

1988 November 26

(MALACHTOS, J.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOROS P. STYLIANOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 536/87).

Educational Officers—Appointments/Promotions—First entry and promotion post—Failure to carry a "major inspection" on applicant as a Headmaster—Does not lead to annulment of sub judice promotion to post of Inspector A in the Secondary Education.

5 *Educational Officers—Appointments/Promotions—First entry and promotion post—All candidates in the service serving on the same post—Factor of seniority correctly considered.*

10 *Educational Officers—Appointments/Promotions—First entry and promotion post—Meeting of Educational Service Committee ended at 1.30 p.m. of the 6.5.87 and its minutes were ready at 9.30 a.m. on the next day—This fact does not support an allegation that the minutes were fabricated.*

Educational Officers—Appointments/Promotions—First entry and promotion post—Judicial control—Principles applicable.

15 *Educational Service Commission—Composition of—Member absent from the two last meetings held in respect of considering the same appointments/promotions—For so long as there was a quorum, such absence does not lead to annulment of the relevant decision.*

The facts of this case appear sufficiently in the judgment of the Court.

(MALACHTOS)

Recourse dismissed.

No order as to costs.

IN THE MATTER OF ARTICLE 118 OF THE CONSTITUTION

Cases referred to:

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

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Enotiadou v. The Republic (1971) 3 C.L.R. 409;

The Republic v. Petrides (1984) 3 C.L.R. 379;

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

Georgiades and Another v. The Republic (1970) 3 C.L.R. 257.

Recourse:

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

A. Papacharalambous, for the applicant.

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

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Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse challenges the validity of the decision of the respondent Committee of Educational Service to promote the two interested parties, namely 1. Doros Theodoulou and 2. Andreas Papastavrou to the post of Inspector A in the Secondary Education.

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The facts of the case, so far as relevant, are the following:

The post in question is a first entry and promotion post. Following the relevant advertisement in the Official Gazette of the Republic, ten applicants applied for the post, among whom were the applicant and the interested parties. All three of them were
5 headmasters in the secondary education.

The Committee at its meeting of 13.4.87, decided to invite all the candidates for an interview on 25.4.87.

At its meeting of 24.4.87 the Committee prescribed the criteria that would be taken into consideration with regard to the evaluation of the performance of the candidates at the interview.
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At its meeting of 25.4.87 at which Andreas Phylactou, the Acting Director of Secondary Education was present, all the candidates were interviewed by the Committee. After the withdrawal of Mr. Phylactou the Committee continued its deliberations and
15 on the basis of the criteria which it prescribed the previous day, decided that the performance of the two interested parties was "excellent" and that of the applicant was "good". In arriving at the above evaluation the Committee gave full reasons in its Minutes.

At its meetings of 30.4.87, 2.5.87 and 5.5.87 the Committee
20 examined the personal files and the confidential reports of the candidates and adjourned the further consideration of the matter for its next meeting which took place on 6.5.87. At this latter meeting the Committee, after referring to its previous Minutes and
25 for the purpose of determining the merits of the candidates, took into consideration the contents of the personal files and the confidential reports of each candidate, their performance at the interview and the recommendations of the Head of the Department and the service report of each one of them.

As regards the applicant for the school year 1977/78 he was
30 awarded 37 marks and for the years 1981/82 and 1983/84 38 marks.

As regards interested party No.1, for the year 1980/81 38

marks and for the year 1982/83 39 marks.

As regards interested party No.2, for the year 1975/76 37 marks, 1979/80 38 marks and for 1983/84 39 marks.

Regarding the performance of the candidates at the interview, the Committee referred to its previous minutes, whereby interested party No.1 made the best impression out of all the candidates whereas the applicant was described as "good". 5

Regarding the recommendations of the Head of the Department, the Committee had before it a letter dated 4.5.87 from Mr. Phylactou, the Acting Director of Secondary Education, in which five out of the ten candidates were recommended in alphabetical order including the two interested parties. The applicant was not included. In the said letter of Mr. Phylactou, the following was stated: 10

"These recommendations are submitted after an examination of the personal files and confidential reports of the candidates and after taking into consideration the impression made in the course of the interview of the candidates to the Committee of Educational Service, in which I participated, and also the deliberation I had with the Inspector of Phylological Subjects." 15 20

The Committee then went on and dealt with the qualifications of the candidates where they ascertained that all the candidates possessed the necessary qualifications required by the relevant schemes of service and further found that the highest qualifications were possessed by candidates Makrides and Antoniades who possessed a Ph.D. degree and the next best qualified candidates were Papastavrou and Theodoulou who possessed a post-graduate degree M.A. and M.Sc. Finally, the Committee dealt with the seniority of the candidates and stated that under the provisions of the existing legislation those possessing the post of Headmaster Secondary Education, were superior in seniority. As the applicant and the interested parties were promoted to the post of Headmaster on the same day, i.e. 1.9.84, their seniority was 25 30

determined from the day of their promotion to the post of Assistant Headmaster. Interested party No.1 was promoted to Assistant Headmaster on 15.9.73 and applicant on 1.9.71 whereas interested party No.2 on 9.11.81. Thereafter the relevant minutes of the Committee read: "The Committee on the basis of the provisions of the law and after taking into consideration the merits, qualifications and seniority of the candidates and by evaluating all these criteria and giving due weight to each one of them, arrived at the conclusion that Ioannis Loizides and Theodoulou Doros, interested party No.1, present the best picture compared with the other candidates and they are the most suitable for promotion to the vacant post.

Mr. Ioannis Loizides is manifestly superior in seniority and as emerging from the aforesaid, he is among the candidates who are superior in merit. The fact that certain candidates possess higher qualifications cannot neutralise the superiority of Mr. Loizides in merit and seniority. Mr. D. Theodoulou is one of the best candidates as regards merit. Mr. Theodoulou has lacked behind in seniority compared with Charalambous Menelaos, Papastavrou Andreas and Kinanis Alexandros, while Mr. Stylianou Theodoros has slight superiority as regards seniority over him but he is superior in merit and qualifications.

On the basis of the above the Committee unanimously decided to offer promotion to the post of Inspector A, Secondary Education for Philological Subjects to Mr. Ioannis Loizides and Doros Theodoulou with effect from 7.5.87.

At its meeting of the following day, 7.5.87 the Committee proceeded first to the approval of the minutes of the previous meeting and thereafter dealt with the non acceptance of the offer of promotion by Mr. Ioannis Loizides who visited the office of the Committee on 7.5.87 and handed a letter where it was stated that he did not accept the offer of promotion to the above post. As a result the Committee decided to revoke its previous decision dated 6.5.87, as far as Mr. Loizides was concerned. Thereafter the Committee proceeded to consider afresh the filling of the vacant

post and in doing so it considered afresh all the candidates. In the end, it decided that interested party No.2 was the most suitable candidate and decided to promote him to the above post and gave the following reasons:

"(a) he is superior in merit to all the candidates; 5

(b) though he lacks behind in seniority compared with Mr. Charalambous, he is superior in merit and qualifications; and

(c) he is superior in seniority and merit than all the other candidates".

The main contentions of counsel for the applicant were: 10

(i) that with regard to the post of Inspector A, the previously prevailing practice for a number of years was to carry out a "major inspection" for the said post. Though applicant has been serving for three years as headmaster, he had not been inspected and graded as a headmaster, whereas other candidates were inspected and graded; 15

(ii) that there is a vacuum in the whole process because one of the members of the Committee (Mr. Olympios), was absent from the meetings of the Committee dated 5.5.87, 6.5.87 and 7.5.87 whereas he was present at the previous meetings of 7.3.87, 13.4.87, 24.4.87, 25.4.87, 30.4.87 and 2.5.87; 20

(iii) that the two years post-graduate of the applicant was not evaluated on the basis of its actual contents and in connection with the qualifications required by the schemes of service viz "Post-graduate education in pedagogics"; 25

(iv) that the said post is a first entry and promotion post and the Committee ought to have taken into consideration all the years of service of the candidates up to 31.9.86. In the instant case interested party Theodoulou had 24 years of service and interested party Papastavrou 22 years, whereas applicant has 27 years of 30

service;

(v) that the Committee gave undue weight and importance to the performance of the candidates at the short oral interview.

5 Finally, and arising out of the fact that the meeting of the Committee of 6.5.87 ended at 1.30 p.m. and that the minutes of the said meeting were approved on the following day at 9.30 a.m. and that thereafter the Committee revoked the promotion of Ioannis Loizides, and proceeded to deal with the filling of the post afresh, and that the promotion of Loizides had been published in
10 the press before the approval of the minutes, it was contended that the minutes were fabricated.

As regards contention (i) above, it is clear from the wording of the relevant regulations that the carrying out of a "major inspection" is not at all mandatory or compulsory. Therefore, the non
15 carrying out of a "major inspection" of the applicant cannot have any effect on the sub judice decision.

Regarding contention (ii), it cannot be said that the absence of a member of a Committee from the last three meetings can affect at all the validity of the proceedings or the sub judice decision so
20 long as this decision is taken by the relevant majority of the remaining members. (See *Vivardi v. Vine Products Council* (1969) 3 C.L.R. 486 and *Ioanna Enotiadou v. The Republic* (1971) 3 C.L.R. 409).

As regards contention (iii), it is clear from the minutes of the
25 Committee that it gave due weight and properly evaluated the post-graduate qualification of the applicant along with the qualifications of all the other candidates.

As to contention (iv), both the applicant and the interested parties were in the Educational Service and were holding the post of
30 Headmaster in Secondary Education and, therefore, as far as they are concerned, the sub judice post was promotion post. This being the position, the Committee did not act in a manner contrary

to law by taking into account their seniority.

As regards the allegation that the Committee attached great importance to the factor regarding the performance of the candidates during the interview, I must say that such contention is not at all borne out from the contents of the relevant minutes. On the contrary, the Committee considered the performance of the candidates and gave to it the proper weight. (See in this respect *The Republic v. Petrides* (1984) 3 C.L.R. 379).

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As regards the contention that the minutes were fabricated, there is nothing improper or illegal in the publication of the decision of the respondent Committee in the press before the approval of the minutes and in the absence of any evidence, I am not prepared to hold that the minutes of 6.5.87 were fabricated merely because the meeting ended on 6.5.87 and the minutes were ready by 9.30 a.m. the following morning.

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Lastly, the sub judice decision being a decision reached in the exercise of discretionary powers by the proper organ, its validity has to be tested by reference to the principles governing judicial control of administrative action. These principles were very lucidly stated in the case of *Georghiou v. The Republic* (1976) 3 C.L.R. 74 at p. 83:

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"As it appears from the case-law in Greece, which is set out in "Επιθεώρησης Δημοσίου Δικαίου και Διοικητικού Δικαίου" when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its dis-

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5 cretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning.

 Useful reference, in this respect, may be made to the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p.268, and to the decisions of such Council in cases 601/1956, 778/1956 and 277/1964.

10 This Court has followed the same approach in a number of cases, such as the *Evangelou* case, supra (at p.300); and, of course, the onus of establishing his striking superiority lies always on the applicant in a recourse (see *Georgiades and Another v. The Republic* (1970) 3 C.L.R. 257, 269)".

15 In the case in hand, I have reached the conclusion that the applicant, on whom the onus of proof lies, failed to establish striking superiority over the interested parties and this recourse must fail.

20 In the result, the recourse is dismissed but, in the circumstances, I make no order as to costs.

*Recourse dismissed.
No order as to costs.*