

(1988)

1988 August 8

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI P. KOULIA,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

*(Cases No. 338/85).*

*Public Officers—Promotions—Public Service Commission—Composition—  
Absence of a member from a vital meeting—Participation of such member  
in subsequent meetings—During such subsequent meeting the process at  
the previous meetings was not repeated—Sub judice promotion annulled,  
notwithstanding that the minutes of such previous meetings were before all  
members during the subsequent meetings.*

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*Collective organ—Composition of—Several meetings in respect of the same  
subject—Absence of member from a vital meeting—Participation of such  
member in subsequent meetings—Process at previous meeting not repeated  
ab initio in such subsequent meetings—Sub judice decision annulled, not-  
withstanding that the minutes of such previous meetings were before all  
members during the subsequent meetings.*

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The facts of this case are sufficiently indicated in the hereinabove head-  
note.

*Sub judice decision annulled.*

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*Cases referred to:*

*Pouagare v. The Republic* (1970) 3 C.L.R. 1;

*Panayiotou v. The Republic* (1972) 3 C.L.R. 337;

*Savva v. The Republic* (1985) 3 C.L.R. 694;

*Vivardi v. Vine Products Council* (1969) 3 C.L.R. 486.

### Recourse.

5 Recourse against the decision of the respondents to promote the interested parties to the post of Senior Medical Officer in preference and instead of the applicant.

*Chr. Mitsides*, for the applicant.

*P. Hadjidemetriou*, for the respondents.

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*Cur. adv. vult.*

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DEMETRIADES J. read the following judgment. On the 18th January, 1985, it was published in the Official Gazette of the Republic that Messrs Andreas Zachariou, Andreas S. Vrahimis, Demetrios Poyiatzis and Georghios Chr. Elia, hereinafter referred to as the interested parties, had been promoted by the respondents to the post of Senior Medical Officer in the Department of Medical and Public Health Services. The applicant, who was a candidate for promotion to this post, is now by her present recourse challenging the decision of the respondents.

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At the material time before the sub judice promotions the applicant and the interested parties were holding the post of Medical Officer 1st Grade in the Medical and Public Health Services. Pursuant to a request for the filling of four then existing vacancies in the post of Senior Medical Officer, which is a promotion post, the respondent referred the matter to the Departmental Committee which was set up for the purpose. On the 15th September, 1983, the Departmental Committee submitted its report by which it recommended for promotion 14 candidates, amongst whom the applicant and the interested parties.

As it appears from the record before me, the respondents, after they considered the report of the Departmental Committee, decided to ask the Departmental Committee to re-examine the matter and to take into consideration all candidates holding the immediately lower post, including those who stated that they did not wish to be promoted. 5

By its new report, which was submitted by letter dated the 16th October, 1984, the Departmental Committee recommended 12 candidates for promotion to the post in question, amongst whom the applicant and the interested parties (Appendix 17 to the opposition). At their meeting on the 25th October, 1984, the respondents considered the report of the Departmental Committee and decided that one of the candidates recommended by it ought to be excluded as not possessing the qualifications required by the schemes of service, whilst two others not recommended, who did possess the said qualifications, ought to be considered for promotion (Appendix 18 to the opposition). 10 15

At their last meeting, which was held on the 22nd November, 1984, the respondents, after hearing the views of the Head of the Department who recommended the interested parties, proceeded to promote them to the post of Senior Medical Officers as from the 1st December, 1984. The promotions were published in the Official Gazette of the Republic dated the 18th January, 1985, as a result of which the present recourse was filed. 20

The grounds of law raised by counsel for the applicant are that: 25

1. The composition of the respondent Commission was defective. 25
2. The respondents failed to carry out a due inquiry as to possession, by two of the interested parties, of the qualifications required by the schemes of service.
3. One of the interested parties had been convicted of a disciplinary offence of a serious nature during the period of two years preceding the sub judice decision. 30

4. The recommendations of the Head of the Department were improperly made and biased against the applicant.
5. The respondent acted under a misconception of fact.
6. There is lack of due reasoning.
- 5 7. The applicant has been treated in discriminatory manner, and
8. The applicant is better than the interested parties and should have been selected instead of them.

10 Regarding the first ground, counsel for the applicant argued that the composition of the respondents was defective in that while during their meeting of the 25th October, 1984, which was one of the most vital meetings, one of their members, namely Mr. HadjiProdromou, was absent, this member was present and took part in the final meeting of the respondents, dated the 22nd November, 1984, in which the sub judice decision was taken, without the procedure being repeated ab initio.

15 Counsel for the respondents argued that since the minutes of all the previous meetings of the respondents were before them at their final meeting and reference was made to them, it is deemed that the whole procedure has been repeated ab initio and since Mr. 20 HadjiProdromou, who was present during the last meeting, did not disagree with the previous minutes, it is presumed that he has adopted them. He also argued that the meeting of the 25th October, 1984, was not of vital importance and in any event the new report of the Departmental Committee was the same as its previous one, during the consideration of which Mr. HadjiProdromou 25 was present.

The relevant principles of administrative law on the matter have been stated in a number of cases (see *Pouagare v. The Republic*, (1970) 3 C.L.R. 1; *Panayiotou v. The Republic*, (1972) 3 30 C.L.R. 337; *Savva v. The Republic*, (1985) 3 C.L.R. 694). In the case of *Panayiotou v. The Republic*, (supra), the following is

stated at pp. 339 - 340:-

"In respect of the second part of this ground of law, learned counsel for the respondent fairly and properly conceded that the deliberations extended to two meetings of the respondent Commission and that when the decision was taken at the second meeting the matter was not examined ab initio; there being a change in the composition of the respondent through the presence of a member who did not take part at a past meeting on the matter, the respondent could not take a valid decision. In this respect he referred me to the Conclusions of the Jurisprudence of the Greek Council of State 1929 - 1959, p. 112. The relevant principles of administrative law on the matter are stated to be in effect that the process, before any collective organ, regarding discussing about and deciding on, any matter, has to take place from beginning to end while there are present the same members of such an organ, in order to ensure the knowledge and evaluation by each member of all factors which come to light during such process. If this process extends to more than one meeting, then the composition of the collective organ at any meeting, through the presence of a member who did not take part at a past meeting on the matter, the organ cannot take a valid decision at its last relevant meeting, except if at such meeting the whole process is repeated fully ab initio, so that the consideration of the law, taken from a number of decisions of the Greek Council of State, namely, Decisions 1753/56, 103/57, 1128/58, was adopted in the case of *Vivardi v. The Vine Products Council* (1969) 3 C.L.R. 486. In find that these principles are applicable to the facts of the present case. In the circumstances, therefore, the sub justice decision is annulled."

In the present case, the deliberations for the filling of the sub justice posts started as early as the 3rd May, 1983. The first meetings of the respondents, however, dealt with the preparatory stages of the process and, in any event, all the members were present. The question arises whether the meeting of the 25th October, 1984, at which one of the members of the respondents was ab-

sent, is a vital one, or whether it forms part of the preparatory stages of the process.

As it is apparent from the minutes of the respondents dated the 25th October, 1984, at that meeting the new report of the Departmental Committee was not only read, but, also considered by the respondents and conclusions were reached concerning the eligibility of certain of the candidates. During their last meeting of the 22nd November, 1984, the respondents proceeded to consider the merits of those considered by them as eligible during their previous meeting and selected the interested parties for promotion, without repeating the process which took place during their meeting of the 25th October, 1984, ab initio. The meeting of the 25th October is, in my view, a vital one and forms part of the process for the filling of the posts in question, bearing in mind the circumstances of the case and especially the fact that decisions were taken at such meeting regarding the eligibility of certain candidates and, also, the fact that the setting up of the Departmental Committee is provided by the Law (section 36 of Law 33/67) and forms part of the process for the filling of vacancies. As a result, the sub judge decision has to be annulled.

In view of my finding as above, I find it both unnecessary and undesirable to deal with the merits of the cases as any finding of mine might interfere with the exercise of the discretion by the respondents in reconsidering the case.

In the result, this recourse succeeds and the sub judge decision is annulled.

*Sub judge decision annulled.*