1969
Mar. 9
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COSTAS
CHRISTOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

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

COSTAS CHRISTOU,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No.* 51).

Public Officers—Appointments and Promotions—Appointment to the post of Superintendent of Prisons by the Public Service Commission—Majority decision of three to two—Best candidate not chosen—Extraneous consideration taken into account—Misconception of fact—Material factors disregarded—Appointment contrary to law and in excess and abuse of powers—In that one or possibly two of the three majority members of the aforesaid collective organ who voted for the sub judice *appointment—Acted in breach of the paramount duty cast on such organ and on each member individually to select the most suitable candidate for the post—See also herebelow.*

Evidence—Revisional Jurisdiction—Inquisitorial function of—Oral evidence to explain or interpret a clear and unambiguous statement correctly recorded in the minutes of the relevant meeting of a collective organ—And where no reference was made to matters not stated or recorded in such minutes—Such evidence not receivable—Reception of such evidence would be detrimental to the interests of good administration—The cases of Georghiades (No. 2) and the Republic (1965) 3 *C.L.R.* 473 *and* Arkatitis and Others (No. 1) and The Republic (1967) 3 *C.L.R.* 29 *clearly distinguishable—See also herebelow.*

Revisional Jurisdiction—Inquisitorial Function—Evidence—Reception of—The Rules of the Supreme Constitutional Court, 1962 *conferring wide powers on the Court to receive evidence—Discretion of the Court—Limits—The interests of good administration—See also hereabove.*

Inquisitorial function of the Revisional Jurisdiction of the Court—See above.

Appointments and Promotions of Public Officers—Paramount duty of the competent collective organ as well as of each of its members—To select the best candidate for the post concerned—See also hereabove under Public Officers.

Promotions and Appointments of Public Officers—See immediately above.

This is an appeal by the Applicant (Christou) against the dismissal by a Judge of this Court of his recourse under Article 146 of the Constitution in which he was seeking to annul the decision of the Respondent Commission of Public Service dated February 8, 1968, whereby they appointed the Interested Party (Constantinou) to the post of Superintendent of Prisons instead of, and in preference to, the Applicant (now Appellant). The Interested Party, the said Constantinou, was appointed to the post in question on secondment viz. on a temporary and provisional basis by a decision of the Respondent Commission dated July 29, 1964; and held such appointment from month to month for the period between July 1964 and February 8, 1968, when he received the permanent appointment which is challenged in the present case.

The *sub judice* decision of the Respondent Commission was reached by three votes against two. The gist of the case before the trial Judge, and now, on appeal has been all along the issue as to whether or not two of the three members of the majority in the Commission, namely Messrs. Loucas and Protestos, exercised their respective discretionary powers in such a way as to fail in the proper discharge of their paramount duty to appoint to the post in question the *most suitable candidate.* As it appears from the minutes of the relevant meeting of the Respondent Commission of February 8, 1968 the former (i.e. Mr. Louca) stated that "he preferred Constantinou (the Interested Party) having regard to Mr. Antoniou's statement"; (Note: Mr. Antoniou is the Senior Superintendent of Prisons whose statement was in favour of the said Interested Party); the other majority member Mr. Protestos stated that "although believing Mr. Christou (the Appellant) is better, he could not see how Mr. Constantinou's (the Interested Party's) secondment could be terminated". In order to arrive at a conclusion regarding the effect of Mr. Protestos' statement just quoted, the learned trial Judge of this Court allowed Mr. Protestos to give evidence on oath on the view he had taken at the aforesaid meeting, such a course having been duly objected to at the time by counsel for the Applicant (now Appellant.)

The trial Judge dismissed the recourse and the Applicant now appeals from that dismissal. The main argument put forward on behalf of the Appellant was that (1) the evidence of Mr. Protestos (*supra*) ought not to have been received and (2) the majority, whose vote decided the issue at the Respondent's meeting of February 8, 1968 (*supra*), acted in abuse of power in that they failed in their duty to select the best candidate for the post.

Held, Per Vassiliades P.:

(1) This Court has constantly taken the view that the opinion of the Court cannot be substituted for that of the Public Service Commission in such appointments, so long as the Commission acts within the limits of its powers in the proper exercise of its discretion. The Court will only interfere, if it is shown that the Commission or any of the individual members thereof who made the decision, acted improperly or illegally, in excess or abuse of powers.

(2) As to Mr. Louca (*supra*) this member's preference for the Interested Party originates according to the minutes in the Director's of Prisons (Mr. Antoniou's *supra*) statement regarding the two candidates; in other words he attached undue weight to one factor as against other material factors which he does not seem to have considered properly; or at all.

(3) According to the minutes, the other member of the majority (Mr. Protestos *supra*) believed that the appellant was "better"; which can only mean that he considered him better qualified and more suitable for appointment to the post in question. But "he could not see how Mr. Constantinou's (i.e. the Interested Party's) secondment could be terminated". This, in my view, was a clear transgression beyond the limits of this member's duties and powers. This secondment was a consideration which might arouse the member's sympathy and humanitarian feelings; but it should not be allowed to interfere with his duty to appoint the best candidate for the post.

(4)(a) Mr. Protestos was called to explain from the witness box his vote in the making of the Commission's decision the minutes of which were already before the trial Judge (*exhibit* 1). Counsel for the Respondent drew attention to the inquisitorial nature of Court proceedings under a recourse and to the rules regulating such proceedings (The Rules of the Supreme Constitutional Court 1962) which give wide powers to the Court

to receive evidence on any point or matter which the Court might consider necessary for the proper determination of the recourse.

(b) I find myself in agreement with this submission of learned counsel for the Commission to the effect that the nature of the proceedings in a recourse are such as to give the Court much wider latitude in receiving evidence. But in the exercise of such power, experience has led to the development of rules which will guide the Court in receiving such evidence. One of such rules is that in dealing with documentary evidence and particularly correspondence or minutes leading to the executive act or decision under consideration the Court will take the position from the document before it which the Court will, if necessary construe or interpret; and will not admit evidence to explain or interpret the contents of the document. Oral evidence in that connection, is more likely to complicate rather than clarify the issue. It is only in exceptional circumstances that oral evidence will be required to complete the picture presented by the document; and it is for the Court to decide whether in the particular case before it such evidence is necessary or not (*Georghiades (No. 2) and The Republic* (1965) 3 C.L.R. 473; and *Arkatitis (No. 1) and Others and The Republic* (1967) 3 C.L.R. 29, distinguished).

(c) In my view the evidence of Mr. Protestos ought not to have been received. The minutes should speak for the member; and not the member for the minutes.

(d) In any case reading his (Protestos') evidence on record confirms me in the view that he misconceived the question which the Commission had to consider and decide in making this appointment.

(5) For the above reasons, I can have no doubt in my mind that the majority decision in question was taken in abuse of power; and to that extent is illegal and should be declared *null* and *void*.

Held, per Triantafyllides, J.

(1) It was contrary to the interests of good administration to permit in the circumstances of this case, Mr. Protestos a member of a collective organ, to give evidence regarding the nature of his views which had already been officially recorded in the relevant minutes of such organ.

(2) This was not a case in which a member of a collective organ, in expressing his recorded in the minutes views, had made reference to matters not stated, too, in such minutes and as a result it became necessary to hear evidence regarding such matters; nor was there any allegation made that the views of Mr. Protestos had been incorrectly recorded.

(3) It follows that the evidence given by the said member of the Respondent Commission regarding what he stated at the relevant meeting of the Commission was not properly receivable (*Georghiades'* and *Arkatitis'* Cases *supra*, distinguished).

(4) But even if such evidence were not to be excluded, I would still say that it does not materially alter my understanding of the aforesaid views of Mr. Protestos; and on the basis of such views I cannot but conclude that Mr. Protestos did not do duly his paramount duty, as a member of the Respondent Commission, to choose for appointment the best candidate; he was driven off his course by the extraneous consideration of the fact that the Interested Party Mr. Constantinou had been already acting on secondment in the post in question.

(5) Regarding the other member of the Commission—again one of those in the majority—Mr. Louca, I am inclined to the view that he has been unduly swayed by the sweepingly absolute opinion which was expressed by the Senior Superintendent of Prisons, Mr. Antoniou, to the effect that the Appellant "could not have *knowledge* of the treatment of adult convicts;" it might be said that the Appellant did not have *experience* about adult convicts, (because he had specialised in juvenile delinquency and had served for over twenty years at the Reform School) but it could not be assumed that he did not have either any *knowledge* regarding this matter; to that extent what Mr. Antoniou told the Respondent Commission could lead to misconception and it appears that this was the position in the case of Mr. Loucas.

(6) In the circumstances I am of the opinion that the *sub judice* appointment must be annulled as being contrary to law and in excess of powers through a breach of the paramount duty, in Administrative Law, of the Respondent to select the best candidate, and due to misconception. It is now up to the Respondent Commission to reconsider the filling of the vacancy in question taking into account all material factors, including any confidential reports on the candidates, which for

some reason are not mentioned, as having been before the Respondent when the decision was reached which has given rise to these proceedings.

Held, per Josephides, J.:

(1) I concur with the reasons given with regard to the member of the Respondent Commission Mr. Protestos and I have no doubt whatsoever in my mind that for those reasons alone the decision complained of should be annulled as being contrary to law and in excess and abuse of powers.

(2) With regard to the statement of the other member of the Commission, Mr. Loucas, I do not think that if his statement in the minutes stood by itself without the statement of Mr. Protestos I would have reached the conclusion of annulling the said decision of the Commission.

Held, per Loizou, J.:

(1) I agree that the appeal should be allowed. In my view it is sufficient for the purposes of this case, to say that the evidence of Mr. Protestos was wrongly received and that the two cases on which the learned trial Judge relied in receiving such evidence i.e. the *Georghiades'* case (*supra*) and the *Arkatitis'* case (*supra*) are clearly distinguishable from the present case.

(2) The statement of this witness at the meeting of the Commission at which the decision challenged by this recourse was taken seems to be perfectly clear and unambiguous. There he quite clearly says that he considers the appellant the better candidate but he could not see how the Interested Party's secondment could be terminated; and he cast his vote in favour of the Interested Party. It seems to me that the paramount duty of Mr. Protestos was to vote for the appellant i.e. the candidate he considered the most suitable for the post and he should have disregarded all other considerations.

(3) In addition it seems that another member of the respondent Commission Mr. Louca, who has voted for the Interested Party, did not base his decision on his own opinion formed in the light of all material placed before the Commission but was unduly influenced by the opinion of Mr. Antoniou, the Senior Superintendent of Prisons, who was no doubt qualified to express an opinion with regard to the Interested

Party, but was hardly in a position to make the positive statement that the appellant "could not have knowledge of the treatment of adult convicts."

(4) In the result it would appear that at least one and possibly two of the members of the Public Service Commission who voted in favour of the Interested Party did not exercise their discretion properly and have, thus, acted in excess of their powers. Consequently the *sub judice* decision taken by majority of three to two must be annulled.

Held, per Hadjianastassiou J.:

(1) The statement of Mr. Protestos in the relevant minutes appears to be clear and unambiguous. I would therefore accept the submission of counsel for the appellant that the evidence of Mr. Protestos was wrongly received. It would have been a very dangerous practice indeed to allow evidence to explain or add to what was clearly and unambiguously said long before at a meeting of a collective organ. Clearly this is not a case in which it was necessary for the purposes of completing the picture of such action or decision to receive evidence other than the relevant minutes (*Georghiades's* case *supra* and *Arkatitis'* case, *supra distinguished*).

(2) I am in agreement with the learned President of this Court that what Mr. Protestos is recorded in the minutes to have said was that the appellant was the better of the two candidates and more suited for that particular post. Mr. Protestos however, went on to say that he could not see how Mr. Constantinou's (the Interested Party's) secondment could be terminated. But this is a wrong criterion and wrong approach. The paramount duty in effecting appointments or promotions is always to select the most suitable candidate for the particular post having regard to the totality of the circumstances pertaining to each one of the qualified candidates including length of service, which, though always a factor to be considered, is not always the exclusive and vital criterion for such appointment or promotion.

(3) With regard to the statement of the other majority member Mr. Louca, I have reached the view, not without difficulty, that in the exercise of his discretionary powers, it

was reasonably open to him to follow the recommendation of Mr. Antoniou the Senior Superintendent of Prisons. . .

Appeal allowed. Judgment appealed from set aside. Decision of the Respondent Commission annulled. No order as to costs here or at the trial Court.

Cases referred to:

Georghiades (*No.* 2) v. *The Republic* (1965) 3 C.L.R. 473 *distinguished;*

Arkatitis (*No.* 1) *and Others* v. *The Republic* (1967) 3 C.L.R. 29, *distinguished.*

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 14th December, 1968, (Revisional Jurisdiction Case No. 81/68) dismissing Applicant's recourse against the decision of the Respondent Public Service Commission to appoint the Interested Party (Constantinou) to the post of Superintendent of Prisons, instead of, and in preference to, the Applicant.

L. Clerides, for the Applicant.

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

Cur. adv. vult.

The following judgments were read:–

VASSILIADES, P.: After Independence; in 1960, the different branches of the Public Service were placed under different Ministries. The Prison Services were placed under the Ministry of Justice; the Police under the Ministry of the Interior. Moreover, changes were made to meet the requirements of the Zurich and London Agreements and the bicommunal structure of the new State, regarding the percentage of Greek and Turkish officers in the different branches of the Public Service. Furthermore, where the principal officer in any branch or

* Reported in (1968) 3 C.L.R. 715.

office belonged to the one community, his assistant or the second in rank was to come from the other community.

The repercussions of such arrangements which, in a way, put the Civil Service on a communal basis, with the corresponding effect on the loyalties of civil servants, were felt very soon; and were apparently far-reaching. It is not necessary, for the purposes of this judgment, to say more than the problem before us is not entirely unconnected with such arrangements. The principal officer in charge of the Prisons was a Greek; his second in rank was a Turk. And when the political disturbances broke out at the end of 1963, the Turkish Superintendent of Prisons ceased to attend to his duties; same as practically all civil servants belonging to the Turkish community. They kept away from their posts for several months during which no replacements were made, apparently in the hope that a political settlement would soon bring them back to their duties.

Another change in the set up of our Prisons which is not unconnected with this case, was the endeavour to put them on the basis of a reform institution rather than the kind of prison which had to serve its purpose during the period of the emergency prior to independence. The new Director of Prisons, an ex-detainee in one of the camps, went abroad for the purpose of studying and introducing to Cyprus reforms and more up-to-date prison methods. The welfare, the educational and the medical services of the Central Prison were re-organized and are being continuously improved. This, I think, is the background against which this case must be considered.

In July 1964, when some six months had elapsed with the Turkish officers of the Prisons still away from their posts, the Government through the Council of Ministers decided to fill certain vacancies in the prison service, on a temporary basis, to enable the prisons to function without a heavy handicap. So the Public Service Commission were requested as per *exhibit* 7 to fill certain posts, including that of the Superintendent of Prisons, on a *temporary basis from month to month.* Later in the same month, on July 29, the Public Service Commission proceeded to make such appointments accordingly. *Exhibit* 8, on the record before us, is an extract from the minutes of the Commission which, regarding the appointment under consideration, reads as follows:-

"(a) *Superintendent*

The Commission, after considering the qualifications experience and merits of the two serving Assistant Superintendents and taking into account the recommendations of the Senior Superintendent of Prisons, decided that Mr. A. Constantinou be seconded to the post of Superintendent".

The Senior Superintendent referred to in this minute, is the present Director, Mr. O. Antoniou.

It was in these circumstances that the Interested Party in this recourse, was appointed to the post in question, on a temporary and provisional basis; and held such appointment from month to month for the period between July 1964 and February 8, 1968, when he received the appointment under consideration, the subject-matter of this recourse. His appointment was made in the following circumstances:

In March 1967, the Council of Ministers had authorized the filling of a number of vacancies as it appears in *exhibit* 4 on the record; and on June 28, the Council issued general authority to the Public Service Commission to consider as vacant certain posts in the public service held by Turkish officers who continued to absent themselves from duty; and proceed to fill them if the exigencies of the service so required. This was followed by a subsequent direction, on November 2, 1967 (circular No. A3) to the effect that "only in exceptional cases where the efficiency of the service was likely to be adversely affected", the filling of such posts should be considered. It was after this circular, according to *exhibit* 4, that the Commission interviewed on November 22, the six candidates named therein for the post in question, including the appellant and the interested party.

The scheme of service regarding the post in question is found in *exhibit* 2 on the record. I do not find it necessary to read it all, but I consider it usefull to refer to the qualifications required for the post which start with a University degree or diploma (such as for social services, psychology, etc.) or its equivalent or "special training in prison administration and administrative ability and experience". Other qualifications required are thorough knowledge of prison legislation and regulations and of Criminal Law and Procedure; and a good knowledge of English. Also, a high moral character, strong

personality and stability of temperament, initiative and other such qualifications which indicate the kind of responsibilities which the appointee would be expected to carry. The post was published in the Official Gazette as a first entry and promotion post; and, eventually, the Public Service Commission reached the stage of having to choose between the appellant and the interested party. In this connection, *exhibit* 3 is useful as a comparative table showing the service and qualifications of the Appellant on the one hand and that of the Interested Party on the other. Again, I find it unnecessary to read the whole of this exhibit; but I would draw attention to certain particulars in comparison regarding the two candidates.

The Appellant entered the Public Service in September 1945, as assistant master at the Reform School, where he is still serving, having been promoted to the post of master in 1954; acting headmaster for some six months in 1958; and finally as assistant headmaster from 1958 to the present date. The Interested Party, on the other hand, entered the service as a 4th class prison warder in 1935 and worked his way up the different grades of prison warder; then became sergeant warder in 1942; senior warder in 1946; inspector in 1948; chief inspector in 1954; assistant superintendent in 1962; and, on secondment, served as superintendent of prisons from August 1964, to the date of the *sub judice* appointment in March, 1968, in the circumstances stated earlier.

The basic qualification of the Appellant is that of a qualified teacher from the Teachers' Training College, Morphou, in 1944; and the Rural Central School in 1945. He has also taken a special course in National Social Welfare in the U.S.A. between August and December 1961.

The main qualification of the Interested Party is a graduate of the Mitsis Commercial School Lemythou (1927–1932) and English School Nicosia (1932–1934). He has also passed a number of Government examinations, such as Financial Instructions (1952), General Orders (1953), Departmental Prison Exam. (1963), Prison Administration in the United Kingdom for a month, in 1953, and examinations in Criminal Law and Procedure for Assistant Superintendents in June 1963.

The Public Service Commission considered finally the appointment in question at their meeting of February 8, 1968, the minutes of which are before the Court as *exhibit* 1. The

Senior Superintendent of Prisons, Mr. Antoniou, according to the minutes, stated to the Commission that the Interested Party held the post in question on secondment since August 1, 1964, and that though he "may not be excellent in all respects" he has carried his duties very satisfactorily. On the other hand, regarding the Appellant, Mr. Antoniou expressed the opinion that, although he (the Appellant) seemed to have specialized in juvenile delinquency, as his experience was acquired at the Reform School, he "could not have knowledge of the treatment of adult convicts".

One would, naturally, expect the Director of Prisons to support the candidature of his assistant; a man with whom he had worked for a considerable time. But the weight which should be given to his opinion regarding the experience of the other candidate, is a matter which should, at least, be considered together with the recommendation which the Headmaster of the Reform School gave regarding the Appellant, as it appears in *exhibit* 5 which was before the Commission at the time. This is a letter dated August 29, 1967, with which the Headmaster of the Reform School, where the Appellant was working, forwarded the latter's application for the post. The letter states that the Appellant had been working at the Reform School since 1945; that he has been a very capable officer, who has shown great initiative and was taking part in all the activities, organization and the administration of the School; that he played an important role and contributed a great deal to the good functioning of the Reform School; and that, although his services were very valuable to the School, the Headmaster had no doubt that the Appellant was a most suitable person for the appointment in question and strongly recommended his Application. Here, again, we have a Headmaster naturally supporting his assistant; but nowhere in the minutes of the Public Service Commission does it appear what weight did the members give to this recommendation.

Eventually, the Commission (consisting of five members) decided, by a majority of 3 to 2, to appoint the interested party in preference to the Appellant. This is the appointment challenged by the present recourse. The minutes (*exhibit* 1) reflect the way in which the decision of the Commission was taken. I shall read here the material part of the minutes:-

> "After discussion, Mr. D. Theocharis stated that he considered Mr. Constantinou better than Mr. Christou.

Mr. Y. Louca preferred Constantinou to Christou, having regard to Mr. Antoniou's statement. Mr. D. Protestos, although believing that Mr. Christou is better, could not see how Mr. Constantinou's secondment could be terminated. The Chairman and Mr. Lapas felt that Mr. Christou with his training, his long experience at the Reform School and his general knowledge of the treatment of offenders as demonstrated very clearly during the interview, was on the whole the best. Mr. Christou proved to be a person of strong character and with his qualities and education he would have made an ideal Supt. of Prisons; he would bring in new ideas of treatment of offenders with very good results. Mr. A. Constantinou is an old man having had no special education he is of ill-health and belongs to the old school with obsolete and useless ideas for the treatment of prisoners. The fact that he had been seconded to the post cannot carry weight as at the time, the secondment was made taking into consideration the existing staff only, and no outsiders".

This decision is challenged by the recourse, mainly on the ground that the majority, whose vote decided the issue, acted in abuse of power, in that they failed in their duty to select the best candidate for the post.

This Court has constantly taken the view that the opinion of the Court cannot be substituted for that of the Public Service Commission in such appointments, so long as the Commission acts within the limits of its powers in the proper exercise of its discretion. The Court will only interfere, if it is shown that the Commission or any of the individual members thereof who made the decision, acted improperly or illegally, in excess or abuse of their power.

In the case of this particular decision, as reflected in the minutes (*exhibit* 1), the three members, whose vote constituted the majority, exercised their powers as follows:–

One of them, Mr. Theocharis, considered the Interested Party as the better of the two. The minutes do not state the reasons for which, in view of the material already referred to, this member came to his decision. But it must, I think, be assumed that he did so, taking everything into consideration and attaching to each factor its proper weight, according to his own assessment. The same, however, cannot be said

regarding the vote of the other member, Mr. Y. Louca. According to the minutes, this member's preference for the Interested Party, originates in Mr. Antoniou's statement regarding the two candidates; and shows that he attached undue weight to one factor as against other material factors which he does not seem to have considered properly; or at all.

It is, therefore, in my opinion, very doubtful whether this member of the Commission made proper use of his power; and did not act in a way amounting to abuse of such power. Leaving, however, for the moment the matter at that, I shall proceed to consider the vote of the other member, Mr. Protestos. According to the minutes, this member believed that the Appellant was "better"; which can only mean that he considered him better qualified and more suitable for appointment to the post in question. But "he could not see how Mr. Constantinou's secondment could be terminated". This, in my view, was a clear transgression beyond the limits of this member's duties and powers. The Commission were not considering the secondment to the post. That was done in 1964. The Commission were now considering the filling of the post by promotion or by a new entry. The secondment of the Interested Party to the post in question was expressly made temporary for the reasons stated earlier in this judgment; and had continued on a month to month basis. The fact that the appointment of another person to the post would result in the discontinuation of the Interested Party's temporary secondment could not be the decisive factor in the matter. It was a consideration which might arouse the member's sympathy and humanitarian feelings; but it should not be allowed to interfere, in my view, with his duty to appoint the best of the candidates for the post; particularly the post in question which, as rightly pointed out during the hearing of this appeal, might have repercussions not only on the Prison services as a whole but also on the lives of many people for, presumably, considerable period.

The reasons for which the Chairman and the other member of the Commission who agreed with him, took a different view, as reflected in the minutes (*exhibit* 1), afford ample explanation as to why Mr. Protestos thought that between the two candidates the appellant was "better". The minutes are quite clear about it.

Considering that the vote of this member made such material difference to the decision of the Commission, I would be

inclined to hold that, in the circumstances, this use of his powers by the member in question, was sufficient to vitiate the decision of the Commission. Had this member given his preference to the candidate whom be considered "better", regardless of the termination of a secondment which was of such temporary nature, the decision of the Commission would be a majority decision in favour of the Appellant instead of a majority decision in favour of the Interested Party.

I shall now proceed to deal, shortly, with the other point taken in this appeal regarding the evidence of Mr. Protestos in this recourse. He was called to explain from the witness-box his vote in the making of the Commission's decision the minutes of which were already before the trial Judge. Counsel for the Appellant objected to such evidence on the basis of the two cases cited by him: *Georghiades (No. 2)* v. *The Republic* (1965) 3 C.L.R. 473 and *Arkatitis and Others (No. 1)* v. *The Republic* (1967) 3 C.L.R. 29. The learned trial Judge ruled that statements appearing in the Judgments in those two cases, afforded good ground for receiving the evidence of Mr. Protestos. During the hearing of the appeal before us, learned counsel for the Respondent drew attention to the inquisitorial nature of Court proceedings under a recourse and to the rules regulating such proceedings (Rules of the Supreme Constitutional Court, 1962) which give wide power to the Court to receive evidence on any point or matter which the Court might consider necessary for the proper determination of the recourse.

Learned counsel pointed out that, unlike ordinary proceedings between party and party where the Court decides the case on the material placed before it by the parties, according to the rules of procedure and the law of evidence, proceedings under a recourse are of a public nature where the function of a Court is to investigate into the matter and decide the question before it upon such evidence as the Court might consider necessary for the purpose.

I find myself in agreement with this submission of learned counsel for the Commission to the effect that the nature of the proceedings in a recourse are such as to give the Court much wider latitude in receiving evidence material for the determination of the issue before it. But, in the exercise of such power, experience has led to the development of rules which will guide the Court in receiving such evidence. One

of such rules is that in dealing with documentary evidence and particularly correspondence or minutes leading to the executive act or decision under consideration, the Court will take the position from the document before it which the Court will, if necessary, construe or interpret; and will not admit evidence to explain or interpret the contents of the document. The construction and interpretation of the document is a matter for the Court; and oral evidence in that connection, is more likely to complicate rather than clarify the issue. It is only in exceptional circumstances that oral evidence will be required to "complete the picture" presented by the document; and it is for the Court to decide whether in the particular case before it, such evidence is necessary or not. The two cases referred to are, in my opinion, distinguishable on their facts; and do not, I think, support the contention that the oral evidence of Mr. Protestos now found on the record, was necessary or should be received to explain his view of the matter before the Commission and the reasons for which he cast his vote as he did. The minutes should speak for the member; and not the member for the minutes. In any case, reading his evidence confirms me in the view that he misconceived the question which the Commission had to consider and decide in making this appointment.

Looking at it in its background, I can have no doubt in my mind that the majority-decision in question was taken in abuse of power; and to that extent is illegal and should be declared as *null* and *void.*

I would allow this appeal and make a declaration annulling the decision accordingly; but in the circumstances, I would make no order for costs either at the trial Court or here.

TRIANTAFYLLIDES, J.: I agree with the learned President of the Court that this appeal should be allowed.

My reasons for doing so may be formulated as follows:-

The subject-matter of the present proceedings is a decision of the Public Service Commission, which was reached by three votes against two; and, of course, what we are concerned with is the validity of the majority decision, as reached by three members of the Commission, because that is what constitutes in law the decision of the Commission.

The gist of the case before the trial Judge—and on appeal, now, before us—has been, all along, the issue as to whether

or not two of the three members of the majority in the Commission have exercised their discretionary powers in such a way as to fail in the proper discharge of their duty to appoint the most suitable candidate.

The one of the said two members is Mr. D. Protestos, who, according to the minutes of the meeting of the Commission of the 8th February, 1968, (when the *sub judice* appointment of the Interested Party, A. Constantinou, as Superintendent of Prisons was decided upon) stated that "although believing that Mr. Christou"—the Appellant—"is better, could not see how Mr. Constantinou's secondment could be terminated".

At the time the Interested Party had been acting in the said post, on secondment, since the 1st August, 1964, whereas the Appellant had applied for a first entry appointment thereto, being Assistant Headmaster of the Reform School, which is an institution for juvenile delinquents.

In order to arrive at a conclusion regarding the true effect of the aforequoted statement of Mr. Protestos, the learned Judge of this Court, who tried the case, allowed Mr. Protestos to give evidence on oath on this point; contrary to an objection to such a course which was raised by counsel for the Appellant.

The two earlier cases—*Georghiades (No. 2) and The Republic* (1965) 3 C.L.R. 473 and *Arkatitis (No. 1) and The Republic* (1967) 3 C.L.R. 29—which were relied upon as relevant precedents, by the trial Judge, in receiving the evidence of Mr. Protestos, are in my view clearly distinguishable from the present case, in view of the materially different circumstances in which evidence was allowed to be adduced during the hearing of such cases.

There is no doubt that the parties to revisional jurisdiction proceedings, under Article 146 of the Constitution, are at liberty to adduce proof in support of their contentions. But, it is absolutely clear, on the other hand, that the ultimate responsibility for, and control of, the reception of evidence in such proceedings, lies with the trial Judge, in the discharge of his inquisitorial function in relation to the validity of the administrative action, or omission, which is *sub judice* before the Court.

A trial Judge has quite a wide discretion in this respect, but such discretion has to be exercised in a manner which is,

inter alia, compatible with the paramount object of the existence of the revisional jurisdiction under Article 146, namely, to ensure good administration; therefore, such discretion cannot be exercised in a manner which will be inconsistent with good administration.

I think it was contrary to the interests of good administration to permit—in the light of the circumstances of the present case—Mr. Protestos, a member of a collective organ, to give evidence regarding the nature of his views, which had already been officially recorded in the minutes of such organ.

This was not a case in which a member of a collective organ, in expressing his recorded in the minutes views, had made reference to matters not stated, too, in such minutes and as a result it became necessary to hear evidence regarding such matters; nor was there any allegation made that the views of Mr. Protestos had been incorrectly recorded.

I have had, really, no difficulty in coming to the conclusion that the evidence given by Mr. Protestos in this case, regarding what he stated at the relevant meeting of the Public Service Commission, was not properly receivable.

But even if such evidence were not to be excluded, I would say that it does not materially alter my understanding of the aforesaid views of Mr. Protestos; and on the basis of such views I cannot but conclude that Mr. Protestos did not do duly his paramount duty, as a member of the Respondent Commission, to choose for appointment the best candidate; he was driven off course by the extraneous consideration of the fact that the Interested Party had been already acting on secondment in the post in question.

Regarding the other member of the Commission—again one of those in the majority—Mr. Y. Louca, I am inclined to the view that he has been unduly swayed by the sweepingly absolute opinion which was expressed by the Senior Superintendent of Prisons, Mr. Antoniou, to the effect that the Appellant "could not have knowledge of the treatment of adult convicts"; even though he had specialized in juvenile delinquency and had served for over twenty years at the Reform School; it might be said that the Appellant did not have *experience* about adult convicts, but it could not be assumed that he did not have any *knowledge* regarding this matter; to that extent what Mr. Antoniou told the Respondent Commission could lead to

misconception and it appears that this was the position in the case of Mr. Louca.

In this connection I cannot agree with the learned trial Judge, who does not appear to think that Mr. Antoniou's statement was the primary consideration which led Mr. Louca to vote as he did; I take the view that Mr. Louca's views owe directly, and practically exclusively, their origin to the said statement.

In the circumstances I am of the opinion that the appointment of the Interested Party, as decided by the Respondent, should have been annulled by the trial Judge, as being contrary to law and in excess of powers (through a breach of the paramount duty, in Administrative Law, of the Respondent to select the best candidate, and due to misconception).

In the result this appeal succeeds; the first instance judgment, which has been appealed against, is set aside, and the decision to appoint the Interested Party to the post of Superintendent of Prisons, as taken by the Respondent on the 8th February, 1968, is declared to be *null* and *void* and of no effect whatsoever. It is now up to the Respondent to reconsider the filling of the vacancy in question, taking into account all material factors, including any Confidential Reports on the candidates, which for some reason are not mentioned as having been before the Respondent when the decision was reached which has given rise to these proceedings.

JOSEPHIDES, J.: I agree that the decision of the Respondent Commission to appoint the Interested Party was contrary to law and in excess of powers and should, therefore, be annulled.

I concur with the reasons given with regard to Mr. Protestos (a member of the Respondent Commission), and I have no doubt whatsoever in my mind that for those reasons alone the decision should be annulled.

With regard to the statement of the other member of the Commission, Mr. Louca, I do not think that if his statement in the minutes stood by itself, without the statement of Mr. Protestos, I would have reached the conclusion of annulling the decision of the Commission.

In the result I would allow the appeal, set aside the judgment of the trial Judge, and declare the decision of the Respondent Commission *null* and *void.*

LOIZOU, J.: I also agree that the appeal should be allowed. In my view it is sufficient, for the purposes of this case, to

say that the evidence of Mr. Protestos was wrongly received and that the two cases on which the learned Judge relied in receiving such evidence i.e. *Georghiades (No. 2) and The Republic* (1965) 3 C.L.R. 473 and *Arkatitis (No. 1) and The Republic* (1967) 3 C.L.R. 29, are clearly distinguishable from the present case.

The statement of this witness at the meeting of the Commission at which the decision challenged by this recourse was taken, which appears in the extract from the minutes of that meeting (*exhibit* 1) seems to be perfectly clear and unambiguous. There, he quite clearly says that he considers the Appellant the better candidate but he could not see how the Interested Party's secondment could be terminated; and he cast his vote in favour of the Interested Party. It seems to me that the paramount duty of Mr. Protestos was to vote for the candidate whom he considered the most suitable for the post and he should have disregarded all other considerations. In addition, it may be reasonably assumed from the same exhibit that another of the members of the Public Service Commission who voted for the Interested Party, Mr. Y. Louca, did not base his decision on his own opinion formed in the light of all material placed before the Commission but was unduly influenced by the opinion of Mr. Antoniou, the Senior Superintendent of Prisons, who was no doubt qualified to express an opinion with regard to the Interested Party, but was hardly in a position to make the positive statement that the Appellant "could not have knowledge of the treatment of adult convicts".

In the result, it would appear that at least one and possibly two of the members of the Public Service Commission who voted in favour of the Interested Party did not exercise their discretion properly and have, thus, acted in excess of their powers.

For the above reasons, the decision of the Public Service Commission, taken by majority of 3 to 2, should, in my view, be annulled.

HADJIANASTASSIOU, J.: I agree that this appeal should be allowed, and that the decision of the Public Service Commission should be annulled, but I would like to elaborate on the considerations which have led me to this result.

In this case, the main contention of counsel for the Appellant was that the learned trial Judge, in dismissing the recourse appealed from, erroneously heard the evidence of Mr. D.

Protestos, with a view to explaining what he actually stated at the meeting of the Public Service Commission on February 8, 1968, particularly so, since what was recorded in the minutes was a clear and unambiguous statement; and that his decision to receive evidence was contrary to the principles formulated in the case of *Cleanthis Georghiades (No. 2)* v. *The Republic* (1965) 3 C.L.R. 473, and *Arkatitis (No. 1)* v. *The Republic* (1967) 3 C.L.R. 29.

I will now deal in brief with the material facts of this case:-

The Appellant has joined the Public Service since 1945, and he is now holding the post of assistant headmaster of the Reform School of Lapithos, since September 1, 1958. In August 1967, the Appellant, after reading in the Cyprus Gazette an advertisement for the filling of the post of Superintendent of Prisons, he applied for appointment to this post. On November 11, 1967, the Applicant was interviewed for this post—which was a first entry and promotion post—by the Public Service Commission.

On February 2, 1968, the Public Service Commission at their meeting, after considering the two candidates, decided by majority of 3 to 2, that Mr. A. Constantinou be appointed substantively to the post of Superintendent of Prisons as from the 1st March, 1968. I propose reading extracts from the minutes of the meeting of the Commission.

> " Mr. Antoniou stated that candidate Aristides Constantinou Asst. Supt., on secondment to the post of Supt. of Prisons since 1.8.64, may not be excellent in all respects but since his secondment he has carried out the duties attaching to the post very satisfactorily. Another candidate, namely C. Christou, was in Mr. Antoniou's view specialized in juvenile delinquency as his experience was in the reform school and could not have knowledge of the treatment of adult convicts.
>
> After discussion, Mr. D. Theocharis stated that he considered Mr. Constantinou better than Mr. Christou, Mr. Y. Louca preferred Constantinou to Christou, having regard to Mr. Antoniou's statement. Mr. D. Protestos, although believing that Mr. Christou is better, could not see how Mr. Constantinou's secondment could be terminated. The Chairman and Mr. Lapas felt that Mr. Christou with his training, his long experience at the reform school

and his general knowledge of the treatment of offenders as demonstrated very clearly during the interview was on the whole the best. Mr. Christou proved to be a person of strong character and with his qualities and education he would have made an ideal Supt. of Prisons; he would bring in new ideas of treatment of offenders with very good results. Mr. A. Constantinou is an old man having had no special education; he is of ill-health and belongs to the old school with obsolete and useless ideas for the treatment of prisoners. The fact that he had been seconded to the post cannot carry weight as at the time the secondment was made taking into consideration the existing staff only and no outsiders".

Pausing there for a moment, I would like to repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned; although I must admit, that the Public Service Commission rightly takes into consideration the secondment for the purposes of considering the experience of the public officer. But, in their search to select the best candidate for the particular post, the Public Service Commission should carefully consider the merits and the qualifications of each candidate and should not give undue weight to the fact that one of the candidates was acting on secondment to that particular post.

The Appellant, feeling aggrieved because of the decision of the Commission, made a recourse No. 81/68, to the Supreme Court, seeking a declaration that the decision of Respondent to appoint and/or promote Mr. Aristides Constantinou to the post of Supt. of Prisons in preference to the Applicant is *null* and *void* and of no effect whatsoever.

The application was based on the following ground of law:– That, under Art. 125 of the Constitution, the Respondent had a duty to effect promotions in the Public Service. It was contended that the decision taken by Respondent in promoting the Interested Party in preference and instead of the Applicant, amounts to an abuse of power within the ambit of Art. 146 of the Constitution and, as such, it should be declared *null* and *void*, in that the Respondent failed in its paramount duty to select the best candidate for the post.

On July 4, 1968, the learned trial Judge, on an application made by counsel for the Respondent to hear the evidence of

Mr. D. Protestos, on the issue that the minutes of the meeting of the Public Service Commission were not clear and unambiguous, and although objected to by counsel for the Appellant, nevertheless ruled that having given the best consideration that he could during the break, he thought the evidence was admissible.

The learned trial Judge then proceeded to hear the evidence of Mr. Protestos and, in his judgment, after dealing with the authorities cited, had this to say about the issue of the reception of evidence:-

> "In my judgment, no valid distinction as regards admissibility can be drawn between the matter objected to in the latter case and Mr. Protestos's evidence as to what he had in fact said at the Commission's meeting of February 8 last and accordingly that case provides a precedent for the admission of Mr. Protestos's evidence.
>
> It follows that I must proceed to consider the effect, if any, of that evidence. And first, is it acceptable? It has not been disputed; minutes of a meeting do not necessarily convey accurately what actually passed at the meeting; and the evidence is both inherently credible and consistent with the minutes. Accordingly, I accept it as true."

I would like to begin by saying that, with due respect to the learned trial Judge's opinion, I hold a different view because a judgment must be read in the light of the facts of the case in which it is delivered. Having had the advantage of reading the decision of those two cases, and particularly *Arkatitis*' case, I have reached the view that the facts of those cases are distinguishable from the facts of the present case, and should not have been followed by the trial Court. Furthermore, I would like to add that, in my opinion, as the statement of Mr. Protestos in the minutes appears to be clear and unambiguous, I would, therefore, accept the submission of counsel that the evidence was wrongly received.

There is no doubt that it is within the province of the Court to construe the document in question, and the fundamental rule of interpretation is that if the words of a document are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary

sense, the words themselves in such case best declaring the intention of the writer. In my view, therefore, it would have been a very dangerous practice indeed to allow evidence to explain or add to what was said long after the meeting was over. In my opinion, in view of the fact that the words were clear and unambiguous and that this was not a case in which it was necessary to complete the picture of such action or decision of the Commission, the Court was not entitled, in the particular facts of this case, to receive this evidence.

As I said earlier, what Mr. Protestos is recorded as having said was that he thought that the Appellant was the better of the two candidates and more suited for that particular post. I am in agreement with the learned President of the Court, that those words could only mean that he considered Mr. Christou better qualified. But, he went on to say that he could not see how Mr. Constantinou's secondment could be terminated and this, in my view, should not have been the criterion in the mind of this member, because, although no doubt based on humanitarian reasons, was nevertheless, a wrong approach.

In my opinion, the paramount duty of the Public Service Commission in effecting appointments or promotions, is to select the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates including length of service, which, though always a factor to be considered, was not always the exclusive vital criterion for such appointment or promotion.

Having reached the conclusion that the decision of the Commission was contrary to the provisions of the Constitution and that it was taken in excess of their powers, I would, therefore, accept this submission of counsel for the Appellant, and declare that their decision to promote Mr. A. Constantinou should be declared *null* and *void.*

I would like, however, to observe that with regard to the statement of Mr. Louca—after giving the matter some consideration—I have reached the view, not without difficulty, that in the exercise of his discretionary powers, it was reasonably open to him to follow the recommendation of Mr. Antoniou and vote for the candidate of his choice. However, I would have expected him to give fuller reasons explaining further his decision to vote in favour of Mr. Constantinou.

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For the reasons I have endeavoured to explain, I would allow the appeal and declare that the decision of the Commission was taken in excess of their powers under the Constitution, and must be declared *null* and *void* and of no effect whatsoever.

Appeal allowed; no order as to costs here or at the trial Court.