

1987 August 5

[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRONICOS I. ANDRONIKOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH THE  
PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Cases Nos. 579/85, 622/85, 693/85).*

- 5 *Public Officers — Appointments/Promotions — First entry and promotion post — Departmental Boards — Recommendations of — Whether Board bound to specify which of the candidates, it recommends, satisfy the qualifications for promotion and which simply the qualifications for appointment — Question answered in the negative*
- 10 *Public Officers — Appointments/Promotions — Interviews, performance at — Weight to be attached to such performance — Not necessary to record in the minutes the views of the individual members of the Commission.*
- 15 *Public Officers — Appointments/Promotions — Departmental Boards — Letter by chairman of, in reply to the Commission, explaining that Board took into consideration all confidential reports and the weight attached to the performance at the interview — Chairman entitled to write such a letter.*
- 20 *Public Officers — Appointments/Promotions — First entry and promotion post — Annulment after the sub judge decision of the promotion of one of interested parties to the post he held at the time of the sub judge decision — Whether sub judge decision affected — Question answered in the negative.*
- Public Officers — Appointments/Promotions — Relationship between Head of Department and one of the interested parties — Not close enough as to affect validity of sub judge decision.*
- Public Officers — Appointments/Promotion — Qualifications — Additional qualification (Postgraduate or special training of at least one academic year in Public Administration) envisaged as such in the scheme of service — Failure to treat correspondence course as amounting to such qualification on ground that it was obtained by correspondence and the examinations are not held*

*under invigilation — Decision reasonably open to the Commission*

The applicants impugn the validity of the selection of the interested parties for the post of Principal Administrative Officer, first entry and promotion post

The main grounds put forward by the applicants in support of their case are

(a) The Departmental Board failed to specify which of the candidates it was recommending were recommended as satisfying the qualifications for promotion and which as satisfying the qualifications for appointment 5

(b) No contemporaneous record exists of the individual impressions of the members of the Commission of the performance of the candidates at the interviews, to which, in any event, undue importance was attached 10

(c) The letter written by the Chairman of the Departmental Board, whereby he informed the Commission that the Board in making its relevant recommendations, took into consideration all the confidential reports for the candidates and not only those of the last two years, did not represent the views of all the members of the Board 15

(d) The annulment of the promotion of one of the interested parties to the post of Senior and Public Administration and Personnel Officer renders the sub judice decision void for having been reached under a misconception as to the true position held by such interested party

(e) The relationship between the Head of Department and one of the interested parties 20

Moreover, applicant in recourse 622/85 argued that the Commission wrongly failed to regard a correspondence course followed by him in Personnel Management as within the meaning of an additional advantage specified by the relevant scheme of service. In this respect it must be noted that the Commission justified its attitude on the ground that the relevant certificate is offered by correspondence and the examinations are not taken under invigilation 25

**Held, dismissing the recourses (1)** Since those recommended by the Departmental Board are so recommended for possessing the qualifications as required by the scheme of service, there is no requirement on its part to specify particularly who are considered as qualified for promotion and who for appointment. In any event, all the particulars of such candidates are at all times before the respondent Commission on which the final decision rests. *The Commission will finally decide which of such candidates will receive an appointment and which a promotion* 30 35

(2) It is not necessary to record in detail the views of individual members in the minutes of the respondent Commission. Moreover unlike the facts in the case of *Maratheftis v The Republic* (1986) 3 C L R 1407, the time that lapsed

**3 C.L.R.                      Andronikou & Others v. Republic**

5                      between the interviews held by the Commission and the sub judge decision  
is not that long as to have distorted the evaluation of the performance of the  
candidates at such interviews so as to create strong probability of the  
Commission labouring under a maternal misconception due to inaccuracies  
Furthermore though without doubt undue importance should not be given to  
the interviews, there is nothing wrong in law to attach the necessary  
importance to them as such interviews reveal a candidate's personality and  
abilities which in instances as the present one are important qualities, in order  
10                      to ascertain whether such candidates would be suitable for the post in  
question

(3) The Chairman of the Board was in a position to give the explanations  
contained in his aforesaid letter to the Commission

15                      (4) The annulment in question took effect after the sub judge decision was  
reached and, therefore, it cannot affect its validity as far as the present  
proceedings are concerned

(5) The relationship was not close enough so that it was not necessary to be  
brought to the knowledge of the respondent Commission Nothing exists to  
raise the probability of bias Moreover the interested party was one of the 22  
candidates, recommended without comment by the Departmental Board  
20                      Finally the Head of Department recommended equally both the applicant,  
who raised the issue, and the interested party

(6) In the circumstances it was reasonably open to the Commission to  
decide as it did as regards the correspondence course of applicant in case  
622/85

25                      *Recourse dismissed*  
*No order as to costs*

*Cases referred to*

*Markides v The Republic* (1983) 3 C L R 750,

*Hadjiantoniou v The Republic* (1983) 3 C L R 1145,

30                      *Maratheftis v The Republic* (1986) 3 C L R 1407,

*Markides v The Republic* (1986) 3 C L R 1699,

*Frangou v The Republic* (1970) 3 C L R 312

**Recourses.**

35                      Recourses against the decision of the respondent to promote  
the interested parties to the post of Principal Administrative Officer  
in preference and instead of the applicant

*A.S Angelides*, for applicants in Cases Nos 579/85; and

622/85.

M. Christofides, for applicant in Case No. 693/85.

A. Vassiliades, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present 5  
recourses which were heard together the applicants seek a  
declaration of the Court that the decision of the respondent,  
published on the 24th May, 1985, in the official Gazette of the  
Republic, to promote the interested parties to the post of Principal  
Administrative Officer, is null and void and of no legal effect 10  
whatsoever.

Six posts of Principal Administrative Officer which is a first entry  
and promotion post, were advertised on the 24th August 1982, in  
the official Gazette of the Republic. In response fifty-six candidates 15  
applied.

In accordance with section 36 of the Public Service Law 1967,  
Law No. 33 of 1967, a Departmental Board was set up which  
considered the applications submitted and called for an interview  
fifty-one candidates who had the qualifications required by the  
scheme of service. It interviewed the forty-three candidates who 20  
attended on the 7, 12, 13 and 27 December 1984, considered the  
matter on the 5th January 1985, and on the 11th January 1985,  
recommended to the respondent Commission for appointment/  
promotion twenty-three candidates including the applicants.

The respondent Commission, however, in dealing with the 25  
recommendations of the Departmental Board was of the opinion  
that the said Board considered only the confidential reports of the  
applicants of the last two years, it therefore sent such report back  
to the Board advising it to consider all the confidential reports of  
the applicants, and also that undue importance ought not to be 30  
given to the interviews.

On the 14th February 1985, the Departmental Board replied to  
the respondent Commission that in reaching their conclusion all  
confidential reports of the candidates had actually been taken into  
consideration and not only those of the last two years as it had 35  
inadvertently been stated in their report. Moreover it was clarified  
therein that in order to determine the merit of the candidates, their  
performance at the interviews was not considered as a separate

factor but it was taken into account together with their confidential reports and all other material factors which were before it.

5 In view of this, the respondent Commission on the 21st February 1985, decided to call for an interview the twenty-three candidates recommended by the departmental Board as well as one other candidate whom it considered as eligible. Such interviews were conducted on the 14, 15, 18 and 19th March, 1985.

10 The respondent Commission met again on the 13th May, 1985, as on the 9th April 1985 and the 7th May 1985, when it was schedule to meet, one of its members was ill and the meetings were postponed. At the aforesaid meeting the Director of Public Administration and Personnel was present and expressed his views and opinion on the performance of the candidates during 15 the interviews. The respondent Commission then proceeded to consider the candidates generally and their performance during the interviews «in the light of the views of the Director of Personnel», it also examined all the material factors from the personal files and the confidential reports of the candidates who 20 were all public officers, their qualifications, merit, seniority and decided to promote as the most suitable for the post the interested parties, with effect from the 15th May, 1985, who were the following:-

25 1) Antoniou Michael, 2) Aristotelous Panayiotis, 3) Patzinakos Achilleas, 4) Papadopoulos Andreas, 5) Savva Andreas, 6) Charalambides Georghios.

The applicants as a result filed the present recourses.

The basic arguments put forward on their behalf are the following:

30 Their first is that the Departmental Board failed to examine and to specify in its recommendations which of the candidates did have the qualifications for promotion, thus, it was argued that five out of the six candidates did not have the qualifications for promotion, except interested party Savva, as they did not satisfy 35 the requirement of the scheme of service of fifteen years of service in the post of the General Administrative Staff etc. Nor did they satisfy the requirement for first entry, of ten years administrative experience in a responsible position.

I do not consider that the Departmental Board acted wrongly by

not specifying which of the candidates were qualified for first entry and which for promotion The duty and purpose of the Departmental Board is to facilitate the respondent Commission in the exercise of its function It advises the Commission when there are many candidates, as to who are eligible for the post in question. Since those recommended are so recommended for possessing the qualifications, as required by the scheme of service, there is, I consider no requirement on its part to specify particularly who are considered as qualified for promotion and who for appointment In any event, all the particulars of such candidates are at all times before the respondent Commission on which the final decision rests which will finally decide which of such candidates will receive an appointment and which a promotion. Moreover, as it is the law that no officer is to be promoted to more than one post at a time, it follows that only those candidates who are serving in the immediately lower post would be eligible for promotion, whereas the remainder would be considered as candidates for a first entry post

Furthermore, from a perusal of the personal files of the interested parties it appears that all interested parties had the qualifications required by the scheme of service, interested party Savva had over fifteen years service in the post of the General Administrative Staff and the rest had the ten years experience in the responsible position in the public service As in any case the interpretation of the scheme of service is generally at the discretion of the appointing authority, the Court cannot interfere unless such interpretation given was not in the circumstances reasonably open to it, and in this instance I find that it was so This argument therefore fails

On this issue of qualifications it was further argued by applicant in case No 622/85, that the respondent wrongly considered that a Correspondence Course followed by him in Personnel Management, with the Metropolitan College, Oxford could not be regarded as falling within the meaning of the additional advantage required by the scheme of service and also that this decision was contrary to information obtained from the British Council by the Ministry of Labour and Social Insurance

It is provided in the scheme of service that

«Postgraduate or special training of at least one academic year in Public Administration or other suitable field will be

considered an advantage.»

In the relevant letter of the British Council it was stated that the Metropolitan College is an accredited Correspondence College and that the course in question could be considered as specialist training in the field of Personnel Management or a related field of training.

This letter was written in reply to specific and particular questions put to it and not in the light of the requirement of the Scheme of Service and therefore no more can be implied to it than what is in fact stated therein which in any case is not disputed by the respondent Commission, which what it in fact decided, is that the Course in question could not be regarded as coming within the ambit of the scheme of service «because such is offered by correspondence and the examinations at its end are not taken under invigilation.»

As it actually transpires the said College by its letter of the 12th January 1978, informed the applicant as follows:

«I see that you wish to receive your certificate, but I regret to inform you that we are unable to despatch this to you since you have failed to reach a high enough standard in the test you have completed. I must point out that it is necessary for you to reach an average of 60% in order to be eligible for the certificate.»

I would recommend that you return all the model answers to the college for tests 1 to 4, 6 and 10 and resubmit these tests. Then, if you gain a high enough standard when you attempt the tests the second time, we will be able to reward a certificate.»

I consider therefore that in the circumstances it was reasonably open to the respondent Commission to decide as it did and this ground also fails.

As regards merit I find that all interested parties are all more or less the same, all having mostly excellent reports. They all have recommendations for promotion as well as applicants Andronikou and Papadopoulos, by both the Departmental Board and the Head of Department, applicant Artemiou was not recommended by either.

As regards seniority applicant Andronikou is junior to interested

party No. 1, Savva, but senior to all others. However, in view of what has been said above his seniority cannot prevail, all other things not being equal.

Applicant Papadopoulos, is junior to interested parties Savva and Aristotelous, but senior to the rest, that is equal to interested party 2 as regards the post of Senior Administrative Officers but senior as regards the previous posts and to interested parties No. 3 by seven months, No 4, by one year and seven months and No. 5 by two months, such seniority of his, however, is not so substantial as to prevail or render him strikingly superior to those selected.

Finally applicant Artemiou is junior to all interested parties, except No. 4 over whom he is senior by eleven months, but as already stated above this applicant had not been recommended.

It was further alleged by the applicants that the sub judge decision should be annulled because no contemporaneous record exists of the individual impressions of the members of the respondent Commission of the performance of the candidates at the interviews -to which interviews in any event undue importance was attached.

In the first place, independently of whether notes were taken down by the individual members of the respondent Commission or not at the time of the interviews it is not necessary to record in detail the views of individual members in the minutes of the respondent Commission. (See: *Markides v. Republic* (1983) 3 C.L.R. 750 at p. 761 cited with approval in *Hadjiantoni and Others v. The Republic* (1983) 3 C.L.R. 1145 at 1153-54). Moreover unlike the facts in the case of *Maratheftis v. The Republic* (1986) 3 C.L.R. 1407, the time that lapsed between the interviews held by the Commission and the sub judge decision is not that long as to have distorted the evaluation of the performance of the candidates at such interviews so as to create strong probability of the Commission labouring under a material misconception due to inaccuracies. Furthermore though without doubt undue importance should not be given to the interviews, there is nothing wrong in law to attach the necessary importance to them as such interviews reveal a candidate's personality and abilities which in instances as the present one are important qualities, in order to ascertain whether such candidates would be suitable for the post in question.



It was also contended on behalf of the applicant in case No. 693/85, that the letter of the departmental Board of the 14th February 1985, clarifying to the respondent Commission that their conclusions were reached after taking into consideration all the confidential reports of the candidates and without giving undue weight to the interviews, did not represent the views of all the members of the Board but only those of its Chairman, having in fact been signed only by him.

I consider that the Chairman, being so, was in a position to give himself the explanations sought by the Commission to the effect that all the confidential reports were taken into consideration and that no undue weight was given to the interviews and in any event all applicants were recommended except applicant Artemiou who was considered as inferior to those recommended.

As regards the statement of the Chairman in para 3 of his aforesaid letter to the effect that «All the members of the Departmental Board agree with the contents of this letter», we take it to mean those members available at the time and all were, with the exception of Mr. Papolomondos who was absent abroad. I find therefore no irregularity in this matter and this ground must be dismissed.

As regards the argument that the annulment of the promotion of interested party Antoniou to the post of Senior Public Administration and Personnel Officer by the Court on 27th September, 1986, (See *Markides v. Republic* (1986) 3 C.L.R. 1699), renders the sub judice decision wrong for having been reached under a misconception as to the position of this interested party, I would dismiss also, as any such annulment took effect after the sub judice decision was reached and could therefore not have affected the validity of the sub judice decision as far as the present proceedings are concerned.

Finally it was argued on behalf of applicant in case No. 622/85 that the participation in the Departmental Board of Mr. Koufteros, the Director of Personnel, was wrong as he was related to interested party No. 2 Antoniou.

In the first place I consider that the degree of relationship was not close enough to be brought to the knowledge of the Commission. Secondly as regards the possibility of bias, none clearly was alleged and in any event nothing exists to suggest such

propability in order to raise doubts; furthermore as regards the Departmental Board, its recommendations were made without particular favourable comment as regards the interested party who was so recommended among twenty-three others.

Finally Mr. Koufteros in his capacity as Head of Department recommended the applicant and the interested party in the following terms: 5

«Papadopoulos Demetrios: Very good as regards personality and explanations. Appeared a little absolute. His replies were very good. 10

Antoniou Michael: Very very good as regards personality and replies and clearness and correctness of his replies.»

I consider that in the particular circumstances it is not of such importance as to affect the validity of the sub judice decision particularly in view of the fact that applicant Papadopoulos was equally recommended. Moreover, the recommendations of the Departmental Board are not binding on the Commission as in the proper exercise of the discretion the Commission had to reach its own conclusions. Consequently I would not consider this as a material irregularity, if at all. 15 20

For the reasons stated, above, I find that the sub judice decision was correct and proper in the circumstances and was reached after a proper exercise of the Commission of its discretion, wide as it is in respect of hierarchically high posts (see *Frangou v. The Republic* (1970) 3 C.L.R. 312, and in accordance with the law the applicants have failed to establish any striking superiority over the interested parties and their recourses must therefore fail and are hereby dismissed, but in the circumstances there will be no order as to costs. 25

*Recourses dismissed.* 30  
*No order as to costs.*