

1988 August 31

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS DOMETAKIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 619/87).

*Public Officers—Promotions—Merit, Qualifications, Seniority—What significance may be attributed to them by the Commission, when the latter weighs them together—Republic v. Zachariades (1986) 3 C.L.R. 852.*

5 *Public Officers—Promotions—Qualifications—Additional qualifications not envisaged as an advantage in the scheme of service—Though they do not establish by themselves striking superiority, they cannot be disregarded.*

*Public Officers—Promotions—Striking superiority—A notion different from the notion of best suitable candidate.*

10 *Public Officers—Promotions—Confidential reports—The importance of recent confidential reports.*

*Public Officers—Promotions—Confidential reports—Reporting officers not civil servants—Applicant cannot reprobate and approbate.*

*Public Officers—Promotions—Head of Department—Recommendations—Reasons of—Reviewable by this Court.*

15 *Public Officers—Promotions—Head of Department—Recommendations—Contrary to the material in the file—Weight.*

The facts of this case need not be summarised.

*Recourse dismissed.  
No order as to costs.*

*Cases referred to:*

- Georghiou v. The Republic* (1976) 3 C.L.R. 74; 5
- Republic v. Zachariades* (1986) 3 C.L.R. 852;
- Michaelides and Another v. The Republic* (1987) 3 C.L.R. 2170;
- Andreou v. The Republic* (1979) 3 C.L.R. 379;
- Papadopoulos v. Republic* (1985) 3 C.L.R. 405;
- Michaeloudes v. Republic* (1982) 3 C.L.R. 963; 10
- Soteriadou and Others v. The Republic* (1983) 3 C.L.R. 921;
- Ioannides v. The Republic* (1986) 3 C.L.R. 1089;
- Georghiou and Others v. The Republic* (1988) 3 C.L.R. 678;
- Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143;
- Ioannou v. Republic* (1977) 3 C.L.R. 61; 15
- Republic v. Roussos* (1987) 3 C.L.R. 1217;
- Platis v. The Republic* (1978) 3 C.L.R. 384;
- HjiIoannou v. Republic* (1983) 3 C.L.R. 1041.

**Recourse.**

Recourse against the decision of the respondents to promote the interested party to the post of Chief School Clerk, Ministry of Education retrospectively as from 15th March, 1984 in preference and instead of the applicant.

A.S. Angelides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondents.

E. Efstathiou, for the interested party.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicant by means of the present recourse seeks the annulment of the decision of the respondent Public Service Commission published in the Official Gazette of the Republic of 3rd July, 1984, whereby, Costas Stefanou (the interested party) was promoted to the post of Chief School Clerk, Ministry of Education, retrospectively as from 15th March, 1984, in preference and instead of the applicant.

The respondent Commission by decision published in the Official Gazette under No. 1945 of 6th April, 1984, promoted to the said post the applicant with effect from 15th March, 1984.

The interested party in the present case challenged the validity of such decision before this Court. That promotion was annulled by the Supreme Court in Revisional Appeal No. 588 - (*Stefanou v. The Republic* (1987) 3 C.L.R. 431) on the sole ground that the respondent Commission had given undue weight to the interview, the result of which was to tip the scales in favour of the interested party, but avoided to make any pronouncement as to which one of the candidates was better on the basis of the established criteria, as any opinion of the Court might be an impedi-

ment for the Respondent when re-examining the case.

Following the judgment of the Full Bench of the Supreme Court, the respondent Commission met and reconsidered the matter on the factual and legal situation obtaining at the date the annulled decision was reached and took the sub judice decision, that is, they promoted by majority—the Chairman and two members—the interested party to the post in question. 5

The applicant challenges the sub judice decision on the following grounds:-

(a) The sub judice decision is tainted with misconception of fact and law concerning the qualifications. 10

(b) The Respondent gave undue weight to the seniority of the interested party.

(c) The applicant is better in merit as reflected in the confidential reports. 15

(d) The confidential reports on the interested party are invalid as the reporting officer was not a civil servant stricto sensu, he being the Director of the Pedagogical Academy, but a public educationalist.

(e) The Respondent did not follow the recommendations of the Head of the Department, the Director-General of the Ministry of Education Mr. Adamides. 20

And lastly,

(f) That the Commission failed in its paramount duty to select the best suitable candidate, who, in the instant case, he alleges, is the applicant. 25

The claim to promotion by the civil servants is based on merit, qualifications and seniority. It is now settled by the jurisprudence

of this Court that an appointing authority when weighing together the said three criteria, laid by law, in order to find the most suitable candidate, may attribute such significance to them as may be deemed proper, provided that it exercises correctly, in the course  
5 of doing so, its relevant discretionary powers—(*Georghiou v. The Republic* (1976) 3 C.L.R. 74; *Republic v. Zachariades* (1986) 3 C.L.R. 852).

Counsel for the applicant contends that, since the additional  
10 qualifications of the interested party were not an additional advantage under the scheme of service, they should not have been taken into consideration. The applicant is a graduate of secondary education. The interested party has university qualifications, including degree in literature of the University of Ioannina. The majority of the Commission said that the interested party was  
15 substantially better in qualifications.

It is correct that academic qualifications, additional to those required by the scheme of service, do not by themselves indicate a striking superiority—(*Hadjiloannou v. The Republic* (1983) 3  
20 C.L.R. 1041). But the notion of "striking superiority" is completely different from the notion of "the best suitable candidate" for promotion.

Additional qualifications to those provided in the scheme of service, which are not made an advantage under the scheme, cannot be disregarded by the appointing authority, as they are an  
25 element of assessing the ability of the candidate in the better performance of the duties of the post. They are not a factor by themselves. They may not constitute striking superiority, but they are a consideration to which regard must be given in selecting the most suitable candidate for promotion. The selection must be  
30 made on the totality of all factors. If the law intended that qualifications, except those required by the scheme of service, should not be taken at all into consideration, then the factor of "qualifications" would be meaningless—(*Michael Michaelides and Another v. The Republic of Cyprus* (1987) 3 C.L.R. 2170).

Triantafyllides, P. in *Andreou v. The Republic* (1979) 3 C.L.R. 379 said at p. 388:-

"... a scheme of service prescribes only the basic requirements for appointment or promotion to a particular post. It is open, therefore, to an appointing authority to take into account any other qualification of a candidate which is of such a nature as to render him the most suitable candidate for appointment or promotion; and there cannot be excluded from the notion of 'the most suitable' the essential consideration of how best will be served the interests of the specific branch of the public service in which a vacant post is to be filled."

Triantafyllides, P. in *Papadopoulos v. Republic* (1985) 3 C.L.R. 405, at p. 441 said:-

"As regards their qualifications there existed a manifest difference between the appellant and the two interested parties in question, in the sense that the qualifications of the appellant were by far superior to those of interested parties Loizou and Ioannou and when such qualifications, which appear to be very relevant to the duties to be performed by somebody holding the post of 'Counsellor or Consul-General B', are weighed together with the more or less equal merit of the appellant and the said two interested parties, and without losing sight of the slight seniority of such interested parties, the conclusion is inevitable, in my opinion, that the appellant was strikingly superior to them."

The passage from *Andreou* case above was adopted by Savvides J., in *Michaeloudis v. Republic* (1982) 3 C.L.R. 963.

In *Soteriadou and Others v. The Republic* (1983) 3 C.L.R. 921, at pp. 943—944 it was said:

"... in promotions qualifications beyond those required by the scheme of service, which are akin to the duties of the officer and which make him more suitable in the carrying out of

such duties, should be taken into consideration."

In *Ioannides v. The Republic* (1986) 3 C.L.R. 1089, at p. 1095 it was said:

5 "Additional academic qualifications to those provided in the scheme of service, though they have to be taken into consideration with all other elements, do not by themselves indicate a striking superiority."

The Respondents properly evaluated the qualifications of the candidates and the complaint of the applicant is untenable.

10 The complaint that they have given undue weight to the seniority of the interested party is, also, unfounded. Under section 46 of the Public Service Law, 1967 (Law No. 33/67) the interested party was by eleven months senior. The reference to Cases Nos. 36/86, 123/86 and 158/86 *Georghiou and Others v. The Republic* 15 (1988) 3 C.L.R. 678 is misconceived. In those cases the Court said that the seniority of the applicants was taken into consideration in the overall assessment of the candidates. Their seniority in the circumstances was not of significant weight and could not tip the scales in their favour.

20 The Commission under section 44(3) of Law 33/67 in making a promotion shall have due regard to the annual confidential reports on the candidates. The confidential reports on the applicant who was posted at the office of the School Committee of Limassol town was prepared by Mr. Papas, the Chairman of the School 25 Committee, who was neither a civil servant nor a public educationalist. The Director of the Pedagogical Academy was reporting officer on the interested party who was posted at that educational institution. These were the reporting officers. They were different.

30 Both the applicant and the interested party were rated excellent for the five years preceding the material date for this decision.

Counsel for the applicant contends that his client was better and should have been preferred because though for the last two years, that is 81-82, 82-83, both were rated excellent on all twelve items, in 80-81 the interested party was rated excellent on ten items whereas the applicant on all twelve and in the two preceding years 78-79, 79-80, 8-3-1, 7-5-0.

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Recent confidential reports, as repeatedly stated by the Supreme Court, are of special importance in ascertaining the merits of the candidates as they depict an up-to-date picture of their performance. (See, inter alia, *Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143; *Niki Ioannou v. Republic (Public Service Commission)* (1977) 3 C.L.R. 61.)

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In the *Republic v. Roussos* (1987) 3 C.L.R. 1217 it was said at p. 1224:-

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"... we should stress that what really matters is the general picture presented by the overall grade in the report, on the basis of the aggregate effect of the evaluations of a public officer regarding particular rateable items, and not the arithmetical formula of how many times as regards such items a candidate had been rated as 'excellent' or 'very good', or 'good' etc."

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And further down:-

"... it must not be lost sight of that it is dangerous to embark on these numerical comparisons independently of the nature of the items in respect of which an officer is rated as 'excellent' or 'very good' since such items do differ in significance depending on the qualities to which they relate."

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It was contended that the reporting officer for the interested party was not *stricto sensu* a civil servant.

The reporting officer for the applicant was not also a civil servant. The applicant cannot be allowed to approbate and reprobate at one and the same time - (*Platis v. The Republic* (1978) 3

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C.L.R. 384, at p. 395).

5 The reporting officer for the interested party was the Director of the Pedagogical Academy, a civil servant in the wide sense of the term, who by virtue of his duties had direct knowledge of his work. Reporting officers are nominated by the Head of the Department, under paragraph 12 of the Circular issued by the Council of Ministers on the confidential reports, and there is no contention that the Director of the Pedagogical Academy, whose reports on the interested party were countersigned by the Director-  
10 General of the Ministry and by the Director of Secondary and Higher Education respectively, was not nominated as reporting officer. This ground, also, fails.

15 The Head of the Department in 1984 attended the meeting of the Commission and stated that among the candidates the selection was limited between Dometakis, the applicant, and Stefanou, the interested party, but the present applicant was better suited. The recommendations of the Head of the Department were not in accord with the material in the file. The interested party is senior, better qualified and equally rated excellent in the confidential reports.  
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25 In making a promotion, the Commission shall have due regard to the recommendations made by the Head of the Department in which the vacancy exists. It is well established that the Public Service Commission has to pay heed to such recommendations and if it decides to disregard them, they have to give reasons for doing so. The Commission is not a rubber stamp of the recommendations of the Head of the Department, but it should not lightly disregard them and if they decide not to act in accordance with such recommendations, they have to give reasons for so disregarding them and such reasons are subject to scrutiny by the  
30 Administrative Court. The reasons for the recommendations of the Head of the Department are also reviewable by the Court.

In the present case the recommendations of the Head of the Department were not supported by the material in the file, and,

further, the Commission gave satisfactory reasons for not following such recommendations.

The applicant failed to satisfy this Court that he is "strikingly superior" to the interested party in the sense this expression is analyzed in *Hjiloannou v. Republic* (1983) 3 C.L.R. 1041.

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On the totality of the material before me, the applicant failed to establish that the sub judice decision was in any way tainted or faulty. It was reasonably open to the Respondent to promote the interested party as the most suitable for the post in question.

For all the foregoing reasons, this recourse fails. The sub judice decision is confirmed under Article 146.4(a) of the Constitution.

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In the circumstances of the case, I make no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

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