

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS KYPRIANOU AND OTHERS (NO. 2),

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

PANTELIS
KYPRIANOU
AND OTHERS
(NO. 2)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Cases Nos. 362/72 & 366/72).

Administrative Law—Collective Organ—Has to act under the notion of good administration—Minutes of meetings of a Collective Organ—Absence of minutes or non-clarity of, may deprive decision reached of due reasoning—Public Service Commission—Not stating in its minutes whether applicant was considered for promotion—Allegation that he was not included in a list which was before the Commission—Non clarity of minutes in this case deprives the sub judice decision of due reasoning—Commission has acted in abuse of its powers—Sub judice decision annulled.

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10 *Public Officers—Promotions—Minutes of Public Service Commission not stating whether applicant was considered for promotion—Sub judice promotion not duly reasoned because of lack of clarity—Annulled.*

15 *Collective Organ—Minutes of—Clarity of minutes—Requirement to keep written records—Notion of good administration.*

The applicants in these recourses challenge the validity of the decision of the respondent Public Service Commission to promote the interested party to the post of Accounting Officer 1st Grade in the Treasury Department.

20 Counsel for applicant No. 3 contended that his client was not considered for promotion: and he pointed out, in this respect, that in the file which was before the Commission there was a list of the candidates and the name of this applicant was not included therein.

25 The minutes of the Commission being silent on this point the Court, in accordance with established practice, sought to direct

1975
May 23

—
PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

the production of further evidence by the Commission in order to supplement the minutes. The Commission, however, stated that they were unable to add anything further because of lapse of time.

It should be added, also, that the promotion of the interested party to the above post had been the subject of earlier proceedings which led to its annulment (see (1972) 3 C.L.R. 337) and the Court, along with annulling the promotion on another ground, drew attention to the absence of this applicant's name from the list of those considered for promotion.

Held (1). The requirement of keeping written records is primarily for purposes of good administration. And the Commission has failed to satisfy the principle that a collective body has to act under the notion of good administration.

(2) In the absence of legislative provision regulating the matter, the non-keeping of minutes by a collective organ does not always vitiate a particular decision, except if the absence of minutes or absence of clarity in the minutes tends to deprive the decision of due reasoning. The non clarity of the minutes in this case deprives the decision of the Commission of due reasoning. I have thus reached the conclusion that the Commission has acted in abuse of its powers.

(3) Although there is a presumption in favour of the correctness of the findings of fact by the administration, in this case once counsel has succeeded in rendering possible the existence of misconception of fact on the part of the Commission, I have a doubt even about the correctness of the findings of fact by the administration. Therefore, since production of further evidence by the Commission was not possible because of lapse of time, I decided to annul the *sub judice* decision so that the administration may ascertain the actual circumstances in a way not leaving doubts. (See *Pierides v. The Republic* (1969) 3 C.L.R. 274 at p. 290; and *Stassinopoulos on the Law of Administrative Acts*, 1951 ed. at p. 305).

Sub judice decision annulled.

Cases referred to:

Panayiotou and Others v. The Republic (1972) 3 C.L.R. 337;

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

HadjiLouca v. The Republic (1969) 3 C.L.R. 570 at p. 574;
Korai and Another v. Cyprus Broadcasting Corporation (1973) 3
C.L.R. 546, at pp. 564-565;
Pierides v. The Republic (1969) 3 C.L.R. 274 at p. 290;
5 *Decisions of the Greek Council of State*: Nos. 166/29 and 107/36.

1975
May 23
—
PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Recourses.

Recourses against the decision of the respondent Public
Service Commission to promote the interested party to the post
of Accounting Officer, 1st Grade, in the Treasury Department,
10 in preference and instead of the applicants.

K. Talarides, for applicants in Case No. 362/72.

E. Lemonaris, for applicant in Case No. 366/72.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

15 The following judgment was delivered by:—

HADJIANASTASSIOU, J.: In these proceedings, under Article
146 of the Constitution, all three applicants seek to challenge
the decision of the Public Service Commission to promote the
interested party Mousa to the post of Accounting Officer, 1st
20 Grade.

Having delivered the ruling* regarding the second applicant,
I think I need not repeat all the facts stated earlier, which I
adopt for the purposes of these recourses, and I propose dealing
shortly only with applicants 1 and 3.

25 The first applicant, Pantelis Kyprianou, joined the Public
Service as from June, 1955 as a Clerical Assistant. In October,
1957, he became a Field and Laboratory Assistant. In August,
1963, he became an Accounting Officer, 3rd Grade, and he was
promoted to Accounting Officer, 2nd Grade, on January 2,
30 1965. In 1967 he passed the Intermediate Examinations of the
Association of International Accountants, Part I and Part II.

The third applicant, Andreas Panayiotou, was appointed to
the post of Accounting Officer 3rd Grade on January 2, 1965,
and he was promoted to Accounting Officer 2nd Grade on
35 December 1, 1965 and was posted to the Accounts Branch of
the Ministry of Education. He is the holder of a Diploma in

* Vide p. 161 in this Part, *ante*.

1975
May 23

Accounting from Athens School of Economics and Business Sciences.

PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

As I said earlier, the Supreme Court for reasons I have stated in the ruling*, declared the interested party's promotion as *null* and *void* and the Commission at its meeting of July, 1972, considered once again the filling of the vacancy in the permanent post of Accounting Officer 1st Grade and promoted for the second time the interested party Mousa, to the permanent post of Accounting Officer, 1st Grade, with retrospective effect as from August 1, 1971. Because of the promotion of the same person, all the applicants, feeling aggrieved, filed the present recourses (which have been heard together) on September 12 and 15, 1972, respectively. On October 7, 1972, counsel on behalf of the respondent gave notice opposing the application of Pantelis Kyprianou and Vassos Polycarpou in Case No. 362/72.

With regard to applicant No. 2 I need not repeat myself, because the point of law appears in my ruling, which in effect was, that he did qualify to file the present recourse. Regarding the decision of the Commission concerning both applicants, it was alleged in paragraph (b) of the Opposition that—"The decision complained of was properly and lawfully taken after careful consideration of all relevant facts and circumstances".

With regard to applicant No. 3 in Case No. 366/72, a different counsel of the Republic gave also notice that he was opposing the application of this applicant and was based (as a point of law) on the allegation that "the decision of the respondent Commission was lawfully taken after careful consideration of all the facts and circumstances of the case and upon a proper exercise of the discretionary power vested in the respondent".

Counsel on behalf of Andreas Panayiotou attacked the promotion of the interested party claiming that the respondents failed in their paramount duty to select the best candidate and that they failed to have regard to his claims for promotion to the said post, contrary to sections 30 (1) (c) and 31 (2) of the Public Service Law, 1967 (Law 33/67); and that they also acted contrary to the decision of the Supreme Court in *Panayiotou & Others v. The Republic (P.S.C.)* (1972) 3 C.L.R. 337.

I think it is convenient to state here that although this point was raised clearly in the grounds of law, yet, counsel for the

* Vide p. 161 in this Part *ante*.

1975
May 23

PANTELIS-
KYPRIANOU
AND OTHERS
(No. 2)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

5 other side, relied only on the statement of facts that—" The
Commission considered the merits, qualifications, seniority and
experience of all the officers holding the post of Accounting
Officer 2nd Grade, as reflected in their Personal Files and in
10 their Annual Confidential Reports". With respect, in view of
the fact that counsel made it also clear that this allegation was
raised even in the previous recourse of the same applicant, this,
in my view, was not sufficient and I was expecting a more clear
and lucid statement to that effect. Be that as it may, after
15 counsel on behalf of this applicant argued this point at length,
a new counsel of the Republic, very fairly, agreed that this was
an important point which ought to have been cleared before the
case proceeded further.

15 Following the practice adopted in previous cases, that is to
say, that when a point in a recourse appears to be obscure or
not clearly shown, the Chairman or a member of the Com-
mission is requested to file a statement to that effect; but un-
fortunately, counsel was unable to help the Court, because, in
20 his own words, the Commission assured him that because of
the length of time they could not remember and they could
not state whether, in fact, applicant was considered on that
occasion for promotion.

25 I have approached this point with an uneasy mind, because,
obviously for the second time the applicant was complaining
that in spite of the statement appearing in the facts, in fact he
was not considered for promotion, and in support of his state-
ment he pointed out that in the file which was before the Com-
mission there was a list of the candidates and his name was not
30 included therein. There is no doubt that after reading the
statement in the minutes of the Commission together with this
fact regarding the list, one would have expected that in the
new decision the Commission would have made a specific
reference regarding this applicant. Of course I do not want to
35 give the impression that I have any doubt that the Commission
cannot add to the statement which appears in the minutes
because of lapse of time. This is a reasonable statement and
one cannot expect the members of the Commission to remember
everything. The question, however, remains that in view of
40 conflicting material before me, this amounts to a misconception
of the real facts, particularly so, in the light of the observations
made by the Supreme Court in the previous cases.

In order to clear further this point, I now turn to the judgment
of the trial Court in the case of *Panayiotou and Others v. The*

1975
May 23

—
PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Republic (supra). The learned trial Judge, after reviewing some of the authorities and relying on the case of *Vivardi v. The Vine Products Council* (1969) 3 C.L.R. 486, annulled the decision of the Commission and proceeded to express its anxiety regarding the point raised earlier and made these observations at p. 340:-

“ I would like to refer to the complaint of applicant in recourse No. 304/71, which arises from the fact that whereas in the minutes of the meeting of the respondent Commission of the 19th May, 1971, it is stated that ‘the Commission considered the merits, qualifications, seniority and experience of all officers holding the post of Accounting Officer, 2nd Grade’ in the list of Accounting Officers, 2nd Grade, considered for promotion to the post of Accounting Officer, 1st Grade, the name of this applicant was not included. This discrepancy is likely to lead to confusion as to whether he has in fact been considered for promotion or not. In view of the outcome of the recourse I need not say anything more about this complaint, except that it should be borne in mind that clarity in the minutes of proceedings of administrative organs is of the utmost importance”.

Having in mind these vivid observations, I have to turn, once again, to the minutes of the Commission dated July 19, 1972, where nothing, with respect, is shown, who were actually considered and inevitably, I think, there is room for the complaint of this applicant that again the Commission in selecting the most suitable candidate, he was left out, not only from the list, but from the consideration by the Commission. I am confident that when the Commission says in their minutes that they have approached the reconsideration of the annulled cases, having in mind the views of the Supreme Court and that they took notice of the said judgment, certainly no one is entitled or indeed is justified in challenging that statement. But I have no alternative in the case in hand but to draw the inference that in spite of what I said earlier, the Commission, like every other busy body in the world, has, apparently, forgotten the observations made by my learned brother in that well written judgment, and they had failed not only to comply with these observations but they omitted to satisfy the principle that a collective body has to act under the notion of good administration. Certainly, it is a worrying proposition because a member of the Public Service is left wondering why this great notion

to which I have referred earlier, has not been followed in his own case for a second time.

5 On the contrary, counsel on behalf of the respondent Commission, following also this impact, tried very fairly indeed, and with a sense of responsibility, to show to this Court that from the minutes of May, 1971, one could draw the inference that the applicant Panayiotou was considered by the Commission. Furthermore, he argued that inspite of the fact that the minutes of July, 1972 were silent on this point, that, he contended, was not sufficient to destroy that inference and show that the Commission in re-examining the case (decision being annulled earlier), did not consider at all this applicant.

15 Having considered the able arguments of counsel and having reviewed all the material before me, I have come to the conclusion that the principle to which I have referred earlier, has been violated, and no doubt, the applicant rightly feels aggrieved that the Commission failed in their paramount duty to select the best candidate once he was not considered. That clarity in the minutes of proceedings of an administrative organ is of the utmost importance, it has been stated time after time, and I need only repeat that lack of clarity of such minutes and records of proceedings may deprive the decision reached of due reasoning as claimed by counsel. Of course, the absence of clarity, on judicial review, makes the task of this Court very difficult indeed, particularly so when another Court has lucidly said so over the same topic. I am aware, of course, that the absence of proper records of proceedings is not necessarily by itself a ground for annulment, and the Court may proceed to examine the nature of the inquiry carried out by the administration before the taking of its relevant decision.

25 It seems that in the absence of any legislative provision regulating the matter, the non-keeping of minutes by a collective organ does not always (a question to be decided on the merits of each case) vitiate a particular administrative decision, except, I repeat, if the absence of such minutes or clarity in the minutes tends to deprive the decision of due reasoning. Having gone into the decided cases, it appears that mainly the requirement of keeping written records is primarily for purposes of good administration. (See *HadjiLouca v. The Republic* (1969) 3 C.L.R. 570, at p. 574; and *Korai and Another v. The Cyprus Broadcasting Corporation* (1973) 3 C.L.R. 546 at pp. 564-565; also Kyriakopoulos on Greek Administrative Law, 4th ed.

1975
May 23

—
PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1975
May 23

—
PANTELIS
KYPRIANOU
AND OTHERS
(No. 2)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Vol. 2 p. 26, and Stassinopoulos on the Law of Administrative Acts, (1951) 223, as well as the Decisions of the Greek Council of State, in Cases 166/29 and 107/36).

From the totality of the material before me, including the observations of the trial Court in the cases to which I have referred to earlier in this judgment, I have reached the conclusion that non-clarity of the minutes deprives the decision of the Commission of due reasoning and I find myself in agreement with counsel that the Commission has failed to consider the applicant.

Having reached this conclusion that the Commission has acted in abuse of their powers, I am also inclined to state for the guidance of the administration that although there is a presumption in favour of the correctness of the findings of fact by the administration, in this case, once counsel has succeeded in rendering possible the existence of misconception of fact on the part of the Commission, I have a doubt in my mind even about the correctness of the findings of fact by the administration. Therefore, as I have already indicated earlier, I feel that the proper way was to direct production of further evidence, but because counsel on behalf of the respondent assured me that the Commission, because of lapse of time were unable to add anything further, I decided to annul the *sub judice* decision so that the administration may ascertain the actual circumstances in a way not leaving doubts. (*Pierides v. The Republic* (1969) 3 C.L.R. 274 at p. 290; also Stassinopoulos on the Law of Administrative Acts, 1951 ed. at p. 305).

For the reasons I have endeavoured to explain, I would dismiss the *sub judice* decision of the Commission, and I would like to add that I think it is no disrespect to counsel that I do not deal with the rest of their contentions as the matter raised concerns the evaluation of the applicants and the interested party regarding the promotion, and because the case of promotion inevitably has to be re-examined by the Commission in the light of this judgment.

Sub judice decision annulled with £25 costs against the respondent in Case No. 362/72 and £15 costs in Case No. 366/72.

*Sub judice decision annulled.
Order for costs as above.*