

1988 July 14

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CONSTANTINOS POURGOURIDES AND ANOTHER (No.2),

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case Nos. 726/86, 770/86).

5 *Legitimate interest—Reconsideration of promotions of public officers, following their annulment on ground relating to the interviews of candidates—Whether an officer, who though invited to such interviews, failed for reasons unexplained, to appear thereat, has a legitimate interest to impugn the promotions decided after such reconsideration—Question determined in the negative.*

10 *Public officers—Promotions—Reconsideration of, following their annulment for reasons connected with the impressions and evaluation of the performance of candidates at the interviews—Such impressions and evaluation correctly not taken into account—Whereas the recommendations of the Head of the Department correctly taken into account.*

General principles of administrative law—Annulment of administrative act—The basis of the reconsideration of the matter.

15 The facts of this case sufficiently appear in the Judgment of the Court.

*Recourses dismissed.
No order as to costs.*

Cases referred to:

Ierónymides and Others v. The Republic, (1986) 3 C.L.R. 2424;

Ioannides and Another v. The Republic (1979) 3 C.L.R. 628.

Recourses.

Recourses against the decision of the respondents to promote the interested party to the post of Headmaster in the Secondary Education in preference and instead of the applicants. 5

A.S. Angelides, for applicant in Case No. 726/86.

N. Clerides, for applicant in Case No. 770/86.

E. Loizidou (Mrs.), for respondent.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourses which were tried together as they present common issues of law and fact and which were taken over by me on the 17th February 1988, the applicants seek a declaration of the Court that the decision of the respondent Commission to promote the interested parties A. Panayi, D. Rousounides and A. Chrysostomou to the post of Headmaster in Secondary Education retrospectively as from the 15th September 1983 is null and void and of no effect whatsoever. 10 15

The Supreme Court by means of its decision in Recourses Nos. 438/83 and 547/83 reported as *Kinanis & others v. Educational Service Commission* (1986) 3 C.L.R. 151 annulled the promotions as from the 5th Septemebr 1983, to the post of Headmaster in Secondary Education of A. Panayi, A. Constantinides, A. Chrysostomou and D. Rousounides. As against the annulment of the promotions, the respondent Comission filed Revisional Appeal No. 517 which was later withdrawn. It was held therein that the combination of the following two factors namely that the evaluation of the performance of the candidates at the interviews of the 4th to 8th July 1983 was made after the lapse of two months on the 2nd September 1983 and that such evaluation by 20 25 30

the Commission was preceded by the recommendation of the Head of the Department, which had been based inter alia on the performance of the candidates at the interviews, leads to the conclusion that, most probably, it was in all good faith humanly im-
5 possible for the members of the Commission not to be influenced to a certain extent by the recommendation of the Head of the Department, which had been based inter alia on the views of the General Inspector of Secondary Education.

The respondent Commission in the light of the aforesaid decision, at its meeting of the 13th September 1986 decided to re-
10 examine the filling of the posts in question. At its next meeting of the 18th September 1986 it reconsidered the matter under the legal and factual situation as it was on the 3rd September 1983 when the annulled decision had been reached, but, as stated in the relevant minutes "during the re-examination, the impression
15 from the personal interviews which had taken place between the 4th and 8th July 1983 and the evaluation of their performance during the personal interviews, which had taken place on the 2nd September 1983, were not taken into consideration."

The respondent Commission studied the personal files of the
20 candidates and their confidential reports in their totality, giving however greater stress to the last ones. On the basis of the provisions of the Law and the scheme of service, taking into consideration the merit, qualifications, seniority of the candidates and the recommendations of the Department, the respondent Commission
25 concluded that the interested parties were the best.

On behalf of applicant in Recourse No. 726/86 it was contended that the respondent Commission at the re-examination ought to
30 have considered not only those candidates who had appeared at the interviews of July but also all those Assistant Headmasters who were qualified for the post such being a promotion post.

A preliminary objection was put forward on behalf of the respondent to the effect that the applicant lacks the legitimate interest necessary to file this recourse since even though he was invit-

ed he had not attended the interviews and had ceased therefore from being a candidate.

I feel that this applicant had the option to attend the interviews and to be considered as a candidate but for reasons unknown to this Court he failed to do so. It does not appear that at any time subsequently he forwarded any reasons for his non attendance or that he attempted to request to be considered at any later stage. Not being therefore a candidate for the promotions of September 1983, he has no legitimate interest to challenge the promotions effected as a result of the re-examination since for such he was not a candidate and no other material concerning him was before the respondent Commission. 5 10

Relevant to this is what was held in *Ieronymides & Others v. Republic* (1986) 3 C.L.R. 2424 at p. 2431.

"Having narrated the facts, I come now to consider the issues before me and I shall deal first with the preliminary objections raised by the interested party who handled the case in person, as to whether the applicants or any one of them has a legitimate interest to challenge the sub judice decision and whether the present recourse is time barred. 15 20

It has been held time and again by this Court that when an appointment to a post is annulled by the Supreme Court the Public Service Commission in reconsidering the filling of the post has to take into consideration the legal and factual situation that existed at the time when the annulled decision was taken which in the present case is the 1st September, 1981, the date of the appointment of Evriviades, whose appointment was annulled. 25

Therefore, the only candidates who could be considered for the filling of such post were those who were eligible candidates on the 1st September, 1981 and no new candidates. Applicants 2 and 4 who were not in the picture in September, 30

1981 and were not amongst the eligible candidates, have no legitimate interest to challenge the appointment of the interested party to such post."

5 See also *Ioannides & Another v. Republic* (1979) 3 C.L.R. 628 at p. 640.

The recourse of this applicant therefore fails.

10 Applicant in Recourse No. 770/86 contended that the sub-judice decision was wrongly reached in that the recommendations of the Department were wrongly taken into account having been based on the performance of the candidates at the interviews of July 1983. It was submitted that new recommendations ought to have been given.

15 As already stated above the respondent Commission has to take into consideration the legal and factual situation as at the date of the annulled decision; and since the Court did not consider that the said recommendations were irregular or faulty there was no reason why they should not have been taken into account of course - as is clearly stated at p.4 of the minutes of the respondent Commission of its meeting of the 18th September 1986 - "Without taking into consideration the impression from the personal interviews and the evaluation of their performance." Therefore, the
20 recourse of this applicant should also fail.

25 For the reasons stated above these recourses fail and are hereby dismissed with no order as to costs.

*Recourses dismissed.
No order as to costs.*