633, *Mytides v. The Republic*, (1983) 3 C.L.R. 1096, 1105, *Papadopoulos v. The Republic*, (1983) 3 C.L.R. 1423, 1429, *The Republic v. Petrides*, (1984) 3 C.L.R. 378, 386, *Christoudias v. The Republic* (1984) 3 C.L.R. 657, 664, *Loizidou-Papaphoti v. The Educational Service Commission*, (1984) 3 C.L.R. 933, 939, *Kyriacou v. The Republic*, (1985) 3 C.L.R. 830, 848, *Ioannides v. The Republic*, (1985) 3 C.L.R. 2450, 2456, *Nicolaidou v. The Public Service Commission*, (1985) 3 C.L.R. 2492, 2499, *Clerides v. The Republic*, (1985) 3 C.L.R. 2594, 2608, *Yenakritou v. The Republic*, (1985) 3 C.L.R. 2731, 2743, *Stephanou v. The Republic*, (1986) 3 C.L.R. 779, 786, and *Kalos v. The Republic*, (1986) 3 C.L.R. 942, 954).

It is thus overwhelmingly established, on the basis of the aforesaid case-law, that the interviews of candidates for appointment or promotion is a firmly embedded and legitimate,

though not an exclusive, mode of assessing the suitability of candidates.

As has been pointed out recently in *The Republic v. Zachariades*, (1986) 3 C.L.R. 852, 856, the performance of the candidates when interviewed «is a process helping in the evaluation of candidates, mainly from the point of view of merit and, also, to a certain extent, of qualifications as well.» 5

It is pertinent to observe in this respect that on more than one occasion this Court has annulled a promotion or appointment on the ground that undue weight was given to the impressions of the organ concerned regarding the performance of the candidates when interviewed by it (see, for example, *The Republic v. Maratheftis*, (1986) 3 C.L.R. 1407, 1414). 10

It is not always, necessarily, a reason for annulment the fact that great importance was attached to the impressions from the interviews, because the adoption of such a course may be warranted by the circumstances of a case and if such course was adopted in a manner compatible with the proper exercise of the relevant discretionary powers of the Public Service Commission, or other appointing authority, it could not be said that undue importance was given to the impressions from the interviews on that particular occasion. 15 20

In the present case what has given us cause for considerable anxiety is the way in which the interviews of the candidates, including the respondent and the interested party, were carried out. 25

As it appears from the relevant minutes of the appellant Public Service Commission, dated 23 July 1983, the candidates for the post, who were seven in all and included the respondent and the interested party, were interviewed jointly by way of a «group interview», at which the Director of Medical and Public Health Services and the Chairman and Members of the Public Service Commission put to them questions regarding matters of general nature and, mainly, on matters relating to the duties of the post as they are set out in the relevant scheme of service. 30 35

Then, on 2 August 1983, the Director of Medical and Public Health Services evaluated the performance of the seven candidates when interviewed and described the performance of the respondent as «nearly very good» and of the interested party as

- «very very good» having described the performance of others in the same group as «good», «very, very good» and «excellent»; and then the Commission, bearing in mind the evaluation made, as aforesaid, by the Director of Medical and Public Health Services,
- 5 evaluated also the performance of the seven candidates in question and described that of the respondent as «nearly very good» and that of the interested party as «very good», having described the performance of the other candidates in the same group as «nearly good», «very good» and «very very good».
- 10 The performance of the respondent and of the interested party when interviewed in 1983 was taken into account by the Public Service Commission on 10 August 1984, when its sub judge decision to promote the interested party was reached.

15 It is to be observed that the Public Service Commission, for reasons with which we are not concerned in the present proceedings, had revoked an earlier promotion of the interested party to the post in question and proceeded to re-examine the matter and, on 10 August 1984, it decided that the interested party should be preferred once again for promotion to the respondent.

20 It appears from the reasoning of the Public Service Commission, as set out in its relevant minutes of 10 August 1984, that a slight superiority of the respondent on the basis of the confidential reports and his slight seniority were neutralized by the better impression which the interested party has made, when

25 interviewed, both to the Director of the Medical and Public Health Services and to the Commission.

We find to be unsafe and quite unsatisfactory the adoption by the Commission of the course of interviewing the seven candidates for appointment, to the three vacant, at the time, posts

30 of Registrar (Orthopaedic), all together in a group and not each one by himself.

In our opinion, save in exceptional cases, such as those in which there is to be ascertained, as being the factor mainly relevant to the duties of the post in question, the physique or appearance of

35 candidates, there should not be conducted group interviews of candidates, because the interviews cannot be turned in this way into group personality contests; and as stated earlier in this judgment interviews are not to be confused with oral examinations under section 31(4) of Law 33/67, as amended by Law 10/83

We fail to see how, after interviewing seven doctors together who were candidates for the post in question, the Commission could, with any certainty, reach the conclusion that during this group interview the respondent was found by the Commission to have been «nearly very good» and the interested party «very good»; and on the basis of this marginal difference the Commission proceeded to find that the superiority of the respondent as regards merit and seniority, even though admittedly slight, was neutralized by the slightly better performance of the interested party, when interviewed together with respondent and five others at one and the same time in a group.

In this respect we should stress that it was not legitimate for the Commission to take into account, as part of its reasoning, the way in which the Director of Medical and Public Health Services had evaluated the performance of the respondent and of the interested party when interviewed, namely nearly «very good» and «very very good», respectively and to rely on it as justifying its preference for the interested party instead of the respondent.

The evaluation made by the Director of Medical and Public Health Services was only a factor to be used by the Commission in making its own final evaluation of the performance of the candidates concerned when interviewed, and not an independent criteria to be relied on as part of the final reasoning of the appellant Public Service Commission.

Moreover, as it was rightly pointed out in *Smyrnios v. The Republic*, supra, at p. 135, there is an undeniable possibility that an adroit candidate, when he is being interviewed, may make the Commission think more highly of him than he deserves, but on the other hand, a timid or nervous candidate may not be able to show his real merit; and this applies with even greater force to a situation in which candidates are interviewed in a group because in such circumstances it would be natural to expect the adroit candidate to appear in a better light and the timid candidate to be overshadowed.

In the light of all the foregoing we have reached the conclusion that, even if it might be said that the appellant Public Service Commission has not given undue weight to the impressions from the interviews of the candidates - and we make no finding in this respect one way or the other - nevertheless the manner in which the candidates were interviewed, namely in a group of seven and

not each one separately, was fraught with the risk of unsafe and unjust findings by the appellant Public Service Commission, in a manner vitiating and rendering defective the exercise of its relevant discretionary powers, and for this reason we uphold the
5 annulment of the appointment of the interested party and we dismiss this appeal.

We think, however, that it was not warranted to award £100 costs in favour of the respondent, as the applicant in these proceedings, and we, therefore, order that there should be no
10 order as to the costs of either the first instance trial or the appeal.

Appeal dismissed.

Order for costs as above.