

(1988)

1988 June 16

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IOANNIDES,

Applicant.

v.

CYPRUS GRAIN COMMISSION,

Respondents.

(Case No. 656/84).

COSTAS KOUFOPAVLOU,

Applicant,

v.

CYPRUS GRAIN COMMISSION,

Respondents.

(Case No. 143/85).

Reasoning of an administrative act—What constitutes due reasoning—Why required.

Public Corporations—Promotions—The Grain Commission—A decision to select a candidate should be duly reasoned—In this case it is not—Neither the decision itself nor the files before the respondents conveyed the reason why the interested party was preferred to the applicants.

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Public Corporations—Promotions—The Grain Commission—Head of Department—Recommendations—Significance—If inconsistent with overall pic-

5 *ture, they should be disregarded or given limited weight—Failure to record them—Sufficient to lead to annulment—In this case, if they were in favour of applicants, no special reasons were given for disregarding them—If in favour of the interested party, they were inconsistent with the overall picture.*

Public Corporations—Promotions—Grain Commission—Confidential reports—Constitute part of the overall picture of the merits of each candidate which the Commission has to weigh as a whole.

10 In this case the sub judge promotion for the interested party was annulled. The principles expounded by the Court in annulling the promotion sufficiently appear in the hereinabove headnotes.

Sub judge decision annulled.

No order as to costs.

Cases referred to:

- 15 *Theodossiou v. The Republic*, 2 R.S.C.C. 44;
Panayis v. The Ports Authority of Cyprus (1988) 3 C.L.R. 1095;
Georghiades and Others v. The Republic (1967) 3 C.L.R. 666;
HadjiSavva v. Republic (1972) 3 C.L.R. 174;
Republic v. Lefcos Georghiades (1972) 3 C.L.R. 594;
20 *Tsouloftas and Others v. The Republic* (1983) 3 C.L.R. 426;
Marangos v. The Republic (1983) 3 C.L.R. 682;
Co-operate Society of Alona v. The Republic (1986) 3 C.L.R. 222;
Republic v. Haris (1985) 3 C.L.R. 106;
Republic v. Koufettas (1985) 3 C.L.R. 1950;

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

Recourses.

Recourses against the decision of the respondent to promote the interested party to the post of Senior Store-Keeper in preference and instead of the applicants. 5

E. Efstathiou, for applicants.

C. Velaris, for respondents.

G. Charalambides, for interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants by means of these recourses seek the annulment of the promotion of Kypros Kyprianou (the interested party) to the post of Senior Store-keeper. 10

The Respondents are a Corporation of Public Law established by the Grain Control Law, Cap. 68 as amended by Laws 18/60, 54/62, 30/64 and 83/66. 15

The Respondents on 20th September, 1984, advertised two posts of Senior Store-keeper amongst their employees. There were 14 candidates. The applications were dispatched through their District Managers; each one of them made his observations and recommendations thereon. 20

On 6th November, 1984, the Commission met and issued the sub judice decision, which is quoted verbatim: -

Ἡ Επιτροπή αφού ἔλαβε γνώση των εμπιστευτικῶν ἐκθέσεων καὶ ἐμελέτησε τους προσωπικοὺς καὶ εμπιστευτικοὺς φακέλους των υποψηφίων καὶ αφού ἀκούσε τις ἀποψεις του Διευθυντοῦ, ἀποφάσισε ὅπως, προσφερθεῖ 25

διορισμός στις δύο θέσεις Ανώτερου Αποθημαρίου στους
Φρέξο Κογκορόζη, Λογιστικό Λειτουργό ΙΙ και στον
Κύπρο Κυπριανού, Λογιστικό Λειτουργό ΙΙ."

5 No Rules or Regulations were governing the promotions of
the employees of the Respondent Commission. Regulations were
made in 1986, published in the Official Gazette on 7th Novem-
ber, 1986, Supplement No. III, (I) under ΚΑΠ 259.

10 As it emerges from the wording of the sub judge decision and
the written address of counsel for the Respondents the claim of
officers to promotion was considered on the basis of merit, quali-
fications, seniority and the general principles of Administrative
Law. Furthermore, the recommendations of the General Manager
were taken into consideration.

15 The paramount duty of a promoting body, such as the Respon-
dent Commission, is to select the most suitable candidate on the
basis of the aforesaid criteria having taken all of them into consid-
eration. In doing so the Commission should decide who is the
most suitable among the qualified candidates on the totality of the
circumstances pertaining to each one of them - (*Michael Theodosi-
20 siou and The Republic. (Public Service Commission), 2
R.S.C.C., 44 at p. 47).*

The Commission has to make an evaluation of the candidates,
to make a comparison between them and reach a decision after
such evaluation and comparison.

25 The Respondent Commission, being a Public Collective Or-
gan, has to keep written records of their proceedings and give
reasons for their decisions.

30 The duty of this Court in reviewing promotions is to see
whether the Commission exercises its discretionary power in con-
formity with the statutory provisions and requirements of Admin-
istrative Law generally, including good faith.

Stylianides J. Ioannides & Another v. Grain Commission (1988)

Reasoning:

The requirement of due reasoning in administrative decisions has been stressed repeatedly by this Court. The requirement of reasoning is that its presence excludes arbitrariness on the part of the administrative organ and protects the administration against itself by preventing it from taking a hasty decision. At the same time it protects the persons affected by such decision. The reasoning must be clear, that is to say, the concrete factors on which the administration based its decision for the case under consideration must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does not satisfy these conditions cannot be considered as due reasoning. The reasoning may be ascertained and supplemented from the material in the file of the administration - *Soteris L. Panayis v. The Ports Authority of Cyprus* (1988) 3 C.L.R. 1095; *Athos G. Georghiadis and Others v. Republic (Public Service Commission)* (1967) 3 C.L.R., 653, 666; *Georghios HjiSavva v. Republic (Council of Ministers)* (1972) 3 C.L.R., 174; *Republic (Public Service Commission) v. Lefkos Georghiadis* (1972) 3 C.L.R., 594; *Andreas Tsouloftas and Others v. The Republic of Cyprus* (1983) 3 C.L.R., 426; *Marangos v. The Republic* (1983) 3 C.L.R., 682 and *Co-Operative Society of Alona v. The Republic of Cyprus* (1986) 3 C.L.R., 222).

The sub judice decision is not reasoned. It does not convey the reasons why the Respondents preferred the interested party. The files to which they referred are before this Court. I went meticulously through them. The reasoning for the sub judice decision can neither be ascertained, nor supplemented from the material in the files of the applicants and the interested party.

Recommendations of the Head of a Department:

The recommendations of the Head of a Department were always considered a most vital consideration, which should weigh

with the promoting body in coming to a decision in a particular case. (*Michael Theodossiou and the Republic (Public Service Commission)* (*supra*); *Republic v. Georghios Haris* (1985) 3 C.L.R., 106).

5 It is well established, however, that when the recommendations of the Head of the Department are inconsistent with the overall picture presented by the confidential reports, they should be disregarded or be given limited weight, depending on the extent of the inconsistency - (*The Republic of Cyprus v. Antonios Koufettas* (1985) 3 C.L.R., 1950).

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This Court in the exercise of its judicial control and in considering the validity of a promotion scrutinizes the reasons given for the recommendation of the Head of the Department in order to ascertain whether they are consistent with the overall picture presented by the confidential reports of the applicant and the interested parties.

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The recommendations were not recorded. It was the duty of the Commission to put on record the recommendations of their Manager, which influenced them in reaching the challenged decision. This is sufficient fault for the sub judice decision to be annulled.

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Assuming that the recommendations of the Head of the Department were unfavourable to the interested party, who was selected for promotion, the Commission did not follow them without giving cogent reasons.

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If the recommendations were favourable to the interested party and the Commission followed them, these recommendations are totally inconsistent with the confidential reports.

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The last report for each one of the applicants and the interested party was made a few months prior to the sub judice decision. The interested party was graded simply "good", whereas the two applicants were "very good", nearing "excellent".

A perusal of the confidential reports for past years depicts the same picture very vividly. I need not go into the details. Suffices to quote some of the remarks in the confidential reports of the interested party: -

"Αν και του αφηρέθησαν αρκετά από τα καθήκοντά του, εντούτοις η αποδοτικότητα του παραμένει η ίδια." 5

In another year: -

"Είναι πολύ αργός εις την εκτέλεσιν των καθηκόντων του και αρέσκειται να διατάζει τους υφισταμένους."

The confidential reports on the candidates for promotion must be regarded as constituting part of the overall picture of the merits of each candidate which the Commission has to weigh as a whole - (*Evangelou v. The Republic* (1965) 3 C.L.R., 292, at p. 297; 10

One of the applicants is senior to the interested party and the other applicant is equal to the interested party. 15

For the aforesaid the sub judge decision cannot survive the scrutiny of judicial control.

There are other grounds on which it may be annulled, but I need not embark on them. 20

In view of the above the sub judge decision is declared null and void and of no effect, but in all the circumstances I make no order as to costs.

Sub judge decision annulled.
No order as to costs. 25