

1988 January 21

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS DEMETRIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYRPUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 572/85, 573/85 and 612/85).

Executory act—Intermediate acts—A confidential report for a public officer is an intermediate act—Consequences of invalidity of such an act.

Public Officer—Promotions—Confidential reports—Circular 491/79 concerning their preparation, para. 4—Reports concerning Public Officers made and countersigned by Educational Officers—Such officers were not entitled to act as they did—Moreover, there has been a violation of para 4 (a) of the Circular—Republic v. Argyrides (1987) 3 C.L.R. 1092 followed. 5

The applicants challenge the promotion of the two interested parties to the permanent post of School Clerk 1st grade.

Though the applicants and the interested parties were public officers, 10 their confidential reports were not prepared by their superiors in the public service, but by the Headmasters of the Secondary Education Schools at which they were serving at the time and they were countersigned by the Head of Secondary Education.

Held, *annulling the sub judice decision*: (1) Those who acted as report- 15 ing officers and the officer, who acted as countersigning officer, were not entitled to act, as they did, because they are not "public", but "educational officers" in the sense of section 2 of Law 10/69.

(2) Moreover, in this case the confidential reports were prepared contrary to the provisions of para 4(a)* of Circular 491/79.

5 (3) Following the approach of the decision in *Republic v. Argyrides*
10 (1987) 3 C.L.R. 1092 the conclusion is that the signing of the confidential
reports in question by incompetent reporting and countersigning officers
contrary to the provisions of Regulation 4 affected the general picture
of the candidates (we do not know what their grading would have been had
they been marked by the competent under the Law and the Regulations
Public Officer) and resulted to an illegality and violation of the provisions
of Article 28 of the Constitution.

Sub judice decision annulled.

Cases referred to:

No order as to costs.

Georghiades v. Republic (1982) 3 C.L.R. 16;

15 *Agrotis v. E.A.C.* (1981) 3 C.L.R. 503;

Karpasitis v. Republic (1986) 3 C.L.R. 1617;

Republic v. Argyrides (1987) 3 C.L.R. 1092.

Recourses.

20 Recourses against the decision of the respondent to promote
the interested parties to the post or School Clerk 1st Grade in
preference and instead of the applicants.

A. S. Angelides, for applicants.

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

25 *N. Andreou*, for interested party D. Karayianni

Cur. adv. vult.

* Quoted at p.58 post.

LORIS J. read the following judgment. The applicants in the above three intituled recourses, which were heard together as presenting common questions of law and fact, challenge the promotion of the two interested parties to the permanent post of School Clerk 1st Grade in perference to and instead of the applicants. 5

The implications of non compliance with rule 4 of the Regulations governing the preparation and submission of confidential reports, (Circular No. 491 issue on 26.3.79 - supplemented by Circular letter dated 11.11.83) is the foremost issue which falls for determination in the present proceedings. 10

"In matters of promotion and in particular those made under the proviso to section 44(1) (a) of the Law, confidential reports are intermediate acts and the ascertainment of their invalidity brings the invalidity of all subsequent acts for the issue of which the act found to be illegal, constitutes a legal prerequisite". 15

(*Georghiades v. The Republic* (1982) 2 C.L.R. 16 at p. 28 - vide also *Agrotis v. E.A.C.* (1981) 3 C.L.R. 503 at p. 513 and the authorities referred to therein). 20

The reason is obvious: "Confidential reports aim to provide an account of an officer's abilities, sense of responsibility and devotion to duty - most material factors reflecting on his suitability for promotion" (*Karpasitis v. Republic* (1986) 3 C.L.R. 1617 at p. 1623). 25

In the cases under consideration, it is common ground that all applicants as well as the interested parties are public officers within the meaning of the Public Service Law, 1967 (Law No. 33/67).

It is also common ground and moreover it is apparent from the confidential reports which are before me - and they were before the respondent P.S.C. as well - that the confidential reports of all 30

applicants and those of the interested parties, were prepared by the Headmasters of the Secondary Education Schools at which they were serving at the time (who thus acted as Reporting Officers) and they were countersigned by the Head of Secondary Education.

Learned counsel for applicants submitted that by virtue of the provisions of para 4 of the Regulations governing the preparation and submission on Confidential Reports, the Senior School Clerk and the Chief School Clerk (who are public officers) ought to have been instead the reporting and the countersigning officers respectively.

Learned counsel submitted further that the Headmasters of Secondary Education who acted as reporting officers come under the Educational Service as envisaged by s. 2 of Law 10/69 as amended (they do not hold a post in the Public Service and they are not appointed or promoted by the Public Service Commission), whilst duties of supervision - and reporting - of School Clerks are not envisaged by the Scheme of Service of the Head of Secondary Education who acted as countersigning officer in the instant cases.

Counsel for applicants concluded that as the applicants as well as the interested parties were school clerks 2nd grade, i.e. holding a post in the Public Service at the material time, and as their confidential reports were signed and countersigned respectively by officers in the Educational Service and officers outside the ambit of their duty (as envisaged by the relevant confidential reports which were mainly relied) their decisions, were invalid and thus the final decision of the respondent - the sub judice decision - was vitiated.

Learned counsel for the respondent Commission submitted that the confidential reports of the interested parties are so positive that applicants are deprived of any legitimate complaint in the matter. In the alternative he submitted that any irregularity regarding this issue is not of a material nature and cannot influence the

legality or the sub-judice decision.

Having carefully considered the material before me in the light of arguments advanced by both sides and bearing in mind the notions of "Educational Officer" as defined by s. 2 of Law 10/69, and "Public Officer" and "Public Service" as defined in Law 33/67, the provisions of circular 491/79 as well as the Scheme of Service of the reporting officer and Countersigning officer in the instant cases and furthermore the Scheme of Service of the Chief School Clerk and Senior School Clerk, I hold the view that neither a Headmaster of Secondary Education nor the Head of Secondary Education could act as reporting and countersigning officers in the case of School Clerks, which is the present case. 5
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In the cases under consideration the confidential reports were not only signed by a reporting officer who is not in the public service but they were prepared contrary to the provisions of para 4 (a) of Circular 491/79 which provides that the "Reporting Officer should indispensably be an officer who by virtue of his duties has direct knowledge of the work of the officer reported upon and can thus express a reliable and valid opinion on his work and capabilities and normally the reporting officer should be the officer supervising the officer reported upon". 15
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Under the relevant scheme of service the officer "responsible for the organisation, co-ordination, management, supervision, and control and effective function of the Secretariat of big Schools" is the Senior School Clerk and above him the officer responsible for the "organization, co-ordination and supervision of School Clerks" is the Chief School Clerk. 25

The implications of non compliance with the Regulations governing the preparation and submission of confidential reports have been recently dealt with by the Full Bench of this Court in the case of *Republic v. Arghyrides* (1987) 3 C.L.R. 1092 where the following were stated inter alia at pp. 1098 - 1099. 30

"As already explained earlier in this judgment, the regula-

5 tions concerning the preparation of confidential reports which
have been embodied in Circular 491/79 and which replaced the
General Orders which were in force prior to 1979 in this re-
spect, were made by the Council of Ministers in the exercise of
10 the powers vested in it under the Constitution and Law 33/67.
Such regulations are not subsidiary legislation in the strict
sense but have to be strictly complied with. The deviation by
the countersigning officer from the express provisions of such
regulations is tantamount to an illegality. Moreover, the sub ju-
15 dice decision should be annulled as violating Article 28 of the
Constitution. Every public officer is entitled to expect that the
procedure in the preparation of confidential reports contemplat-
ed by the Regulations approved by the Council of Ministers
should be strictly adhered to in all cases without any differentia-
20 tion. Any application of the Regulations in a different manner
in each particular case violates the principle that a person is en-
titled to equal treatment which is safeguarded under Article 28
of the Constitution. We have, therefore, reached the conclu-
sion that the sub-judice decision should be annulled on this
ground as well".

Following the approach adopted by the Full Bench in *Argy-
rides* case (supra), I have reached the conclusion that in the
present case too, the signing of the confidential reports in ques-
25 tion by incompetent reporting and countersigning officers con-
trary to the provisions of Regulation 4 affected the general picture
of the candidates (and we do not know what their grading would
have been had they been marked by the competent under the Law
and the Regulations Public Officer) and resulted to an illegality
and violation of the provisions of Article 28 of the Constitution;
30 as the respondent commission has obviously relied on such re-
ports in selecting the most suitable candidates for promotion, the
sub-judice decision has to be annulled.

In the circumstances I consider it unnecessary to embark on
any other ground raised in the present proceedings.

In the result all above intituled recourses succeed and the sub
judice decision is hereby annulled.

Let there be no order as to costs

*Sub judice decision annulled.
No order as to costs.*