

(1988)

1988 February 3

[LORIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALECOS CHRYSOSTOMOU,

Applicant,

v

THE EDUCATIONAL SERVICE COMMISSION,

Respondent

(Case No 268/84)

Educational officers—Promotions—Qualifications—Additional qualifications not envisaged as an advantage in the scheme of service—Do not indicate by themselves striking superiority, but should be weighed together with all other circumstances

Educational Officers—Promotions—Confidential reports—In the circumstances, the Commission was entitled to accept the facts and statements contained therein at their face value

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Educational Officers—Promotions—Interviews, performance at—Evaluation of, on basis of personal notes of members of Commission—Whether such notes ought to have been recorded—Question determined in the negative - (Angelidou v Republic) (1982) 3 C L R 520 distinguished

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Educational Officers—Promotions—Striking superiority—In this case applicants failed to establish such superiority

The facts of this case sufficiently appear from the judgment of the Court, whereby the recourse of the applicant, impugning the promotion of the interested parties to the post of Inspector A Secondary Education, were dismissed

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Recourse dismissed

No order as to costs

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Cases referred to:

Frangoullides (No. 1) v. The Republic (1965) 3 C.L.R. 20;

Angelidou v. The Republic (1982) 3 C.L.R. 520;

Markides v. The Educational Service Committee (1983) 3 C.L.R. 750;

5 *HadjiAntoni v. The Republic* (1983) 3 C.L.R. 1145;

Georghiou v. The Republic (1976) 3 C.L.R. 74;

Hjiloannou v. The Republic (1983) 3 C.L.R. 1041.

Recourse.

10 Récourse against the decision of the respondent to promote the interested parties to the post of Inspector A, Secondary Education in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

R. Vrahimi - Petridou (Mrs), for the respondent.

A.S. Angelides, for interested party G. Poullis.

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Cur. adv. vult.

20 LORIS J. read the following judgment. By means of the present recourse the applicant impugns the decision of the respondent Educational Service Commission to promote, in preference to and instead of him, the interested parties to the present proceedings G. Poullis and P. Papazachariou, to the post of Inspector A, Secondary Education.

The applicant and the interested parties were, on 29 October 1983, when the vacancies in the post of Inspector A' were advertised, Headmasters in secondary Education, and had

applied, together with other nine candidates, for promotion to the two vacant posts of Inspector A' , relating to the subject of Physics.

The respondent Commission decided to call for interview those qualified under the relevant scheme of service; the interview was held on 8 March 1984. 5

On 15 March 1984 in evaluating the performance of the candidates during such interview, on the basis of the personal notes of its members, the Commission graded the applicant as "very good" and the interested parties as "excellent". 10

The relevant meeting of the Commission for the filling of the post was held on 6 April 1984, and the material part of the minutes of that meeting read as follows:

"Η Επιτροπή Εκπαιδευτικής Υπηρεσίας αφού μελέτησε τους προσωπικούς και εμπιστευτικούς φακέλλους των υποψηφίων και έχοντας υπόψη τις σχετικές διατάξεις του Νόμου και των Σχεδίων Υπηρεσίας αποφασίζει ως εξής: 15

.....
(γ) Θέσεις Επιθεωρητή Α' Μέσης Εκπαίδευσης (για τα Φυσικά). 20

Η Επιτροπή Εκπαιδευτικής Υπηρεσίας με βάση την αξία, τα προσόντα και την αρχαιότητα των υποψηφίων και λαμβάνοντας υπόψη τις υπηρεσιακές εκθέσεις, τις συστάσεις του οικείου Τμήματος και την εντύπωση την οποία αποκόμισε από την προσωπική συνέντευξη (Βλ. Πρακτικά 15/3/84) βρίσκει ότι, 25

οι κ.κ. Παναγιώτης Παπαζαχαρίου (ΠΜΠ. 2630) Διευθυντής Σχολείων Μέσης Εκπαίδευσης (Γυμνάσιο Αραδίππου) και Γεώργιος Πουλλής (Π.Μ.Π. 3535) Διευθυντής Σχολείων Μέσης Εκπαίδευσης (Γυμνάσιο Πεδουλά) είναι 30

οι καταλληλότεροι για τις θέσεις αυτές.

5 Κι οι δύο έχουν εξαιρετη βαθμολογία "(39-37 και 39 -
39, αντίστοιχα). Έχουν επιπρόσθετα από τα απαιτούμενα
από τα Σχέδια Υπηρεσίας προσόντα (ο κ. Παπαζαχαρίου
έχει Diploma in Advanced Studies M.E.D. και Ph. D. και ο
κ. Πουλλής Diploma in Advanced Studies Post Graduate
10 Diploma in Ph. D.). Έχουν συστηθεί από το οικείο Τμήμα
και υπερέχουν σε αρχαιότητα έναντι όλων των υποψη-
φίων (ο κ. Παπαζαχαρίου έχει προαχθεί σε θέση Διευθυν-
τή από 9/11/81 και ο κ. Πουλλής από 1.9.82) και είχαν
εξαιρετη απόδοση κατά την προσωπική συνέντευξη.

15 Με βάση τα πιο πάνω η Επιτροπή ομόφωνα αποφασί-
ζει να προσφέρει προαγωγή στη θέση Επιθεωρητή
Α' στους κ.κ. Παναγιώτη Παπαζαχαρίου και Γεώργιο
Πουλλή από 1.7.84.

....."

(English Translation:

20 "The Educational Service Commission having examined
the personal and confidential reports files of the candidates and
bearing in mind the relevant provisions of the Law and the
Schemes of Service decides as follows:

".....
(c) Posts of Inspector A' Secondary Education (for Physics).

25 The Educational Service Commission on the basis of merit,
qualifications and the seniority of the candidates and taking
into account the service reports, the recommendations of the
appropriate Department and the impression formed from the
personal interviews (vide Minutes 15.3.84) finds that,

30 Messrs. Panayiotis Papazachariou (PMP. 2630)
Headmaster Secondary Education (Aradippou Gymnasium)

and Georghios Poullis (PMP. 3535) Headmaster Secondary Education (Pedoulas Gymnasium) are the most suitable for these posts.

Both of them have excellent grading (39-37 and 39-39, respectively). They have additional to the required by the Schemes of Service qualifications (Mr. Papazachariou possesses a Diploma in Advanced Studies, M.Ed. and Ph.D and Mr. Poullis a Diploma in Advanced Studies, Post Graduate Diploma and Ph.D.). They have been recommended by the appropriate Department and they are superior in seniority over all the candidates (Mr. Papazachariou has been promoted to post of Headmaster on 9.11.81 and Mr. Poullis on 1.9.1983) and they had excellent performance at the interviews.

On the basis of the foregoing the Commission unanimously decides to offer promotion to the post of Inspector A' to Messrs Panayiotis Papazachariou and Georghios Poullis as from 1.7.84.

....."

Counsel for the applicant submitted that the respondent Commission failed to evaluate properly the qualifications, merit, experience, ability and seniority of the applicant and, on the basis of such criteria, to promote him, as he was strikingly superior to the interested parties and the most suitable candidate for promotion and, therefore, the Commission in promoting the interested parties, acted in excess or abuse of powers.

From a comparative table attached to the Opposition (exhibit "IC") which contains particulars in relation to the qualifications, service, seniority and the confidential reports of the applicant and the interested parties and from all other material placed before the court in this respect it appears that:

The applicant possesses a Diploma in Physics of the University of Athens, a Diploma in Science Education (Leeds)

Associate of the Institute of Education (London), M.Ed. (University of Manchester) and a Certificate in Education/ Planning (Moray House of Education). He was appointed to the post of Headmaster Secondary Education on 5 September 1983 and till then he had twenty years of service. In his last two confidential reports he has a rating of 38, 39 marks.

Interested party G. Poullis possesses a Diploma in Physics of the University of Athens, a Diploma in Advanced Studies, a Ph. D. (Physics) and a Postgraduate Diploma in Educational Management and Administration (Moray House, Edinburgh). He was promoted to the post of Headmaster Secondary Education on 1 November 1981 and till 31 August 1983 he had nineteen years of service. In his last two confidential reports he has a rating of 37,39 marks.

Interested party P. Papazachariou possesses a Diploma in Physics of the University of Athens, a Diploma in Advanced Studies (Manchester), a Ph.D. (Manchester) and a M.E.D. (Exeter). He was promoted to the post of Headmaster Secondary Education on 9 November 1981 and till 31 August 1983 he had twenty - three and a half years of service. In his last two confidential reports he has rating of 39, 39 marks.

As regards qualifications counsel for the applicant submitted that the respondent Commission failed to ascertain that the interested parties were not qualified under the relevant scheme of service or that in any case applicant's additional qualifications were superior to those possessed by the interested parties.

In accordance with paragraph 2 of the relevant scheme of service (exhibit 1 "B") in addition to the basic qualifications "Postgraduate training in educational matters or in a subject connected with the duties of the post lasting at least one academic year" is required as well.

Counsel for the applicant argued in this respect, that the Ph.D. possessed by the interested parties is it Science and, therefore, it

could not be treated as an additional qualification in education.

In view of the material placed before the respondent Commission and, particularly, the fact that interested party Poullis possesses a Postgraduate Diploma in Educational Management and Administration and interested party Papazachariou a Degree of Master of Education, it was reasonably open to the respondent Commission to treat both interested parties as qualified under the relevant Scheme of Service. Any other additional qualifications in education possessed by the applicant do not indicate by themselves that he was a strikingly superior candidate but should be weighed together with all other circumstances.

Regarding the confidential reports counsel for the applicant alleged that in respect of the year 1980-1981 the marks of interested party Poullis were corrected from 38 to 39 without an objection having been filed by him and without the proper procedure having been followed, whereas it has to be noted that the objection of the applicant against his marks for the year 1983-1984 was dismissed.

The contention of counsel for the applicant about the unauthorized correction in the confidential report of interested party Poullis is not supported by the material in the personal file of this interested party. From blue 151 it appears that the interested party lodged an objection in respect of his rating for the year concerned as a result of which the relevant correction was effected. Since no irregularity in the preparation of such confidential reports was established they were correctly taken into account by the respondent Commission in evaluating the merits of the candidates. Reference may be made in this respect to the case of *Frangoullides (No. 1) v. The Republic*, (1965) 3 C.L.R. 20, where it was pointed out (at p.28) that ".....the Commission was entitled to accept the statements of fact and opinions expressed in those reports on their face value and was not required, having regard to the circumstances of the case, to investigate the matter further and to try to substantiate or refute

the correctness or accuracy of such facts and opinions".

5 As to the impression formed by the Commission at the interview counsel for the applicant argued that the notes of the members of the Commission on which they based themselves in evaluating the performance of the candidates at the interview should have been recorded so that the Court would have been able to judge whether the Commission had arrived correctly at such evaluation. And he referred, in this respect, to the case of *Angelidou v. The Republic*, (1982) 3 C.L.R. 520.

10 As far as this argument is concerned I am of the view that the respondent Commission is not bound to record in its minutes the details contained in their notes about the impressions formed at the interview and reference may be made, in this respect, to the cases of *Makrides v. The Educational Service Committee*, (1983) 3 C.L.R. 750, 761 and *HadjiAntoni v. The Republic* (1983) 3
15 C.L.R. 1145, 1153. The *Angelidou*, case, supra, referred to by counsel for the applicant in support of his contention is clearly distinguishable from the present case on its own particular circumstances.

20 Having in mind everything that has already been said above I have formed the view that the applicant, on whom the burden is cast, failed to establish that he was a strikingly superior candidate (see, in this respect, *Georghiou v. The Republic* (1976) 3 C.L.R. 74, 83 and *Hjiloannou v. The Republic*, (1983) 3 C.L.R. 1041,
25 1045) and, further, that in view of the seniority of the interested parties over the applicant, and all other considerations, it was reasonably open to the respondent Commission to prefer, instead of him, as more suitable for promotion the interested parties.

30 It is to be presumed that the Commission in arriving at the sub-judice decision has taken all relevant material regarding the candidates before it into consideration and has evaluated them properly.

It has been further argued on behalf of the applicant that the sub-judice decision is not duly reasoned.

I am unable to agree with such contention because the reasoning appears sufficiently in the decision itself and may also be supplemented by the material contained in the relevant files, which were before the Commission at the material time and were produced as exhibits before me.

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Finally I will dismiss summarily the contention of counsel for the applicant that he was treated in a discriminatory manner because of his trade union activities, as such allegation has not been substantiated nor can it find support from the material before me.

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Concluding, I must state that it should be borne in mind that this Court cannot substitute its own discretion to that of the Commission but can only intervene when the organ concerned has exceeded the outer limits of its discretion or had acted in excess or abuse of powers.

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I am not, satisfied that this is so in the present case and, therefore, in view of the foregoing the present recourse is hereby dismissed. Having given to the matter my best consideration I have to make no order as to costs.

*Recourse dismissed.
No order as to costs.*

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