

1987 April 7

(TRIANTAFYLIDIS, P., MALACHTOS, SAVVIDES, STYLIANIDES, KOURRIS, JJ.)

COSTAS STEPHANOU,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 588).

*Public Officers — Promotions — Interviews — Purpose of — Undue weight
attached to interview and in particular to the performance of candidates —
Ground of annulment*

5 The appellant and the interested party were amongst the three candidates who were considered by the respondent for the filling of the vacant post of Chief School Clerk (Ministry of Education)

10 At its meeting of 23 1 84 and as it emanates from the relevant minutes the respondent Commission, having examined the material facts, having taken into consideration the conclusions of the Departmental Committee and the opinion and recommendations of the Head of the Department and having noted that all three candidates have excellent confidential reports for the last years, decided for the purpose of forming a better evaluation of the merits of the candidates, to invite them for an interview

15 The interview took place on 27.2.84. The last part of the relevant minutes of the respondent Commission reads as follows «The Commission having taken into consideration the clearly better performance of Dometakis at the interview before it, his better confidential reports in their totality compared with those of Stephanou, as well as the recommendation of the Director-General selected Dometakis as the best».

20 The appellant challenged by means of a recourse for annulment the selection of Dometakis. As such recourse was eventually dismissed by a Judge of this Court, the present appeal was filed

25 Held, *allowing the appeal and annulling the sub judice decision*: (1) Interviews do not constitute a criterion by itself separate from the merit, qualifications and experience of the candidates, but they are merely a means

of forming an opinion and evaluating the merits, notwithstanding the fact that it is not the safest one

(2) A perusal of the minutes of the respondent Commission leads to the conclusion that the Commission has given undue weight to the interviews and in particular to the impressions formed by it at such interviews, which it treated as a criterion by itself in the evaluation of the candidates and which unduly affected the final decision 5

*Appeal allowed Sub judice
decision annulled No order
as to costs* 10

Cases referred to.

- Tnantafyllides and Others v The Republic* (1970) 3 C.L R 235;
- Makndes and Another v. The Republic* (1983) 3 C L R 622;
- Lambis and Others v. The Republic* (1986) 3 C L R 130,
- Papadopoulos v The Republic* (1983) 3 C L.R 1423. 15

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 29th March, 1986 (Revisional Jurisdiction Case No. 281/84)* whereby appellant's recourse against the promotion of the interested party to the post of Chief School Clerk in the Ministry of Education in preference and instead of the appellant was dismissed. 20

E. Efstathiou, for the appellant.

M. Florentzos, Senior Counsel of the Republic, for the respondent. 25

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against the judgment of a Judge of this Court exercising original jurisdiction in the first instance, whereby he dismissed the recourse of the appellant by which he was challenging the promotion of the interested party to the post 30

* Reported in (1986) 3 C L R. 779

of Chief School Clerk (Ministry of Education) in preference and instead of the appellant.

5 The learned trial Judge after he had dealt with all relevant facts of the case and had expounded on the principles pertaining to the promotions and the criteria fixed by law, as emanating from the case law of the Supreme Court, concluded as follows at p. 789 (see *Stephanou v. Republic* (1986) 3 C.L.R. 779).

10 «In the light of the above, I am satisfied that the respondent P.S.C. carried out due inquiry, taking into consideration all relevant criteria and properly applying the Law in reaching at the sub judice decision which was reasonably open to it.

15 The applicant failed to prove striking superiority, as already stated; on the contrary the interested party is better merited for the reasons already explained, whilst as regards qualifications in spite of applicant's manifestly superior Academic qualifications, such qualifications do not indicate by themselves 'striking superiority' as they were not envisaged by the relevant Scheme of Service as an advantage.»

20 The learned trial Judge also rejected the appellant's complaint that the sub judice decision was not duly reasoned and found that-

25 «The reasoning behind a decision may be legitimately supplemented from the material contained in the files; and the files before me, to which extensive reference was made in this judgment, contain more than the required material which can support the sub judice decision allowing at the same time an unhindered judicial scrutiny.»

In the result the appellant's recourse was dismissed, hence the present appeal.

30 Counsel for the appellant in arguing the grounds of appeal relied upon, contended that:-

(a) the decision of the trial Court was wrong in law and was based on misinterpretation of the law.

(b) The findings of the trial Court are not justified in the light of the material and/or the evidence before the Court.

35 (c) The decision of the trial Court was the result of a wrong approach as to the principles applicable in case of promotions.

(d) The final conclusion of the trial Court was not justified in the circumstances of the case.

Counsel for the appellant submitted that once the respondent Commission found that both the appellant and the interested party, on the basis of their confidential reports for the last three years, were excellent, it went wrong to hold an interview and postpone the taking of a decision after the evaluation of the candidates at the interview. 5

Once both candidates, counsel submitted, were found as excellent in merit, the respondent should have proceeded to consider and compare their qualifications and then take into consideration their seniority as well. On the basis of qualifications the appellant was by far superior to the interested party and even if on such criteria the parties were found equal, the seniority of the appellant should have prevailed and the appellant should have been promoted instead of the interested party. 10 15

Counsel for the respondent contended that the decision of the trial Court in affirming the sub judice decision of the respondent was correct and that the appellant failed to prove any superiority over the interested party and in any event striking superiority. Counsel submitted that the respondent Commission in selecting the best candidate for promotion, properly selected the interested party as in the light of the confidential reports of the last five years the interested party was by far superior to the appellant. Also, the interested party had in his credit the recommendation of the Director-General of the Ministry of Education according to which he was superior in all respects concerning the confidential reports, his personality and abilities, and was recommended by him as the most suitable for the post. In his submission, the respondent Commission was entitled to call the candidates for an interview for the purpose of assessing their personality which was essential for the duties of the post. By holding such interview the respondent Commission did not act in excess of its authority and in any event it has not given undue weight to the interview. 20 25 30

The facts of the case are briefly as follows: 35

The appellant and the interested party were amongst the three candidates who were considered by the respondent for the filling of the vacant post of Chief School Clerk (Ministry of Education) which was vacant at the material time, after a list of candidates was

prepared by a Departmental Committee and submitted to the respondent.

The respondent Commission at its meeting of 23.1.84 heard the recommendations of the Director-General of the Ministry of
5 Education and then proceeded to examine the personal files and confidential reports of the candidates. The recommendations of the Director-General of the Ministry of Education concerning the appellant and the interested party as recorded in the minutes of the meeting, are as follows:

10 Out of the three candidates Costas Stefanou is first in seniority and Nicos Dometakis second. The selection should be made between these two candidates. In the confidential reports Dometakis appears, and rightly so, as better. He is superior in all respects, concerning personality and abilities
15 and he is the most suitable for the post.

Dometakis is serving in Limassol. He is the secretary of the School Committee and has an excellent performance. He is a very competent person.

20 Stefanou is a librarian at the Paedagogic Academy and in addition to his other qualifications he possesses a diploma in literature.»

The minutes of the Committee as to what happened at such meeting, read as follows:

25 «The Commission examined the material facts from the file for the filling of the post and the personal files and confidential reports of the candidates and took into consideration the conclusions of the Departmental Committee and the opinion and recommendations of the Director-General of the Ministry of Education.

30 The Commission noted that all three candidates have excellent confidential reports for the last three years. Stefanou has a grading 10 - 2 - 0 in 1980 - 1981 and 12 - 0 - 0 for 1981 - 1982 and 1982 - 1983 and the other two 12 - 0 - 0 for all three years.

35 In view of the above the Commission for the purpose of forming a better evaluation of the merits of the three candidates, decided to invite them for an interview on a date

to be fixed later At such meeting, the Director-General of the Ministry of Education should be invited to attend »

The interview in question, in fact took place on 27 2 1984 and both the Director-General and the respondent Commission made their evaluation as to the performance of the candidates at such interview The respondent then proceeded to consider the personal files and confidential reports of the candidates, the recommendations of the Departmental Committee, the performance of the candidates at the interview, the recommendations and views of the Director-General of the Ministry of Education and concluded as follows

«The Commission noted that ever since the new type of confidential reports was introduced, Dometakis and HJ Lambris have the highest gradings as a whole, having been assessed as excellent (12 - 0 - 0) in all their reports

Stefanou was excellent (8 -3 -1) in 1978 - 1979, very good (7 - 5 -0), in 1979 - 1980, excellent (10 - 2 -0), in 1980 - 1981 and excellent (12 - 0 - 0) in 1981 - 1982 and 1982 - 1983

Stefanou has superior qualifications (he is also the holder of a diploma in literature), from the other two candidates Such qualifications, however, are not required by the schemes of service and they are not contemplated as an advantage Nevertheless, the Commission for the purpose of assessing and comparing the general evaluation of the candidates, took them into consideration

On the aspect of seniority Stefanou is senior by about a year to Dometakis in the post of School Clerk 1st Grade HadjiLambris is third

The Commission having taken into consideration the *clearly better performance of Dometakis at the interview before it*, his better confidential reports in their totality compared with those of Stefanou, as well as the recommendation of the Director-General selected Dometakis as the best » (The underlining is ours)

The respondent proceeded to promote the interested party to the post as the most suitable of the candidates

From what appears from the minutes of the meeting of the respondent Commission at which the selection of the best

candidate took place, one of the matters which affected the final decision of the respondent was the impression formed by it during the interviews.

5 The question of impressions formed at interviews has been the subject matter of consideration and deliberation by this court in a series of cases.

10 It has been held time and again by this court that interviews do not constitute a criterion by itself separate from the merit, qualifications and experience of the candidates but is merely a means of forming an opinion and evaluating the merits, notwithstanding the fact that it is not the safest one. (see *Triantafyllides and others v. The Republic* (1970) 3 C.L.R. 235; *Makrides and Another v. The Republic* (1983) 3 C.L.R. 622 and *Lambis and others v. The Republic* (1986) 3 C.L.R. 130 and
15 *Papadopoulos v. The Republic* (1983) 3 C.L.R. 1423, where it was held that although the impressions gained at the interview as to the personality of a candidate are relevant to the choice of a candidate for promotion especially if the post carries serious administrative responsibilities, they cannot be decisive.

20 A perusal of the minutes of the respondent Commission clearly leads to the conclusion that the respondent in the present case has given undue weight to the interviews and in particular to the impressions formed by it at such interviews which it treated as a
25 criterion by itself in the evaluation of the candidates and which unduly affected its final decision in the matter.

30 The respondent Commission in evaluating the candidates at its meeting of 23.1.84 found that all three of them had excellent confidential reports during the last three years and as a result it decided to invite them for an interview for the purpose of their better evaluation. And then at its meeting of 27.2.84 it is expressly stated that the Commission took into consideration «the clearly
35 better performance of Dometakis at the interview before it»

Having reached the conclusion that the respondent Commission in the present case has given undue weight to the
35 interview, the result of which was to tip the scales in favour of the interested party, we decided that the appeal should be allowed and the sub judice decision of the respondent Commission should be annulled on this ground.

We shall avoid making any pronouncement as to who of the

candidates is the best on the basis of the established criteria as any opinion on our part may be an impediment for the respondent when re-examining the case afresh

In the result the appeal is allowed and the sub judice decision is annulled

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In the circumstances we make no order for costs

*Appeal allowed
Sub judice decision
annulled No order as to
costs*

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