1987 July 20

[A. LOIZOU, MALACHTOS, LORIS, PIKIS, KOURRIS, JJ.]

THE PUBLIC SERVICE COMMISSION,

Appellant-Respondent

v.

MARINA POTOUDES AND OTHERS,

Respondents-Applicants

(Revisional Jurisdiction Appeal No. 680)

Public Officers — Appointments — Interviews — Absence of contemporaneous record relating to the evaluation of the performance of the candidates — The time that elapsed between the interviews and the relevant record was ranging between 39 to 79 days — Maratheftis and Another v. The Republic (1986) 3 C.L.R. 1407 distinguished and explained — In the circumstances of this case the delay in making the record does not constitute a ground of annulment

Public Officers — Appointments/Promotions — Interviews — Weight — Principles applicable — When greater weight justified

Jurisprudence — Precedent, doctrine of — The binding part of a judicial decision

Collective organs — Records — Need to keep proper records — Where a record is made subsequently to the event the assesment of its accuracy and reliability is a question of fact

Public Officers — Appointments — First entry post — Candidates in temporary government service competing with candidates from outside the service — Weight to be attached to the record of service of the candidates in temporary service — Constitution, Art. 28

Public Officers — Appointments — Head of Department — Recommendations — Weight of

The applicants and the interested parties in the recourse were among the seventy-seven candidates, who were found by the Departmental Board to be eligible for appointment to the post of Press and Information Officer, a first entry post.

The Public Service Commission held interviews as between the 14.6.83 and the 25.7.83. The Commission recorded the results of the interviews in its minutes on 2.9.83.

The trial Judge annulled the relevant appointments (See *Potoudes and Others v The Public Service Commission (1986) 3 C L R 1985)*, because in the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and bearing in mind that more than two months had elapsed from the interviews except the last one, there exists as in *Marathefts and Another v The Republic (1986) 3 C L R 533* a good strong probability that the Commission was labouring under a material misconception due to inaccuracies which, because of the passage of time, might have crept in and distorted the evaluation of the performance of the candidates at the interviews, which amounts to a defective way of exercise of its discretionary power

Hence this appeal

Held, allowing the appeal (A) Per A Loizou, J Malachtos and Kourris JJ concurring (1) Two factors distinguish the case of Marathefts, supra, from this case The time elapsed from the interviews until the recording of the evaluation of the performance of the candidates was more than five months in Marathefts, whereas in this case it was ranging between thirty-nine to seventy-nine days

(2) Though 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 such as the present one are important qualities, in order to ascertain whether such candidates would be suitable for the post in question (*Andronicou and Others v Republic* (1987) 3 C L R 1237 adopted)

Interviews constitute one of the methods of carrying out a due inquiry which a collective organ has to carry They have more significance in instances of first appointment, or first appointment and promotion, when not all the relevant factors are before the administrative organ, or when the factors which there may be before the competent organ can be identical as in the case of candidates who all are graduates of secondary schools and all have passed the one or other examination Moreover they are useful in cases of appointment to the higher posts in the hierarchy of the Service or in such posts where the personality of the candidates plays a significant role in the successful discharge of their duties

B) Per Loris, J The present case is distinguishable from *Marathefts* case In the case under consideration not only the interval of time that elapsed between the interview and the record made of those results was considerably shorter than in Marathefts case, but the material placed before the appellant P S C on the suitability of the candidates interviewed was favouring those appointed

Furthermore, in the present instance, there existed the recommendation of the Director of the Department, which coincided with the assessment of the

Commission It is well settled that such recommendation is a most vital consideration, which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded (*Theodossiou v The Republic*, 2 R S C C 44 at p 48 followed)

C) Per Pikis, J , Kourris, J concurring (1) The trial judge treated the case of *Marathefitis* as establishing the rule that inordinate delay in recording in the minutes the result of an interview makes the likelihood of error unavoidable and on that account the decision was vulnerable to be set aside The decision in *Marathefitis* does not establish any such principle of administrative law The decision in *Marathefitis* is but a species of the application of the broader principle that the absence of proper records pertaining to the decision of an administrative body makes the decision, depending on the impact of that absence on the decision, liable to be set aside The outcome of the case in *Marathefitis* was inextricably connected with the particular facts of that case

2) The facts of the present case are distinguishable from those in *Marathefitis* in a number of respects Not only the interval of time that elapsed between the interviews and the record made of those results was much shorter than that in *Marathefitis*, but the material before the respondents on the suitability of the candidates interviewed favoured those appointed

3) In accordance with the rule of precedent (stare decisis) the ratio of a case, that is, the binding part of it, is the principle or principles of law founding the judicial determination The principle as such must be distinguished from the results of its application in diverse circumstances

4) The principle of law deriving from the case of *Marathefitis* is that collective organs must keep proper records of their proceedings and deliberations in the interest of the efficient transaction of administrative business on the one hand and effective judicial control on the other The accuracy and reliability of records is inevitably connected with the contemporaneity of the records with the event Where a record is made subsequently to the event, the assessment of its accuracy and reliability is a question of fact

5) The reference made by the Director to the worth of the services of those candidates already in the service in the P I O should, of course, on no account be treated as decisive for the filling of a first entry post Equality before the Administration requires equal treatment of everybody competing for a first entry post The record of the performance of candidates in temporary government service is merely relevant as a factor bearing on the overall worth of the candidates

Appeal allowed

Cases referred to

Potoudes and Others v The Public Service Commission (1986) 3 C L R 1985,

Marathefttis and Another v The Republic (1986) 3 C L R 1407,

Andronikou and Others v The Republic (1987) 3 C L R 1237

Theodosiou v The Republic, 2 R S C C 44,

Republic (Minister of Finance) and Another v Demetriades (1977) 3 C L R 213,

Chancery Lane Safe Deposit & Offices Co Ltd v Inland R Comrs [1966] 1 All E R 1 (H L),

Ogden Industries Pty Ltd v Lucas [1969] 1 All E R 121 (P C),

Miliangos v George Frank (Textiles) Ltd [1975] 3 All E R 801 (H L)

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) given on the 3rd November, 1986 (Revisional Jurisdiction Cases Nos 44/84-46/84, 78/84, 96/84, 106/84 and 113/84)* whereby the appointment of the interested parties to the post of Press and Information Officer (English and French) was annulled

A Vladimerou, for the appellant

A S. Angelides with A Ladas and N Papaefstathiou, for the respondents

L Papaphilippou, for the interested parties

Cur adv vult

The following judgments were read

A. LOIZOU J.: At the conclusion of the hearing of this appeal, and having in the meantime given several rulings to a number of objections raised in the course of the hearing, we allowed the appeal and indicated that we would be giving our reasons for doing so to-day

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* *Reported in (1986) 3 C L R 1985*

Note The judgment of the Court was delivered on 20 7 1987, the reasons for the judgment were given on 13 10 1987

The facts of the case appear in the judgment of the learned trial Judge reported as *Marina Potoudes and Others v. The Public Service Commission* (1986) 3 C.L.R. 1985. I need not repeat them here. Suffice it to say than on the 21st May, 1982, a number of vacancies in the post of Press and Information Officer which, is a first entry post, were advertised in the Official Gazette of the Republic. The applications of 208 candidates who applied for appointment were considered by the Departmental Board which was set up under the provisions of Section 36 of the Public Service Law 1967. Its report dated the 4th March, 1983, contained a list of seventy-seven candidates, found by it to possess the required qualifications. Amongst them were the applicants and the interested parties. The Public Service Commission having concluded the examination of the eligibility of the candidates interviewed those found by it as eligible, amongst whom the applicants and the interested party. The interviews took place between the 14th June and the 25th July 1983.

The respondent Commission recorded the results of the interview in its minutes of the 2nd September when it heard the views of the head of the Department with regard to the performance of the candidates at the interview and at their work, in the case of those already in the service either on contract or on secondment. It then proceeded to make its own evaluation of the candidates as to their performance at the interview on the basis of the material before it and selected seventeen candidates with knowledge of the English language, two with knowledge of the Russian language, one with knowledge of the Arabic language, one with knowledge of the Turkish language, three with knowledge of the German language, one with knowledge of the Spanish language and five with knowledge of the French language, as the most suitable to the vacant post of Press and Information Officer.

The learned trial Judge after referring to the case of *Maratheftis and Another v. The Republic* (1986) 3 C.L.R. 533, concluded as follows:

> «Notwithstanding the fact that the period which has elapsed was not so long as in the case of *Maratheftis and Another*, nevertheless, bearing in mind the fact that in *Maratheftis* case the Commission had to deal with eleven candidates only in

respect of a particular post, whereas in the present case it had to deal with 66 candidates in a post which, though similar, nevertheless, it was grouped under separate headings for a number of languages, I have come to the conclusion that in the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and bearing in mind that more than two months had elapsed from the interviews, except the last one, there exists, as in *Maratheftis* case, a good strong probability that the Commission was labouring under a material misconception due to inaccuracies which, because of the passage of time, might have crept in and distorted the evaluation of the performance of the candidates at the interviews, which amounts to a defective way of exercise of its discretionary power

For this reason I have come to the conclusion that the sub judice decision has to be annulled »

As against this judgment the respondent Commission filed the present appeal and I do not think that it is essential in this case to pronounce on the correctness of the principles enunciated in *Maratheftis case,* as the following facts of the present case differentiate this one from the case of *Maratheftis*

(a) Unlike what happened in the *Maratheftis case* where the time that elapsed between the interviews and the evaluation of the performance of the candidates at such interviews was more than five months, in this case such time was ranging from seventy-nine to thirty-nine days

(b) In the evaluation in the *Maratheftis case* there have been used only marginally different ratings such as «very good» and «very very good» in assessing the leading candidates, whereas in this case the ratings used were substantially different because the interested parties were in general assessed as «very good» (with the exception of three who were assessed as «very very good»), and three of the applicants were assessed as «nearly very good» and the remaining four as «good»

Therefore only on their facts the present case is distinguishable from *Maratheftis,* I have come to the conclusion that the sub judice promotions should not have been annulled as the respondent Commission exercised its discretion in a proper manner

As regards the question of the interviews and their significance to be attached to them I had occasion to pronounce on these issues in a number of judgments and my views are contained in the case of *Andronikos Andronikou and Others v The Republic* judgment delivered on the 5th August 1987 not yet reported,* in which I had the following to say

«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 p 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 judice decision is not that long as to have distorted the evaluation of the performance of 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 »

I abide by the aforesaid principles and I would like to avail myself of this opportunity and add that the interviews though they may not be referred to by the Law as being one of the criteria to be born in mind by the Public Service Commission, yet, they constitute one of the methods of carrying out a due inquiry which a collective organ has to carry and therefore interviews are useful and must be used as methods of discovering the relevant factors on which the discretionary power of an administrative organ will be exercised They have, in my view, more significance in instances of first appointment, or first appointment and promotion

* *Reported in (1987) 3 C L R 1237*

when not all the relevant factors are before the administrative organ, or the factors which there may be before the competent organ can be identical as in the case of candidates who all are graduates of secondary schools and all have passed the one or other examination. The personality therefore, of the candidates or those other factors which will help the administrative organ to choose, will be revealed inter alia and from a personal interview. Moreover they are useful in selections in cases of appointment to the higher posts in the hierarchy of the Service or in such posts where the personality of the candidates plays a significant role in the successful discharge of their duties.

With this I conclude my reasons for having arrived at the conclusion to allow the appeal and set aside the first instance judgment.

MALACHTOS J.: I also agree with the reasons given by the presiding Judge in the present case and I am of the opinion that *Maratheftis case* has to be distinguished from the present case. In other words in general lines I agree with the reasoning of the judgment of the presiding Judge, and I have nothing else to add.

LORIS J.: We have already allowed the appeal. The facts were stated extensively and I do not intend repeating them. I shall confine myself in saying that it is obvious that the first instance Judge annulled the sub-judice decision in the first instance relying on the case of *The Republic v. Maratheftis* (1986) 3 C.L.R. 1407.

The ratio decidendi in *Maratheftis* case (supra) appears at pages 1413 and 1414 of the report where the following are set out verbatim:

> «We have reached the conclusion that in view of the absence of any official contemporaneous record of the Commission regarding the performance of the candidates when interviewed and, also, in view of the period of more than five months which intervened between the interviews in July 1983 and the recording, on the 21st December 1983, of the evaluation by the Commission of the performance of the candidates at such interviews, there exists a quite strong probability that the Commission, notwithstanding its undoubted good faith, was labouring under material misconceptions due to inaccuracies, which, because of the

passage of time, may have crept in and distorted the evaluation of the performance of the candidates at the interviews; and the said probability is enhanced when in such evaluation there have been used only marginally different ratings such as «very good» and «very very good» in assessing the leading candidates.»

The present case is distinguishable from *Maratheftis* case (supra); in that case the interval of time that elapsed between the interviews and the relevant record of the results, coupled with the marginal difference in the performance of the candidates as eventually recorded, created a strong probability that the Commission was labouring under material misconceptions.

In the appeal under consideration not only the interval of time that elapsed between the interview and the record made of those results, was considerably shorter, but the material placed before the appellant P.S.C. on the suitability of the candidates interviewed was substantially favouring those appointed.

Furthermore, in the present instance, there existed the recommendation of Mr. Psillides the Director of the Department, which coincided with the assessment of the Commission; and it is well settled that «the recommendation of a Head of Department or other senior responsible officer... is a most vital consideration, which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded.» (*Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 48)

PIKIS J.: A good number of appointments made to the post of Press and Information Officer at the Public Information Office (P.I.O.) were annulled for the reason that the Public Service Commission failed or omitted to make contemporaneous notes of the performance of the candidates at the interview; remedying the omission after the lapse of a period of time did not remove doubts inherent in the course followed about the accuracy of the recollections of members of the Commission respecting the performance of the candidates at the interview. Hence the possibility of misconception of the facts relevant to the suitability of the candidates for appointment could not be ruled out. And as

the interview was one of the key factors relied upon for the selection made, the misconception was material and on that account the decision was set aside for material misconception of the facts.

The learned trial Judge derived support for his appreciation of the implications of the absence of a contemporaneous minute about the performance of the candidates at the interview from the decision of the Full Bench in *Republic v. Maratheftis**. In the opinion of the trial Court the ratio of the above case was conclusive for the fate of the sub judice decision making the nullification of the act inevitable.

To appreciate the implications of the case of *Maratheftis* or. the outcome of this case it is essential to refer to the facts relevant to the appointment of the interested parties. The P.S.C. interviewed a large number of candidates for the purpose of filling a number of first entry posts at the various sections of the P.I.O. The candidates were interviewed between 14th June and 25th July, 1983. The P.S.C. recorded the results of the interview in the minutes of the Commission of 2nd September of the same year in the context of the decision-making process. According to the judgment of the trial Court the delay that occurred in making a note of the impressions gained by members of the respondents about the performance of the various candidates made the likelihood of an error occurring with regard to a significant fact a real possibility and guided by the decision in *Maratheftis* proceeded to annul the appointments made.

Aside from the possibility of error creeping into the deliberations of the respondents on account of the aforementioned delay, the facts before them relevant to the suitability of the various candidates for appointment made it, as we can surmise from the facts before them, reasonably open to choose the interested parties. Not only the results of the interview as ultimately recorded favoured those selected, but the assessment of the Commission largely coincided with that of Mr. Psillides, the Director of the Department, who was present at the interview. Moreover, many of the candidates were in the employment of the P.I.O. on a temporary basis and the assessment of their work, to whatever extent that factor was relevant to the process of filling a first entry

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* *(1986) 3 C.L.R. 1407.*

post, again favoured the appointment of those selected. The sole ground upon which the appointments were set aside, we repeat, was the absence of a contemporaneous record reflecting the performance of the candidates at the interviews, an omission that was found not to have been remedied by the note made on 2nd September, 1983. The learned Judge treated the case of *Maratheftis* as establishing the rule that inordinate delay in recording in the minutes the results of an interview makes the likelihood of error unavoidable and on that account the decision was vulnerable to be set aside. With great respect to the learned trial Judge, the decision in *Maratheftis* does not establish any such principle of administrative law. The decision in *Maratheftis* is but a species of the application of the broader principle that the absence of proper records pertaining to the decision of an administrative body makes the decision, depending on the impact of that absence on the decision, liable to be set aside. The outcome of the case in *Maratheftis* was inextricably connected with the particular facts of that case. In *Maratheftis* the interval of time that elapsed between the interviews and the record made of the results, considered in conjunction with the marginal differences between the performance of the candidates as eventually recorded, created a real possibility of an error having occurred in the process of selection. For that reason and the additional one that the Public Service Commission attributed undue importance to the results of the interview, the decision was voided. The candidates in that case were members of the public service of long standing. Insufficient attention was paid to their service record compared to the interview, a factor, undoubtedly, of lesser importance to the service record of candidates.

The facts of the present case are distinguishable from those in *Maratheftis* in a number of respects. Not only the interval of time that elapsed between the interviews and the record made of those results was much shorter than that in *Maratheftis,* but the material before the respondents on the suitability of the candidates interviewed favoured those appointed. In other words, the results of the interviews did not conflict with the remaining material before the Commission. In accordance with the rule of precedent (stare decisis) deeply rooted in our system of law *Republic (Minister of Finance) and Another v. Demetrios Demetriades* *, the

* *(1977) 3 C.L.R. 213*

ratio of a case, that is, the binding part of it, is the principle or principles of law founding the judicial determination*. It is that principle of law that can be depicted as definitive of the outcome of a case; and where two or more principles of law are relied upon in the alternative as justifying the specific result, each one of those principles forms part of the ratio of a case** . The principle as such must be distinguished from the results of its application in diverse circumstances.

The principle of law deriving from the case of *Maratheftis* is that collective organs must keep proper records of their proceedings and deliberations in the interest of the efficient transaction of administrative business on the one hand and effective judicial control on the other. The interview of candidates for the purpose of making appointments in the public service being a matter referrable to their deliberations should be the subject of a record. The accuracy and reliability of records is inevitably connected with the contemporaneity of the records with the event. Where a record is made subsequently to the event, the assessment of its accuracy and reliability is a question of fact. The decision in *Maratheftis* does not lay down that failure to keep a contemporaneous record necessarily exposes the record subsequently made to error. So to hold would be elevating the assessment made by the Court in *Maratheftis* of the implications of the omission to keep a contemporaneous note in that case into a rule of law. In my judgment the effect of the case of *Maratheftis* was misconceived. Neither the interval of time that elapsed between the interviews and the record made nor any other fact before us creates a real likelihood of the record kept having been fraught with error.

Reading through the lines of the assessment of the candidates made by the Director of the Department one is left in no doubt that he considered those selected as the candidates best suited for appointment. The reference made by the Director to the worth of their services at the P.I.O. should, of course, on no account be treated as decisive for the filling of a first entry post. Equality before

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* *Chancey Lane Safe Deposit & Offices Co. Ltd. v. Inland R. Comrs [1966] 1 All E.R. 1 (H.L.). I had occasion to discuss the subject of binding precedent in Cap. VII of the English Common Law and the Doctrines of Equity and their application in Cyprus.*

** *Ogden Industries Pty Ltd. v. Lucas [1969] 1 All E.R. 121 (P.C.) - Miliangos v. George Frank (Textiles) Ltd. [1975] 3 All E.R. 801, 803 (H L.).*

the Administration requires equal treatment of everybody competing for a first entry post. The record of the performance of candidates in temporary government service is merely relevant as a factor bearing on the overall worth of the candidates. For example, if a candidate outside government service emerges, on an objective view of the material bearing on his worth, as better than someone in the service, the service record of the latter will not be allowed to outweigh the preference to which he is entitled to on account of the objective implications of his qualifications in the wider sense.

In the end I remain unpersuaded as to the existence of a real likelihood that an error occurred in recording the performance of the various candidates at the interview. Therefore, I shall join in the order proposed that the appeal be allowed.

KOURRIS J.: I have had the advantage of reading in advance the judgment of Pikis J., and I agree with the reasons given in support. I also agree in general lines with the reasons given to-day by the presiding Judge His Honour, A. Loizou.

I have nothing useful to add and I would allow the appeal.

COURT: We must now proceed to try the recourses on the remaining grounds. For that purpose they will be fixed for directions in due course.

Order accordingly.