

undue weight to the factors of seniority—Having, thus, made the said promotion of one Interested Party inconsistently with its paramount duty under Article 125 of the Constitution—And in abuse and excess of powers—See, also, above under Public Officers.

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Public Service Commission—Constitution and Quorum—No proper quorum when sub judice decision taken—However, the Applicant cannot succeed on this issue—Because the point was first raised at the hearing of the case long after the enactment on the 16th December, 1965, of the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965), which by section 5 made provision validating decisions taken by the said Commission, inter alia, with insufficient quorum over a period of time including the material day in the present case (1st July 1965)—It would have been otherwise had the point been raised in the application i.e. before the enactment of that Law No. 72 of 1965, supra—See also, under Administrative and Constitutional Law, below.

Administrative Law—Discretionary powers—Proper exercise of—Improper exercise of—Abuse and excess of powers—See under Public Officers and Public Service Commission, above.

Administrative Law—Decision—Administrative decision—Decision taken and based on reasons inconsistent with those appearing on the relevant records—Such decision must be annulled.

Administrative and Constitutional Law—Law validating with retrospective effect defects in administrative decisions—Effect of such law on pending recourses under Article 146 of the Constitution—Provided the issue of such defect has been raised in the application filed before the enactment of such validating Law—Pending proceedings as aforesaid are not affected by such law—Otherwise, if the issue is first raised after the enactment of such Law—See, also, under Public Service Commission, above.

Public Service—See under Public Officers, above.

Promotions—Principles applicable—See above.

Annual Confidential reports—See above.

Recommendation for promotion by the Head of the Department concerned—See above.

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Seniority—Its weight and significance in cases of promotions—See above.

Discretionary powers—Improper exercise—Proper exercise etc. etc.—See above.

In this recourse under Article 125 of the Constitution the Applicant challenges the promotion to the post of Assistant Collector of Customs of the two Interested Parties, C.P. and A.H. Such promotions were decided upon by the Respondent Public Service Commission — the competent organ for appointments, promotions etc. etc. of public officers under Article 125 of the Constitution—at its meeting of the 1st July, 1965. The history of events is shortly as follows:

The Applicant and the Interested Parties were at the material time Customs and Excise Officers, 1st Grade. By letters dated the 10th September, 1964, the 9th November, 1964, and the 24th March, 1965, respectively, addressed to the Director-General of the Ministry of Finance, the Director of the Department of Customs and Excise strongly recommended the Applicant and the first Interested Party for promotion to the aforesaid post of Assistant Collector of Customs. The second Interested Party was not mentioned in the said letters. On the 11th June, 1965, the Director-General, Ministry of Finance, fully adopting the views of the Director of the Department of Customs and Excise, sent a letter to the Respondent Commission whereby he strongly recommended for promotion the Applicant and the first Interested Party as aforesaid. The relevant confidential annual reports, duly produced, were undoubtedly by far more favourable to the Applicant and the first Interested Party as compared to those relating to the second Interested Party.

The second Interested Party was at the time senior to the Applicant in the post of Customs and Excise Officer, 1st Grade, by three years, whereas the first Interested Party was senior to the Applicant by two years. It would seem that at the material time *i.e.* on the 1st July, 1965, the Respondent Public Service Commission did not meet with a proper quorum. But this last point has not been raised by the Applicant in his application: it has only been taken for the first time at the hearing of the case *viz.* long after the enactment on the 16th December, 1965, of the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965) which by section

5 makes provision validating decisions of the said Commission taken with insufficient quorum over a period of time, including the material date in this case: the 1st July, 1965, *supra*.

The Court in dismissing the application as regards the first Interested Party, C.P., but granting it as regards the second Interested Party, A.H., and annulling the latter's promotion:

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Held, I. As regards the question of quorum of the Respondent Commission at the time it has taken the sub judice decisions i.e. on the 1st July, 1965:

At the hearing of the present case counsel for Applicant took belatedly—having not raised it in the body of the Application—the point that at the material time the Commission did not meet with a proper quorum.

As such point was taken for the first time after the enactment, on the 16th December, 1965, of the Public Service Commission (Temporary Provisions) Law 1965 (Law No. 72 of 1965), which by section 5 thereof makes provision validating decisions taken by the said Commission with insufficient quorum over a period of time, including the material day *viz.* the 1st July, 1965, (*supra*), the Applicant, for the reasons given in *Theophylactou and the Republic* (1966) 3 C.L.R. 801. cannot succeed in these proceedings on the ground that the Commission met at the material time with insufficient quorum.

Held, II. As regards the promotion of the first Interested Party, C.P.:

(1) I have felt no difficulty with regard to the promotion of the first Interested Party. He was one of the recommended candidates. The confidential reports concerning him were very favourable and they did contain strong recommendations for promotion. It was certainly reasonably open to the Commission to decide to prefer him to Applicant, in view of the fact, taken together with all other considerations that this Interested Party was by two years senior to the Applicant in the post of Customs and Excise Officer, 1st Grade.

(2) Therefore, this recourse, in so far as it challenges the promotion of the first Interested Party, fails and is dismissed accordingly.

Held, III. As regards the promotion of the second Interested Party, A.H.:

(1) There can be no doubt that the Respondent Commission in choosing, from among various candidates, those to be promoted, has quite a wide margin of discretion, and so long as such discretion has been exercised properly and the decision reached was reasonably open to the Commission on the material before it, this Court cannot substitute its own discretion for that of the Commission.

(2) But, there exists in the present case the glaring, inescapable, fact that in promoting the second Interested Party, A.H., instead of the Applicant, the Respondent Commission promoted an officer who had not been recommended for promotion by his Department, and passed over an officer who had been consistently recommended for promotion by such Department.

(3) It follows, that in promoting the aforesaid second Interested Party, instead of the Applicant, the Commission acted contrary to the recommendations of the Department concerned. But such recommendations, especially in cases as in the present one where specialized knowledge and ability are required for the performance of certain duties, should not be lightly disregarded by the Public Service Commission. *Theodossiou and The Republic*, 2 R.S.C.C. 44 at p. 48; and *Nedjati and The Republic*, 2 R.S.C.C. 78, at p. 83, applied.

(4) (a) It is correct that the said second Interested Party was, at the time, senior by three years in the post of Customs and Excise Officer, 1st grade.

(b) But, seniority could not be relied upon, as distinct from the overall picture of merits, in order to outweigh such merits, and also in order to provide justification for acting contrary to the recommendations for promotion, both by means of the Annual Confidential reports and by means of special communications to the Commission for the purpose.

(c) And it is the paramount duty of the Public Service Commission, in the proper exercise of its competence under Article 125 of the Constitution, to select the candidate most suitable for the post in question (See *Theodossiou* case, *supra*, at p. 47).

(d) Seniority is only one of the relevant factors to be taken into account, and not the decisive factor; it may be the decisive factor only if all other things are equal as between two candidates.

(e) Once the Commission had recognized in its minutes that “there were other junior candidates who might appear more suitable for promotion on grounds of merit”—and yet the Commission proceeded to by-pass such candidates in favour of a less meritorious but more senior, one, viz the said second Interested Party A.H., the Court is forced inevitably to the conclusion that the Commission has, in effect, treated seniority, instead of overall suitability arising out of merits, as the decisive factor, thus acting inconsistently with its duty under Article 125 of the Constitution and applying an erroneous criterion leading to a wrong exercise of its discretion.

(5) (a) With regard to the Annual Confidential reports on the Applicant and the said second Interested Party, A.H., an examination of the recent ones (and those are which matter, as showing current merits, see *Jacovides and The Republic*, (1966) 3 C.L.R. 212 at p. 222), shows that the confidential reports on the Applicant were far superior to those on the said Interested Party, A.H. Such reports could not, by any means, justify preference of the said Interested Party to the Applicant, nor even could it be said that they placed them on an equal footing so as to allow seniority to decide the issue. Moreover, the confidential reports on the Applicant contained recommendations of his Department for his promotion, whereas no such recommendations appear in the confidential report on the said second Interested Party.

(b) And yet these very same reports were, somehow, relied upon by the Commission, as it appears from its relevant minutes, as enabling them to act contrary to the recommendations contained in such reports as well as in the other communications of the Department and Ministry, concerned.

(c) This is, indeed, a case in which this Court has to annul the *sub judice* decision, in so far as it promotes the second Interested Party, A.H., because material reasoning therein is contradicted by the relevant administrative records on which such reasoning has been based (see the *Jacovides* case, *supra*).

(6) It is clear that at no time was the second Interested party A.H. found to be superior in merit to the Applicant. What was thrown decisively into the balance in his favour (the second Interested Party), and erroneously so, as held earlier in this Judgment,—was his seniority.

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(7) The present case is clearly distinguishable from the case of *Constantinou and The Republic* ((1966) 3 C.L.R. p. 862) where the Head of Department did admit, before the Public Service Commission, in unambiguous terms clearly recorded in the relevant minutes, the merits of non-recommended candidates, enabling thus the Commission to disregard to a certain extent the written recommendations made to them earlier, and to promote junior officers over the head of a senior recommended candidate. But in the present case no such statement seems to have been made to the Commission regarding the said second Interested Party by the Acting Director of the Department of Customs and Excise, present at the relevant meeting of the 1st July, 1965, (*supra*) as could be said to amount to a ground weighty enough to entitle the Commission to depart from the written recommendations before, which had been based, admittedly, on the respective merits of the candidates.

(8) For all the above reasons I have been driven inevitably to the conclusion that the Respondent Commission has disregarded the recommendations before it without sufficient reason, and it has made the promotion of the second Interested Party A.H. inconsistently with its paramount duty under Article 125 of the Constitution, through an erroneous exercise of its discretionary powers and in abuse and excess of such powers.

(9) Therefore, the said promotion is declared to be null and void and no effect whatsoever.

(10) It is now up to the Commission to reconsider the filling of the vacancy in question. The aforesaid second Interested Party remains one of the candidates to be considered. If the Commission decides to depart from the recommendations of the Department concerned—and I am not expressing any view—let the reasons for such a course be properly and sufficiently recorded. No order as to costs.

*Order in terms. Order
as to costs in terms.*

Cases referred to:

Theophylactou and The Republic (1966) 3 C.L.R. 801 applied;
Theodossiou and The Republic 2 R.S.C.C. 44, at pp. 47 and 48,
applied;

Nedjati and The Republic 2 R.S.C.C. 78, at p. 83, *applied*;

Jacovides and The Republic (1966) 3 C.L.R. 212 at p. 222,
applied;

Constantinou and The Republic ((1966) 3 C.L.R. p. 862),
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Recourse.

Recourse against the validity of promotions to the post of Assistant Collector of Customs.

A. *Triantafyllides* for the Applicant.

L. *Loucaides*, Counsel of the Republic, for the Respondent.

A. *Emilianides*, for the Interested Party A. HadjiIossif.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: In this recourse the Applicant challenges the promotions to the post of Assistant Collector of Customs of the two interested Parties, C. Papadakis and A. HadjiIossif.

Such promotions were decided upon by the Respondent Public Service Commission on the 1st July, 1965, (see its minutes *exhibit* 1).

The history of events in this Case is shortly as follows:

The Applicant and the Interested Parties were, at the material time, Customs & Excise Officers, 1st grade.

On the 10th September, 1964, the then about to retire Director of the Department of Customs & Excise, Mr. Frangeskides, addressed a letter (see *exhibit* 3) to the Director-General of the Ministry of Finance, under which comes the Department in question, recommending for accelerated promotion to the post of Assistant Collector of Customs five officers, among whom were the Applicant and Interested Party Papadakis, but not Interested Party HadjiIossif. Copy of this letter was sent, also, to the Public Service Commission.

On the 9th November, 1964, the successor of Mr. Frangeskides, Mr. Philippides, addressed, in his capacity as Acting Director of the Department of Customs & Excise, a letter (see *exhibit* 5)

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to the Director-General of the Ministry of Finance, recommending for promotion to the post of Assistant Collector of Customs two officers only, one of whom was the Applicant. These two officers were the first two out of those recommended by the aforementioned letter of the 10th September, 1964.

On the 24th March, 1965, the said Mr. Philippides wrote, again, to the Director-General of the Ministry of Finance (see *exhibit 6*) recommending five officers for promotion to the post of Assistant Collector of Customs, among whom were the Applicant (2nd in order of priority) and Interested Party Papadakis (4th in order of priority). These five officers were the same as those recommended by the letter of the 10th September, 1964 (copy of which was in the possession of Mr. Philippides, see *exhibit 7*).

On the 11th June, 1965, the Director-General of the Ministry of Finance, wrote, in the matter, to the Respondent Commission (see *exhibit 2*) strongly recommending, in order of merit, the same five officers who had been recommended, as above, by Mr. Philippides.

A comparison of *exhibits 3, 6 and 2* shows that the Director-General of the Ministry of Finance adopted fully the views of the Department concerned.

The question of the filling of two vacancies in the post of Assistant Collector of Customs came up before the Commission on the 1st July, 1965, and Mr. Philippides was present at such meeting.

The relevant minutes of the Commission (see *exhibit 1*) read as follows:

“1. *Filling of vacancies, Dept. of Customs & Excise.*

Mr. M. Philippides, Acting Director of the Department of Customs & Excise, present.

Assistant Collector of Customs.

The Commission examined carefully the qualifications, experience, seniority and merits of Customs & Excise Officers, 1st Grade, as shown in their Annual Confidential Reports.

The Commission also took into serious consideration the recommendations of the Ministry of Finance made

in its letter No. MF 142/63/B of 11.6.65. The Commission further had the opportunity to hear the helpful views of the Acting Director of the Department with regard to the duties attaching to senior posts in the Department and the qualities required of their holders.

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The Commission having regard to the Annual Confidential Reports and to the statements of the Acting Director as regards Messrs. A. V. Hjilossif and C.I. Papadakis who, with the exception of Mr. J. Tsangarides who was not considered suitable for promotion, were the most senior Customs & Excise Officers, 1st Grade, decided that Messrs. Hjilossif and Papadakis were on the whole the most suitable for promotion, in spite of the fact that there were other junior candidates who might appear more suitable for promotion on grounds of merit. The Commission accordingly decided that they be promoted to the post of Assistant Collector of Customs w.e.f. 1.7.65".

The annual confidential reports on the Applicant and the Interested Parties have been produced and are *exhibits 4 (a) (b) and (c)*, respectively.

The most recent, at the material time, confidential report on the Applicant was dated the 10th June, 1965, and it was a very favourable one; Applicant was being recommended for promotion "without any reservations"; the Reporting Officer was a Collector of Customs, Mr. Evripidou and the Countersigning Officer was Mr. Philippides, the Head of Department. The immediately previous confidential report on Applicant was dated the 25th May, 1964, and it was also a favourable one, containing, again, a recommendation for promotion.

The most recent confidential report on Interested Party Papadakis was dated, also, the 10th June, 1965; it was a very favourable one; he was "strongly" recommended for promotion; the Reporting Officer and the Countersigning Officer were the same as in the case of the report of the same date on Applicant. The immediately previous confidential report on this Interested Party was dated the 16th May, 1964, it was a most favourable one too; he was "strongly recommended", thereby, for "immediate promotion".

The most recent confidential report on Interested Party Hadjilossif was dated, again, the 10th June, 1965; the Reporting

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Officer was a Collector of Customs, Mr. Atteshlis and the Countersigning Officer was Mr. Philippides. There was no recommendation for promotion in such report; all that was stated therein, by way of observations, was that this Interested Party possessed Customs as well as general knowledge of good standard but was of average standard as regards management abilities. In the immediately previous confidential report, dated the 12th May, 1964, the Reporting Officer, who was again Mr. Atteshlis, assessed this Interested Party as being "very good" but the Countersigning Officer, Mr. Frangeskides, the then Head of the Department, wrote "I disagree with the above assessment. He is good".

The decision of the Commission promoting the two Interested Parties to the post of Assistant Collector of Customs was taken, as already stated, on the 1st July, 1965, and it was attacked by this recourse on the 9th August, 1965.

At the hearing of this Case counsel for Applicant took belatedly — having not raised it in the Application — the point that at the material time the Commission did not meet with a proper quorum. As such point was taken after the enactment, on the 16th December, 1965, of the Public Service Commission (Temporary Provisions) Law 1965 (Law 72/65), which by section 5 thereof makes provision validating decisions of the Commission taken with insufficient quorum over a period of time including the 1st July, 1965, the Applicant, for the reasons given in *Theophylactou and The Republic* (1966) 3 C.L.R. 801, cannot succeed in this Case on the ground that the Commission met, at the material time, with insufficient quorum.

We pass, next, to the contention of the Applicant that the promotions of the Interested Parties, as decided upon by the Commission, were made in abuse and excess of powers, especially in view of the disregard of the recommendations made to the Commission:

I have felt no difficulty with regard to the promotion of Interested Party Papadakis. He was one of the recommended candidates. His confidential reports were very favourable and they did contain strong recommendations for promotion. It was certainly reasonably open to the Commission to decide to prefer him to Applicant, in view also of the fact, taken together with all other considerations, that this Interested

Party was by two years senior to the Applicant in the post of Customs & Excise Officer, 1st grade.

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Therefore, this recourse, in so far as it challenges the promotion of Interested Party Papadakis, fails and is dismissed accordingly.

The position with regard to the promotion of Interested Party Hadji-Iossif is rather more complicated; and I have had to consider it at some length.

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There can be no doubt that the Commission, in choosing, from among various candidates, those to be promoted, has quite a wide margin of discretion, and so long as such discretion has been exercised properly and the decision reached was reasonably open to the Commission on the material before it, this Court cannot substitute its own discretion for that of the Commission.

But, there exists in the present Case the glaring, inescapable, fact that in promoting the Interested Party concerned, instead of the Applicant, the Commission promoted an officer who had not been recommended for promotion by his Department, and passed over an officer who had been consistently recommended for promotion by such Department.

A mere perusal of the letter of Mr. Frangeskides — the previous Head of the Department — dated the 10th September, 1964 (*exhibit 3*), copy of which had been sent to the Commission, as well as of the relevant confidential reports, signed by the, at the time, Acting Head of Department, Mr. Philippides, and of the letter of the Director-General of the Ministry of Finance to the Commission, dated the 11th June, 1965, (*exhibit 2*), could have left no doubt to the Commission that it was the consistent and definite view of the said Department, and of its parent Ministry, that the Applicant was fit to be promoted, whereas no mention at all, in this respect, was being made of Interested Party Hadji-Iossif.

It follows that in promoting the said Interested Party, instead of the Applicant, the Commission acted contrary to the recommendations of the Department concerned.

In *Theodossiou and The Republic* (2 R.S.C.C. p. 44), a promotion case, the Court had this to say (at p. 48):

“In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and

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especially so in cases where specialized knowledge and ability are required for the performance of certain duties,”—

and the post of Assistant Collector of Customs does require, by its very nature, specialized knowledge and ability,

— “is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded. If the Public Service Commission is of the opinion that for certain reasons such recommendation cannot be adopted then as a rule such Head of Department or other officer concerned should be invited by the Public Service Commission to explain his views in order that the Public Service Commission may have full benefit thereof, a course which has not been followed in this case.

If, nevertheless, the Public Service Commission comes to the conclusion not to follow the aforesaid recommendation it is to be expected for the effective protection of the legitimate interests, under Article 151 in conjunction with Article 146 of the Constitution, of the candidates concerned, that the reasons for taking such an exceptional course would be clearly recorded in the relevant minutes of the Public Service Commission. Failure to do so would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power”.

And, in *Nedjati and The Republic* (2 R.S.C.C. p. 78) the Court had this to say in relation to recommendations of Heads of Departments (at p. 83):

“It should be pointed out in this connection that the weight to be attached to such recommendations does not, in the opinion of the Court, in any way fetter or curtail the powers of the Public Service Commission but serves the end which the provisions of paragraph 1 of Article 125 are designed to achieve, namely, that the functions of a public office should be performed, in the general interest of the public, by the public officer best suited to perform such duties”.

If we examine the relevant minutes of the Commission

(*exhibit 1*)— which have already been set out in full in this Judgment—it appears that in deciding to prefer a non-recommended candidate, Interested Party Hadji-Iossif, to a recommended one, the Applicant, the Commission has relied on the seniority of the said Interested Party over other candidates, on the relevant annual confidential reports, and on “statements”, regarding such Interested Party, which were made at the meeting of the Commission, of the 1st July, 1965, by Mr. Philippides, the Head of the Department.

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It is correct that the said Interested Party was, at the time, senior to the Applicant in the post of Customs and Excise Officer, 1st grade, by three years, having been appointed thereto in 1958, whereas the Applicant was so appointed in 1961.

As Mr. D. Proestos, a member of the Commission, has stated in evidence, longer service has been taken to entail also longer experience; and quite correctly so; but experience gained through service is a factor intrinsically connected with merits, and it must be assumed that possession of the necessary experience, or lack of such experience, as the case might be, had been duly taken into account, by the successive Heads of the Department concerned, in assessing the merits of the various Customs and Excise Officers, 1st grade, and in deciding whom to recommend for promotion; and they have recommended the Applicant, along with four others, but not Interested Party Hadji-Iossif, in spite of his seniority.

Thus, seniority could not be relied upon, as distinct from the overall picture of merits, in order to outweigh such merits, and also in order to provide justification for acting contrary to the recommendations for promotion made to the Commission, both by means of the annual confidential reports and by means of special communications for the purpose (such as *exhibit 2 and 3*).

It is the paramount duty of the Commission, in the proper exercise of its competence under Article 125 of the Constitution, to select the candidate most suitable for the post in question (see the *Theodossiou* case, *supra*, at p. 17). Seniority is only one of the relevant factors to be taken into account in this respect, and not the decisive factor; it may be the decisive factor only if all other things are equal as between two candidates.

Once the Commission had recognized in its minutes (*exhibit 1*) that "there were other junior candidates who might appear more suitable for promotion on grounds of merit" — (and as Mr. Protestos has told the Court one of them was the Applicant) — and yet the Commission proceeded to by-pass such candidates in favour of a less meritorious, but more senior, one, *viz.* Interested Party HadjiIossif, the Court is forced inevitably to the conclusion that the Commission has, in effect, treated seniority, instead of overall suitability arising out of merits, as the decisive factor, thus acting inconsistently with its duty under Article 125 and applying an erroneous criterion leading to a wrong exercise of its discretion.

Also, the Commission, in preferring for promotion Interested Party HadjiIossif, stated in its minutes (*exhibit 1*) that it did so "having regard" to the annual confidential reports. Mr. Protestos in his evidence stated, *inter alia*, that the confidential reports on the Applicant and the two Interested Parties were very good in the cases of all three of them. But an examination of the recent — (and they are the ones which matter, as showing current merits, see *Jacovides and The Republic*, (1966) 3 C.L.R. p. 212 at p. 222 — confidential reports on the Applicant and Interested Party HadjiIossif, shows that the confidential reports on the Applicant were far superior to those on the Interested Party; such reports could not, by any means, justify preference of the Interested Party to the Applicant, nor could it even be said that they placed them on an equal footing so as to allow seniority to decide the issue; moreover, the confidential reports on the Applicant contained recommendations of his Department for his promotion, whereas the confidential reports on the Interested Party contained no such recommendation; and yet these very same reports were, somehow, relied upon by the Commission as enabling it to act contrary to the recommendations contained therein and in other communications of the Department and Ministry, concerned.

This is, indeed, a case in which this Court has to annul the *sub judice* decision, in so far as it promotes the Interested Party, because material reasoning stated therein is contradicted by the relevant administrative records on which such reasoning has been based (see the *Jacovides* case, *supra*).

The Commission has, also, relied, according to its minutes (*exhibit 1*); on "statements" regarding Interested Party HadjiIossif, by Mr. Philippides, at the meeting of the

1st July, 1965. Unfortunately the effect of such statements has not been recorded in the said minutes, though one would have expected this to have been done. Evidence had, therefore, to be heard in an effort to ascertain the material on which the Commission has based its action. This is, yet, another instance in which the absence of definite provisions, regulating the keeping of the minutes of the Commission in a manner commensurate to the needs of judicial control under Article 146 of the Constitution, has led to difficulties in, and prolongation of, litigation. It is only to be hoped that adequate provision in this respect will be made in the near future, and as early as possible.

The evidence regarding the stand taken by Mr. Philippides at the relevant meeting of the Commission appears to be somewhat conflicting.

Mr. Protestos, who has given evidence first, has told the Court that Mr. Philippides did not appear to endorse the recommendations made by the Director-General of the Ministry of Finance, in his letter of the 11th June, 1965, and that during the course of the discussion of the matter before the Commission, he agreed to the promotion of the two Interested Parties.

Mr. Protestos did not, however, tell the Court of any specific statement made by Mr. Philippides in favour of Interested Party HadjiIossif, and he has, quite fairly, explained that, as a matter of fact, Mr. Philippides was never expressly asked whether he agreed or disagreed with the recommendations contained in the aforesaid letter of the 11th June, 1965, in view of the fact that he appeared already not to endorse them.

Mr. Philippides, on the other hand, has testified — when he was called, by leave of the Court, to give evidence in rebuttal — that he insisted, on the 1st July, 1965, on the adoption of the recommendations of the Ministry, which were in agreement with his own views, but that after the Commission reached its decision, he did not express either agreement or disagreement with such decision, as the Commission was the appropriate organ in the matter.

Mr. Philippides has told the Court that he was asked whether Interested Party HadjiIossif had anything against him and he replied “no”. This is the only statement which according to all the evidence on record Mr. Philippides appears to have

made before the Commission regarding this Interested Party. It was never put to him while being questioned by counsel for Respondent, or the Interested Party, that he had made any other relevant statement.

I think that both Mr. Protestos and Mr. Philippides are witnesses who have done their best to assist the Court by telling it the truth as they remembered it, in relation to proceedings which took place a whole year before the date on which they gave evidence; and neither of them appeared to have kept any notes at the time.

When the evidence of Mr. Protestos and of Mr. Philippides is considered together, as a whole, my conclusions, as to what has been established, are as follows:

I have no reason to disbelieve Mr. Philippides that he adhered to the written recommendations made earlier; any contrary impression must be erroneous. On the other hand I think that the evidence of Mr. Protestos as to Mr. Philippides agreeing to the promotion of the Interested Parties is also truthful, but it is based more on impressions derived from a possibly passive attitude of Mr. Philippides, especially after the relevant decision was reached, rather than from any specific statement made by Mr. Philippides in support of Interested Party HadjiIossif, in particular; it must not be lost sight of in this respect that when Mr. Protestos gave evidence he spoke of Mr. Philippides agreeing to the promotions of *both* Interested Parties, and his recollection to that effect may have been brought about, to a considerable extent, because of agreement by Mr. Philippides for the promotion of Interested Party Papadakis, who *was* one of the recommended candidates.

The fact remains, after all the evidence given before the Court has been gone into, that there does not emerge therefrom any such specific statement, made to the Commission by Mr. Philippides regarding Interested Party HadjiIossif, as could be said to amount to a ground weighty enough to entitle the Commission to depart from the written recommendations before it, which had been based, admittedly, on the merits of the candidates.

It is clear, both from the Commission's minutes (*exhibit 1*) and the evidence of Mr. Protestos, that at no time was Interested Party HadjiIossif found to be superior in merit to a candidate such as the Applicant. What was thrown decisively into the

balance in his favour – and erroneously so, as it has already been held earlier in this Judgment – was his seniority. Even if Mr. Philippides had agreed expressly and unequivocally to the promotion of Interested Party HadjiIossif on the ground of his seniority, notwithstanding his being inferior in merit, thus resorting, at the last moment, himself to a wrong criterion, such a fact cannot be deemed as being sufficient to justify the Commission to disregard official recommendations which had been properly made with merits as the criteria.

This Case is clearly distinguishable from the case of *Constantinou and The Republic* ((1966) 3 C.L.R. 862) where the Head of Department did admit, before the Commission, in unambiguous terms clearly recorded in the relevant minutes, the merits of non-recommended candidates, enabling thus, the Commission to disregard to a certain extent the written recommendations made to it earlier, and to promote junior officers over the head of a senior recommended candidate.

For all the above reasons I have been driven inevitably to the conclusion that the Commission has disregarded the recommendations before it without sufficient reason, and it has made the promotion of Interested Party HadjiIossif inconsistently with its paramount duty under Article 125, through an erroneous exercise of its discretionary powers and in abuse and excess of such powers; the said promotion is declared to be null and void and of no effect whatsoever.

It is now up to the Commission to reconsider the filling of the vacancy in question. The aforesaid Interested Party does remain one of the candidates to be considered, together with the Applicant and other candidates. If the Commission decides to depart from the recommendations of the Department concerned – and I am not expressing any view, or anticipating the Commission's decision, either way – let the reasons for such a course be properly and sufficiently recorded.

Regarding costs, as Applicant has won this Case against one only of the Interested Parties, I have decided to make no order as to costs.

*Order and order as
to costs in terms.*

1967
Jan. 31

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU
AND HADJIANASTASSIOU, JJ.]

REPUBLIC
(COUNCIL
OF MINISTERS)
v.
CHRISTAKIS
VASSILIADES

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Appellant,

v.

CHRISTAKIS VASSILIADES,

Respondent.

(*Revisional Jurisdiction Appeal No. 19.*)

Supreme Court—In its appellate Jurisdiction—Composition and quorum of the Supreme Court in appeals from the decision of a single Judge of the Supreme Court exercising original or revisional jurisdiction under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)—Such appeal lies to the Supreme Court as a whole, subject to any Judge thereof being incapacitated—That is to say to the full Bench, and not to three Judges as provided in section 11(3) of the said Law—No matter whether or not a question of unconstitutionality is being at issue—A Judge or Judges so incapacitated do not sit on appeal in the particular case—And need not be substituted unless the Court thinks that it is so expedient—And the Judge who has heard a case in the first instance is so incapacitated from sitting on appeal in the said case—Sections 2 (1), 3 (1) and (2), 7 (1), 9 (a) and (b), 11 (1) (2) and (3) of the said Law No. 33 of 1964, supra—Meaning of “Court” in the proviso to section 11(2) of the said Law—Constitution of Cyprus, Articles 133.9, 146, 153.9, 155.1, 2 and 4, and Article 163.3.

Composition and Quorum of the Supreme Court—At hearings of appeals from decisions of a Judge of the Supreme Court exercising original or revisional jurisdiction—See above.

Appeals—Supreme Court—Composition and quorum of at hearings of appeals from decisions of a single Judge thereof—See above.

Judge—Judge of the Supreme Court—Incapacitated from sitting on appeals from decisions of a single Judge exercising original or revisional jurisdiction—Whether he should be substituted—The Judge from whose decision the appeal is made is so incapacitated from sitting on the appeal—See, also, above.