

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ATHOS G. GEORGHIADES AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

—
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AND OTHERS
v.
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(PUBLIC SERVICE
COMMISSION)

(Cases Nos. 203/66, 216/66,
222/66, 230/66, 234/66).

Public Officers—Promotions and Appointments—Promotions and appointments to the post of Labour Officer, 2nd Grade, in the Ministry of Labour and Social Insurance—Validity—Vacancies—Advertisement of vacancies—Proper exercise by the Respondent Public Service Commission of its discretion to advertise said vacancies—Scheme of service—Binding on the Public Service Commission—Interpretation and Application of the scheme of service by the said Commission—The Court will not interfere so long as such interpretation or application of the relevant scheme of service was reasonably open to the Commission—The application, however, by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations—Appointment of an outsider to the public service as against suitable persons already in the service—Need of due reasoning of relevant decision—Interview and evaluation of candidates—Regarding two of the three Interested Parties in the present case, it was reasonably open to the Respondent Public Service Commission to prefer them over the Applicants—The latter failed to discharge the burden which lay on them to satisfy the Court that the Commission acted in excess or abuse of powers in relation to these two Interested Parties—On the contrary, as regards the third Interested Party, the decision of the Respondent Commission to appoint him in preference to the Applicants is bad in law, in that it lacks due reasoning—And, also, for lack of sufficient enquiry on the part of the said Commission as to whether the aforesaid Interested Party was duly qualified for appointment under the relevant scheme of service—See, also, herebelow.

Public Officers—Promotions and Appointments—Interview and evaluation of candidates—Proper weight should be given to the Annual Confidential Reports by the Heads of Department, to the relevant recommendations of the superiors—And, also, to the merits and qualifications of the candidates as well as to their comparative seniority—See, also, above under Public Officers ; see, also, herebelow.

Administrative Law—Collective organs—Administrative decisions of collective administrative organs—Need for due reasoning—All the more greater in case of a majority decision—A decision of an administrative collective organ taken without due reasoning is contrary to law i.e. to the general principles of Administrative Law and, also, in excess and abuse of powers—So it is a decision taken without due enquiry as to material considerations e.g. as to the required qualifications of candidates to a post in the public service—See, also, above under Public Officers.

Collective Organs—Decisions of administrative collective organs—Need for due reasoning etc. . . . etc.—See, also, above under Public Officers ; Administrative Law.

Administrative Law—Principles of Administrative Law—See above under Administrative Law.

Schemes of service—Public Service Commission bound to comply with Schemes of Service—Interpretation and application of schemes of service by the said Commission—See above under Public Officers—See, also, below under Language.

Abuse and excess of powers—Onus on the Applicant to satisfy the Court that there has been an abuse or excess of powers—See, also, above under Public Officers ; Administrative Law.

Excess and abuse of powers—See immediately above.

Reasoning—Due reasoning—Need for—See above under Public Officers ; Administrative Law : Collective Organs.

Discretion—Proper exercise of—Defective exercise of—See above under Public Officers ; Administrative Law.

Language—English language—High standard of knowledge of the English language required under a scheme of service in force when Cyprus was still a British Colony—Not amended by the Government of the Republic—Presumption that this scheme has been impliedly approved by the Council of Ministers for the purpose of the Republic, in the form in which it was found to be

on Independence day (i.e. the 16th August, 1960)—The said English language requirement in the said scheme of service is a matter of substance, and not merely of form—See, also, above under Schemes of Service.

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English language—See immediately above under Language.

Decision—Administrative decisions—Decisions contrary to law viz. to the general principles of Administrative Law and, also, taken in excess and abuse of powers—See above under Administrative Law.

Principles of Administrative Law—See above under Administrative Law.

Appointments—Appointments in the public service—First entrant in preference to suitable persons already in the service—See above under Public Officers.

Promotions—Promotions in the public service—See above under Public Officers.

Confidential Reports—Annual confidential reports—Must be given due weight—See above under Public Officers.

Recommendations—Recommendations of candidates by their superior officers—Proper weight must be given to—See above under Public Officers.

Enquiry—Proper enquiry must be carried out into all relevant considerations before an administrative decision taken—See above under Public Officers ; Administrative Law.

The five Applicants in these recourses, all Assistant Labour Officers, challenge the validity of a decision of the Respondent Public Service Commission, reached on the 4th July, 1966, whereby the three Interested Parties Messrs. K., I. and G. were appointed to the post of Labour Officer, 2nd Grade, in the services of the Ministry of Labour and Social Insurance. The first two Interested Parties, being Assistant Labour Officers, were promoted through "secondments" of an indefinite period, which secondments should, thus, be regarded as being, in substance, promotions, though not as yet of a substantive nature. On the other hand, the third Interested Party, Mr. G., was appointed to the aforesaid post of Labour Officer, 2nd Grade, of a first entrant to the public service of the Republic.

On the 28th April, 1966, the Respondent Commission considered the filling of vacancies in the post of Labour Officers,

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2nd Grade, and decided that they should be advertised. The said post being a first entry and promotion post, it was properly open to the Commission, at the time, to decide, in the exercise of its discretion, to advertise the said vacancies. The relevant advertisement was published on the 5th May, 1966, after which twenty-three persons, among whom were the Applicants and the Interested Parties, submitted their relevant applications.

The relevant scheme of service (which is set out in the judgment, *post*) provides, with regard to first entrants, the following, *inter alia*, qualification: "Good knowledge of English of the standard of English Higher (Credit level)".

It would seem that the knowledge of English of the first entrant (*i.e.* the third Interested Party, Mr. G.) was "behind the required standard", at least at the time he applied for appointment on the 10th May, 1966. It should be noted in this respect that the decision complained of is dated the 4th July of the same year, and, in the meantime, this Interested Party appears to have started studying English.

In dismissing the recourse as regards the two first Interested Parties, Messrs. K. and I., but annulling the decision complained of as regards the third Interested Party, Mr. G., the Court:

Held, I. As to the first two Interested Parties, Messrs K. and I.:

(1) Bearing in mind the qualifications, the relevant confidential reports and the comparative seniority of the Applicants and the said two first Interested Parties, I am not prepared to say that I have been satisfied by the Applicants—on whom lay the burden of doing so—that the Respondent Commission has acted in excess or abuse of powers in preferring, instead of the Applicants, Interested Parties Messrs. K. and I.; such a course was reasonably open to it on the basis of the material before it. Moreover, these two Interested Parties had been recommended for promotion by their Head of Department, the Director-General of the Ministry of Labour and Social Insurance.

(2) Nor am I satisfied that Applicants Stylianou and Savva were discriminated against, and not promoted, on the ground of being females.

Held, II. In annulling the sub judice decision as far as the third Interested Party, Mr. G., was concerned, on the ground of lack of due reasoning:

(1) (a) The decision to appoint this Interested Party was a majority one, with three members of the Commission voting in favour of it and two members voting against it.

(b) Nothing is stated at all in the relevant minutes regarding the views of either the majority or the minority. It might, however, be said, on the basis of what is stated in the minutes in relation to the selection of the two first Interested Parties, Messrs. K. and I., that what may have operated in favour of the third Interested Party, Mr. G., were his qualifications and merit ; there could be no question of any seniority of his (he was a first entrant), and his experience was negligible as compared with the experience of other candidates.

(2) It is well settled in Administrative Law that decisions of, *inter alia*, collective administrative organs have to be duly reasoned. (See *PEO and The Board of Cinematograph Film Censors* (1965) 3 C.L.R. 27; *Constantinides and the Republic* (reported in this Part at p. 7 *ante*); *Kasapis and The Council for Registration of Architects and Civil Engineers* (reported in this Part at p. 270 *ante*). Of course, what is due reasoning is a question of degree dependant upon the nature of the decision concerned.

(3) As the need for due reasoning of decisions of collective organs arises mainly out of the fact that they are the result of deliberations of the members of such organs (see Tsatsos, on the "Recourse for Annulment before the Council of State" (in Greece), 2nd ed., p. 151) it follows that such need is all the more greater in case of a majority decision of a collective organ, such as the *sub judice* decision in relation to the third Interested Party, Mr. G. .

(4) Moreover, this was a case in which the Respondent Commission took an exceptional course, in the sense that it preferred an outsider to the service as against persons already in the service some of whom were admittedly suitable to become Labour Officers, 2nd Grade (see *exhibit 1b*). Thus, as promotion prospects of suitable officers were being defeated it was most essential that an adverse for them decision, such as the decision to appoint the said third Interested Party, Mr. G., should set out fully the reason justifying such a course.

(5) (a) In the circumstances I am of the view that whatever reasoning may be gleaned from the minutes of the Commission, or even from any records related thereto, such as the personal file of the Interested Party concerned (*viz.* Mr. G.) (see exhibit 22),

it falls short of what could be considered as due reasoning for the decision to appoint him.

(b) It is not possible to deduce clearly and with certainty the views on the matter of either the majority or the minority in the Commission, so as to be able to decide whether the Commission, through its majority, has acted lawfully and within its powers ; it is not possible to know clearly how the majority of the Commission weighed the academic qualification of the said Interested Party—which was not required even as an additional advantage, by the scheme of service—and reached the conclusion that this Interested Party should be preferred over candidates with considerable length of experience, and even one of them—Applicant in case 203/66—with qualifications directly related to the duties of a Labour Officer, 2nd Grade.

(c) We do not know, in fact, the exact grounds on which this Interested Party was found to be so outstandingly better as to justify his being appointed as a first entrant though there were other suitable candidates already in service ; and we do not know on what ground the minority disagreed with such a course and felt that the recommendation made by Mr. Sparsis, the Director-General of the Ministry, in favour of this Interested Party, ought not to be acted upon ; and on this we do not know whether the majority was unduly influenced by such recommendation.

(6) In the light of the foregoing I have been driven to the conclusion that the decision of the Respondent Commission regarding the appointment of the said Interested Party, Mr. G., must be annulled as not conforming to the minimum, in the circumstances, requirement regarding due reasoning and as being, thus, contrary to law—namely, the relevant principle of Administrative Law (see *Morsis and the Republic* (1965) 3 C.L.R. 1 at p. 9) and, also, in excess and abuse of powers.

Held, III. In annulling the sub judice decision in relation to the said third Interested Party, Mr. G., for the additional reason that the Respondent Commission failed to carry out sufficient enquiry regarding the issue of whether or not the said gentleman was qualified for appointment under the relevant scheme of service for the post concerned :

(1) As laid down in, *inter alia*, *Papapetrou and The Republic* 2 R.S.C.C. 61, the Public Service Commission is bound to comply with the scheme of service relating to a particular post.

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(2) (a) In the present instance the scheme of service provided that first entrants, such as Interested Party Mr G, had to possess a good knowledge of English of the standard of the English Higher examination (Credit Level)

(b) It appears that this scheme of service has been in force since before 1960 when Cyprus ceased being a British Colony. But it must be presumed that this scheme, laying down a rather high standard of knowledge of English, has been impliedly approved by the Council of Ministers, for the purposes of the Republic, in the form in which it was found to be in 1960 (see *Papapetrou's case, supra*)

(c) Moreover, the Director-General of the Ministry, in giving evidence before me, has explained that though local correspondence is conducted in Greek they have still to use the English language in the Ministry of Labour and Social Insurance because of contacts with International Organizations, so the English language requirement in the scheme of service is a matter of substance and not merely of form

(3) (a) The Court will not interfere with either the interpretation or the application of a scheme of service given or made by the Public Service Commission so long as such application or interpretation was reasonably open to the Commission (See *Papapetrou's case, supra*, and *Josephides and The Republic* 2 R S C C 72)

(b) The application, however, by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient enquiry regarding all material considerations

(c) And in the present case I am of the opinion, on the material before me, that such an enquiry has not taken place regarding possession or not by the said third Interested Party, Mr G, of the required knowledge of the English language. In my view, the matter of the standard of knowledge of English of this Interested Party should have been sufficiently enquired into by the Respondent Commission, for the purpose of applying the scheme of service, through an examination written or oral, and not merely by a few questions at the relevant interview

(4) I hold, therefore, that the Respondent Commission has not conducted the sufficiently necessary enquiry into a most material aspect of the matter and that, therefore, it

exercised its discretion in a defective manner, leading to its decision regarding the appointment of this Interested Party being wrong in law and in excess and abuse of powers ; and, thus, it has to be annulled (see *HjiLouca and The Republic* (1966) 12 J.S.C. 1243.).

Held, IV. Result :

For all the above reasons these recourses succeed only to the extent in which they had challenged the validity of the appointment of the said third Interested Party, Mr. G., and fail as regards the rest.

No order as to costs.

Order in terms. No order as to costs.

Cases referred to:

PEO and The Board of Cinematograph Film Censors, (1965) 3 C.L.R. 27;

Constantinides and The Republic (reported in this Part at p. 7 *ante*);

Kasapis and The Council for Registration of Architects and Civil Engineers (reported in this Part at p. 270 *ante*);

Morsis and The Republic, (1965) 3 C.L.R. 1 at p. 9;

Papapetrou and The Republic, 2 R.S.C.C. 61;

Josephides and The Republic, 2 R.S.C.C. 72;

HjiLouca and The Republic, (1966) 3 C.L.R. 854.

Recourse.

Recourse against the validity of a decision of the Respondent concerning appointments to the post of Labour Officer, 2nd Grade, in the Ministry of Labour and Social Insurance.

Applicant in Case 203/66 in person.

L. *Clerides*, for Applicant in Case 222/66.

L. *Papaphilippou*, for Applicants in Case Nos. 216/66, 230/66 and 234/66.

K. *Talarides*, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: The five Applicants in these recourses (A. Georghiades, A. Zambakides, C. Kyriakides, N. Stylianou and O. Savva), all Assistant Labour Officers, challenge the validity of a decision of the Respondent Public Service Commission, reached on the 4th July, 1966, by means of which Interested Parties Kl. Karageorghiades, H. Iacovides and Chr. Georghiou were appointed to the post of Labour Officer, 2nd Grade, in the services of the Ministry of Labour and Social Insurance.

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The first two Interested Parties, being Assistant Labour Officers, were promoted through “secondments” of an indefinite duration—and not for a limited period of time as secondments in the proper sense of the term are to be understood; thus, the secondments of these Interested Parties should be regarded as being, in substance, promotions, though not as yet of a substantive nature; actually, by the same decision of the Commission, two other officers, D. Tymvakis and T. Demetriou, who had previously been seconded to the post of Labour Officer, 2nd grade, were given substantive appointments thereto.

Interested Party Chr. Georghiou was appointed to the post of Labour Officer, 2nd grade, as a first entrant to the public service of the Republic.

All five Applicants challenge the validity of the appointment of Interested Party Georghiou and all Applicants, with the exception of Applicant Zambakides in 216/66, challenge the validity of the secondments of Interested Parties Karageorghiades and Iacovides.

As these Cases relate to one and the same administrative decision they have been heard together and it is proposed, now, to give one Judgment in respect of all of them.

The history of relevant events can be stated shortly as follows:

On the 28th April, 1966, the Commission considered the filling of vacancies in the post of Labour Officer, 2nd grade, and decided that they should be advertised (see its minutes *exhibit* 12).

The post of Labour Officer, 2nd grade, is a first entry and promotion post and it was properly open to the Commission, at the time, to decide, in the exercise of its discretion, to advertise the said vacancies.

The relevant advertisement was published on the 5th May, 1966, (see copy of the advertisement, marked *exhibit 10*).

The scheme of service for the post concerned—on the basis of which the advertisement was made—reads as follows (see *exhibit 2*):

“Labour Officer, 2nd grade (First Entry and Promotion Post)
Salary Scale £570x24—690x30—720.

Duties and Responsibilities:

To undertake inspection of factories shops, hotels and other workplaces; enforcement of labour legislation; investigation of accidents and conciliation in labour disputes; investigation into labour matters; to assist in the administration of social insurance and employment services; to place workers and collect data for statistical purposes. A Labour Officer, 2nd grade, may be required to take charge of a District Labour Office in a small district.

Qualifications Required:

- (a) For First entry: Good knowledge of English of the standard of English Higher (Credit level) and a thorough knowledge of either Greek or Turkish.
- (b) For Both First Entry and Promotion: Ability to deal tactfully with and gain the confidence of employers, workers and the public in general. An understanding of labour problems in relation to labour requirements of industry. Some knowledge of mechanics, structure of buildings, industrial hygiene, industrial welfare and personnel management would be an advantage. Candidates must be energetic and willing to be trained in the technical aspects of their work”.

The Commission decided on the 6th June, 1966, (see its minutes *exhibit 13*) to interview twenty-three Applicants among whom were the Interested Parties and the Applicants. (The applications of the Applicants for appointment are *exhibit 24* in these proceedings and the applications of the Interested Parties are to be found in their personal files which are *exhibits 22, 25 and 26*).

The interviews were held on the 1st July, 1966 (see the minutes *exhibit 14*). The Director-General of the Ministry of Labour and Social Insurance was present as the Head of the Department concerned.

The final decision of the Commission in the matter was taken on the 4th July, 1966, and it reads as follows (see its minutes *exhibit 15*):

"Filling of vacancies in the post of Labour Officer, 2nd grade. The Commission in filling the vacancies in the post of Labour Officer, 2nd grade, and after considering the qualifications, experience and merits of Messrs. D. Tymvakis and T. Demetriou, who were the only Assistant Labour Officers seconded to the temporary post of Labour Officer, 2nd grade, decided unanimously that they be promoted substantively to the permanent post of Labour Officer, 2nd grade, as from the date indicated in each case:

1. D. Tymvakis w.e.f. 1.8.66.
2. T. Demetriou w.e.f. 6.9.66.

The Commission after considering the qualifications, experience, seniority and merits of the candidates interviewed on 1.7.66, and those of Mr. Kl. Karageorghiades who did not attend the interview, being absent from Cyprus on a course of study, decided unanimously that the following be seconded to the temporary (Development) post of Labour Officer, 2nd grade, w.e.f. 1.8.66:

1. Kl. Karageorghiades.
2. H. Iacovides.

The Commission also decided by majority of 3 to 2 that Mr. Chr. Georghiou, be appointed to the temporary (Development) post of Labour Officer, 2nd grade, w.e.f. 1.8.66".

The files of Confidential Reports on the Applicants and Interested Parties Karageorghiades and Iacovides have been produced and are *exhibit 27* in these proceedings. There were no confidential Reports in respect of Interested Party Georghiou because, at the material time, he was being employed in carrying out duties of a Labour Officer, 2nd grade, on a daily wages basis, and he was, therefore, not considered to be in the public service, so that Confidential Reports would be prepared in relation to him.

Counsel for the Respondent has produced a comparative table showing the service and qualifications data of the Applicants and the Interested Parties (see *exhibit 18*). From this table it appears that the Applicants and Interested Parties Karageorghi-

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ades and Iacovides were appointed to the post of Assistant Labour Officer as follows:— Applicant Georghiadēs (in 203/66) since the 1st May, 1963, Applicant Zambakides (in 216/66) since the 15th January, 1958; Applicants Kyriakides (in 222/66) Stylianou (in 230/66) Savva (in 234/66), Interested Party Karageorghiadēs and Interested Party Iacovides, since the 15th November, 1956.

Interested Party Georghiou was first employed on daily wages, as stated above, on the 14th August, 1965.

Bearing in mind the qualifications, the relevant Confidential Reports and the comparative seniority of the Applicants and Interested Parties Karageorghiadēs and Iacovides, I am not prepared to say that I have been satisfied by the Applicants—on whom lay the burden of doing so—that the Commission has acted in excess or abuse of powers in preferring, instead of the Applicants, Interested Parties Karageorghiadēs and Iacovides; such a course was reasonably open to it on the basis of the material before it. Moreover, these two Interested Parties had been recommended for promotion by their Head of Department, the Director-General of the Ministry of Labour and Social Insurance.

Nor am I satisfied, on the material before me, that Applicants Stylianou and Savva were discriminated against, and not promoted, on the ground of being females.

Thus, to that extent these recourses fail.

The case of the appointment of Interested Party Georghiou is quite a different one:

This Interested Party was first employed on daily wages at the Larnaca District Labour Office on the 14th August, 1965, to act as an Employment Officer—a post involving duties of a Labour Officer, 2nd grade; he was, at the time, a graduate of the Athens School of Economics and Commercial Science (Commercial Branch) (see *exhibit 21*). Later, on the 10th March, 1966, he was admitted as an Affiliate Member of the British Institute of Management (see his personal file *exhibit 22*); this affiliate membership is not a further academic qualification but a professional membership.

On the 10th May, 1966, he applied for appointment to the post of Labour Officer, 2nd grade (see in *exhibit 22*).

In a covering letter, dated the 11th May, 1966, (see in *exhibit*

22) the District Labour Officer, Larnaca, reported that this Interested Party was an energetic, diligent and disciplined officer and that his behaviour towards the public was very good. He added, however, that his knowledge of English lacked "behind the required standard" but that he had already started studying and by improving his knowledge of English he was expected to become a very good officer for the post concerned; he ended by stating that the application of the Interested Party was being forwarded with his best recommendations.

The Director-General of the Ministry of Labour and Social Insurance, Mr. Sparsis, forwarded the application for appointment of this Interested Party to the Public Service Commission stating that he agreed with the above report of the District Labour Officer, Larnaca.

According to the evidence of Mr. Sparsis he had discussed with the Minister of Labour and Social Insurance the question of suitable candidates for appointment to the post of Labour Officer, 2nd grade, and the Minister had agreed with the view of Mr. Sparsis that this Interested Party should be one of those to be recommended to the Public Service Commission for appointment.

Mr. Sparsis has told the Court that this Interested Party has been recommended for appointment because, in view of the expansion of the work of the Ministry, persons of ability and with academic qualifications were needed.

Mr. Sparsis has stated that this Interested Party made a good impression on the Commission when interviewed by it in his presence. He added that the question of his knowledge of English was discussed by the Commission and the view was taken that such knowledge was satisfactory; he told the Court, in this connection, that he recollected that some of the questions put to this Interested Party by members of the Commission were put to him, and answered by him, in English.

It is to be noted from the relevant minutes of the Commission (see *exhibit* 15) that the decision to appoint this Interested Party was taken not on the date of the interview—the 1st July, 1966—when Mr. Sparsis was present, but at a subsequent meeting, on the 4th July, 1966, when Mr. Sparsis was not present. Such decision was a majority one, with three members of the Commission voting in favour of it and two members voting against it.

Nothing is stated at all in the said minutes regarding the

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views of either the majority or the minority. It might be said, however, on the basis of what is stated in the minutes in relation to the selection of Interested Parties Karageorghiades and Iacovides, that what may have operated in favour of Interested Party Georghiou were his qualifications and merit; there could be no question of any seniority of his, and his experience was negligible as compared with the experience of other candidates.

It is well settled in Administrative Law that decisions of, *inter alia*, collective administrative organs have to be duly reasoned (see *PEO and The Board of Cinematograph Film Censors* (1965) 3 C.L.R. 27; *Constantinides and The Republic*, (reported in this Part at p. 7 *ante*); *Kasapis and The Council for Registration of Architects and Civil Engineers*, (reported in this Part at p. 270 *ante*)); of course, what is due reasoning is a question of degree dependant upon the nature of the decision concerned.

As the need for due reasoning of decisions of collective organs arises mainly out of the fact that they are the result of deliberations of the members of such organs (see Tsatsos on the "Recourse for Annulment before the Council of State" 2nd ed., p. 151) it follows that such need is all the more greater in case of a majority decision of a collective organ, such as the *sub judice* decision in relation to Interested Party Georghiou.

Moreover, this was a case in which the Commission took an exceptional course, in the sense that it preferred an outsider to the service as against persons already in the service some of whom were admittedly suitable to become Labour Officers, 2nd grade (see the views of the Minister of Labour and Social Insurance to the effect that there were about twelve suitable candidates in the service; and such views were within the knowledge of the Commission by means of a letter addressed to it by the Pancyprian Civil Servants Trade Union—*exhibit 16*). Thus, as promotion prospects of suitable officers were being defeated it was most essential that an adverse for them decision, such as the decision to appoint this Interested Party, should set out fully the reasons justifying such a course.

In the circumstances I am of the view that whatever reasoning may be gleaned from the minutes of the Commission, (*exhibit 15*), or even from any records related thereto, such as the personal file of Interested Party Georghiou, (*exhibit 22*), it falls far short of what could be considered as due reasoning for the decision to appoint him; it is not possible to deduce clearly and with certainty the views on this matter of either the majority or the

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minority in the Commission, so as to be able to decide whether the Commission, through its majority, has acted lawfully and within its powers; it is not possible to know clearly how the majority of the Commission weighed the academic qualification of the Interested Party—which was not required, even as an additional advantage, by the scheme of service—and reached the conclusion that this Interested Party should be preferred over candidates with considerable length of experience, and over one of them—Applicant in 203/66—with qualifications directly related to the duties of a Labour Officer 2nd grade; we do not know, in fact, the exact grounds on which this Interested Party was found to be so outstandingly better as to justify his being appointed as a first entrant though there were other suitable candidates already in service; and we do not know on what ground the minority in the Commission disagreed with such a course and felt that the recommendation made by Mr. Sparsis, in favour of this Interested Party, ought not to be acted upon; and on this point we do not know whether the majority in the Commission was unduly influenced by such recommendation or whether it weighed it duly against all relevant factors.

In the light of all the foregoing I have been driven to the conclusion that the decision of the Commission regarding the appointment of this Interested Party must be annulled as not conforming to the minimum, in the circumstances, requirement regarding due reasoning and as being, thus, contrary to law—namely, the relevant principle of Administrative Law (see *Morsis and The Republic*, (1965) 3 C.L.R. 1 at p. 9)—and also, in excess and abuse of powers. It is, therefore, declared to be null and void and of no effect whatsoever.

There is a further reason for which I am of the view that the appointment of this Interested Party should be annulled and this is that the Commission in appointing him did not carry out a sufficient enquiry regarding the issue of whether or not he was qualified for appointment under the scheme of service for the post concerned (see *exhibit 2*).

As laid down in, *inter alia*, *Papapetrou and The Republic* (2 R.S.C.C. p. 61) the Public Service Commission is bound to comply with the scheme of service relating to a particular post.

In the present instance the scheme of service provided that first entrants, such as Interested Party Georghiou, had to possess

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a good knowledge of English of the standard of the English Higher examination (Credit level).

It appears that this scheme of service, which lays down a rather high standard of knowledge of English, has been in force since before 1960 when Cyprus ceased being a British Colony. But it was up to Government, if it thought fit to dispense with the English language requirement, to amend accordingly such scheme of service. It has not done so and it must be presumed that this scheme has been impliedly approved by the Council of Ministers, for the purposes of the Republic, in the form in which it was found to be in 1960 (see *Papapetrou* and *The Republic (supra)*).

Moreover, Mr. Sparsis, in giving evidence, has explained that though local correspondence is conducted in Greek they have still to use the English language in the Ministry of Labour and Social Insurance because of contacts with International Organizations; so the English language requirement in the scheme of service is a matter of substance and not merely of form.

In *Papapetrou* and *The Republic (supra)* it has been laid down that the Court will not interfere with the interpretation of a scheme of service given by the Public Service Commission so long as such interpretation was reasonably open to it; and as shown by *Josephides* and *The Republic* (2 R.S.C.C. p. 72) the Court will not interfere with the application of a scheme of service by the Commission so long as such application was reasonably open to it.

The application, however, by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient enquiry regarding all material considerations; and in the present Case I am of the opinion that such an enquiry has not taken place regarding the possession or not by Interested Party Georghiou of the required knowledge of the English language.

The Commission had before it a report by the District Labour Officer, Larnaca, that this Interested Party, a subordinate of his, possessed, on the 11th May, 1966, a knowledge of English lacking behind the required standard (presumably that laid down by the scheme of service) and that such Interested Party was studying in order to improve his knowledge of English.

It would not be reasonable to assume with any degree of

certainty that, through the studies of this Interested Party until the 4th of July, 1966, he had improved to a sufficient extent his knowledge of English.

The Court has been told that when he was interviewed by the Commission on the 1st July, 1966,—together with twenty other candidates in one single day—the Commission took the view that his knowledge of English was of the required standard; but we know, on the evidence adduced, that such view was taken through putting some questions to this Interested Party in English, which he answered in English, and through no other inquiry into the matter.

Had it been a question of just a working knowledge of English, one might consider the method by which this Interested Party was tested regarding his English, when interviewed by the Commission, as possibly a proper one; but when a standard of knowledge of English of the English Higher Examination at the Credit level (not only the Pass level) was required by the scheme of service, I think that what took place was a most inadequate way of testing his knowledge of English; and especially after the Commission had been warned about the insufficiency of the knowledge of English of this Interested Party by his District superior at Larnaca, who was in a position to know better about it than any one else.

The question of the standard of knowledge of English of this Interested Party should have been sufficiently enquired into by the Commission, for the purpose of applying the scheme of service, through an examination written or oral, and not merely by a few questions at the interview.

I find, therefore, that the Commission has not conducted the sufficiently necessary inquiry into a most material aspect of the matter and that, therefore, it exercised its discretion in a defective manner, leading to its decision regarding the appointment of this Interested Party being wrong in law and in excess and abuse of powers; and, thus, it has to be annulled (see *HjiLouca* and *The Republic*, (1966) 3 C.L.R. 854).

As the matter will be reconsidered by the Commission, I do not wish to deal with any other aspects of these Cases, especially those involving comparison of the overall merits of the Applicants and this Interested Party, so as not to influence the future views of the Commission at all.

Before, however, concluding this Judgment I should, perhaps,

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state that I found no merit at all in the ancillary complaint of Applicant in 203/66 that since March, 1963 the process followed by the Commission in effecting promotions to the post of Labour Officer, 2nd grade, has been "unorthodox and void". I find that such complaint is too vague to form the subject of a recourse and has, moreover, not been established at all.

For all the above reasons these recourses succeed only to the extent in which they had challenged the validity of the appointment of Interested Party Georghiou and fail as regards the rest.

There shall be no order as to costs, in the circumstances.

Order in terms.

No order as to costs.