

1976
May 3

[HADJIANASTASSIOU, J.]

MAROULLA
CONSTANTINIDOU
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA CONSTANTINIDOU AND OTHERS

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 184/71 and 442/71).

Public Officers—Appointments and promotions—Post of Radiographer—Schemes of Service—Requirements of, as to qualifications—Leaving certificate from a secondary school—Non-inquiry by respondent Public Service Commission into these requirements—Appointment annulled.

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Public Officers—First entry and promotion post—Need for advertisement for appointments to—Section 31(1) of the Public Service Law, 1967 (Law 33 of 1967)—Appointment to such post, without advertisement, of a person outside the service—Previous placing of such person on a waiting list when a candidate for a similar vacancy—Does not meet requirements of the law as to advertisement—Appointment annulled.

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Public Officers—Appointment—Conditional appointment subject to production of certain evidence—Not finalized—Annulled.

Administrative Law—Proper inquiry—Annulment of appointment to post of Radiographer through failure of the respondent Public Service Commission to carry out a proper inquiry into the requirements of the Scheme of Service as to qualifications.

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Administrative Law—Administrative act—Conditional subject to production of certain evidence—Not finalized—Annulled.

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After meeting for the purpose of filling a vacancy in the post of Radiographer, a first entry and promotion post, on the 11th February, 1971, the respondent Public Service Commission decided to select for appointment interested party Nicolaidou.

5 As a "leaving certificate of a secondary school" was amongst the qualifications required under the relevant scheme of service for the post in question the offer of appointment to the said interested party was made subject to the production of evidence that she was the holder of a leaving certificate from a secondary school.

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The Commission, also, at the same meeting, decided to place interested party Angelidou on the waiting list for appointment to the above post on the creation of an additional vacancy.

10 On May 6, 1971, the Commission appointed this interested party to the post in question, without advertising the vacancy, and the offer of appointment to her was again made subject to the production of a leaving certificate from a secondary school.

15 Interested party Nicolaidou was not in possession of a leaving certificate from a secondary school of Cyprus because after attending a Cyprus Cymnasium during the years 1955-1959 she proceeded to England where she continued her education. In response to the Commission's condition to produce a leaving certificate she wrote to them on the 11th April 1971 stating that as far as she knew "leaving certificates are not issued by secondary schools in England".

20 On the 18th March, 1971, however, this interested party was issued by an Educational Institution in England with a certificate of secondary education (quoted in full at p.97 *post*) wherein details were given of the education she had received and the examinations she had passed. There was no record in the relevant file showing whether this certificate has been the subject of a new inquiry by the respondent Commission or whether it was considered that the qualifications appearing therein were equal to the qualifications required under the scheme of service for the said post.

25 The main contention of applicants with regard to the appointment of interested party Nicolaidou was that she did not possess the qualifications required under the relevant scheme of service because she has not graduated from a school of secondary education; and the main contention with regard to interested party Angelidou was that her appointment was made contrary to s. 31(1) of the Public Service Law, 1967 because, being a first entry and promotion post, it had to be advertised.

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40 *Held, (I) with regard to the appointment of interested party Nicolaidou:*

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That it was the duty of the Commission to inquire into this important aspect of the case regarding the requirement of the scheme of service as to the qualifications; that the Commission having failed to inquire whether the certificate issued to the interested party was meeting the requirements of the scheme of service, has also failed to finalize the said appointment which was made conditionally on the production of evidence that she was in possession of a leaving certificate of a secondary school; that the Commission have failed to carry out a proper inquiry and once they failed to finalize the act the decision relating to the appointment of interested party Nicolaidou will be annulled (see *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653 at 669). 5 10

Held, (II) with regard to the appointment of interested party Angelidou: 15

That in the case of a first entry and promotion *post*, the proper advertisement for such appointment is as much a part of, and an essential pre-requisite for the relative administrative act in selecting the most suitable candidate (see, also, General Order II/1.17). 20

(2) That the appointment of interested party Angelidou was made contrary to s. 31(1) of the Public Service Law, 1967 which provides that a "vacancy in a first entry office or in a first entry and promotion office shall be advertised in the official Gazette of the Republic"; and that the Commission has acted contrary to law and in excess or abuse of powers and the appointment of this interested party will be annulled. (*Grimaldi v. The Republic* (1965) 3 C.L.R. 443 followed). 25

Sub judice appointments annulled.

Cases referred to: 30

Petsas v. The Republic, 3 R.S.C.C. 60 at p. 63;
Koukoullis and Others v. The Republic, 3 R.S.C.C. 134 at p. 136;
Constantinou and Another v. The Republic (1966) 3 C.L.R. 174 at p. 179.
Zinieris (No. 1) v. The Republic (1975) 3 C.L.R. at pp. 18-19; 35
Georghiades v. The Republic (1967) 3 C.L.R. 653 at p. 659;
Grimaldi v. The Republic (1965) 3 C.L.R. 443 at p. 450;
Theodossiou v. The Republic, 2 R.S.C.C. 44 at p. 47;
Kyriacou v. C.B.C. and Another (1965) 3 C.L.R. 482;
Decision No. 742/1932 of the Greek Council of State. 40

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Recourses.

5 Recourses against the decision of the respondent Public Service Commission to appoint the interested parties to the post of Radiographer in the Department of Medical Services in preference and instead of the applicants.

A. *Triantafyllides*, for the applicants in both cases.

S. *Georghiades*, Senior Counsel of the Republic, for the respondent.

N. *Zomenis* for the interested party in Case No. 184/71.

10 T. *Papadopoulos*, for the interested party in Case No. 442/71.

Cur. adv. vult.

The following judgment was delivered by:-

15 HADJIANASTASSIOU, J.: In these two consolidated cases which have been heard together, the applicants seek to challenge the decision of the respondent to appoint the interested parties, Maria Nicolaidou and Clelia Angelides, to the post of Radiographer, in preference and instead of the applicants, as being *null* and *void* and of no effect whatsoever.

20 The facts are these:-

The first applicant, Maroulla Constantinidou, joined the service of the respondent in the Department of Medical Services as an Assistant Radiographer (T) on 1st December, 1961, and on the 1st July, 1969, she became an Assistant Radiographer (P). The second applicant, Phryni A. Christofi, joined the same department as an Assistant Radiographer on 20th September, 1962; and the third applicant, Agni Mogaster, joined the same department as an Assistant Radiographer on the 9th October, 1961. The first interested party, Maria Nicolaidou, joined the service on 1st March, 1971, as a Radiographer (P), and the second interested party, Clelia Angelides, joined the service as a Radiographer (P) on 15th May, 1971.

35 It appears that on the 16th November, 1970, the Director-General of the Ministry of Health wrote to the Chairman of the Commission informing him that the Minister of Finance had approved, *inter alia*, the filling of one vacancy (including any consequentials) in the post of Radiographer in the Department of Medical Services (blue 7). Because the post in question is a first entry and promotion one, and the Commission advertised its filling on the 11th December, 1970, (Notification No. 40

2046) in the Official Gazette of the Republic, and in response the Commission received five applications, namely those of the applicants and the interested parties.

The duties and responsibilities of the post in question are:—

“Responsible for the taking of X-Ray photographs and the giving of deep X-ray treatment as directed by the Radiologist or Senior Radiographer. May be required to act as radiographer in the District hospitals. Clerical duties in connection with the X-Ray Department.” 5

Qualifications required: 10

Leaving certificate of a secondary school. A good knowledge of English. Training in radiography for not less than three years and the passing of such departmental examinations as may be arranged from time to time. Experience in radiography and deep X-ray work.” 15

On the 26th January, 1971, the Commission decided to interview all the five candidates in the presence of the Director of the Department of Medical Services and the Specialist in Radiology (Dr. A. Kouppas) (blue 12).

On the 11th February, 1971, the Commission met for the filling of the vacancy in question in the presence of the Director-General and Dr. A. Kouppas, and an extract from the minutes of that meeting reads as follows:— 20

“The Commission interviewed the following candidates:—

1. Angelidou Clelia 25
2. Mogaster Agni
3. Constantinidou Mary C.
4. Christofi Fryni
5. Nicolaidou Papadopoulou Maria

The Commission as well as the Representatives of the Department of Medical Services put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. 30

Dr. Kouppas stated that Mrs. Maria Papadopoulou Nicolaidou who is a qualified Radiographer both in Radio-diagnosis and Radiotherapy, has worked in London Hospitals for about 2 years and since April, 1970, she has 35

been working under him in the X-ray Department of the Nicosia General Hospital on daily wages. She has proved to be a very good Radiographer and recommended her for appointment to the above post.

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5 The Commission, after considering the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.) and bearing in
10 mind the views expressed by the Representatives of the Department of Medical Services on each one of them, decided unanimously that Mrs. Maria Papadopoulou Nicolaidou was on the whole the best and that she be
15 appointed, on probation, to the permanent post of Radiographer, w.e.f. 1.3.71.

Dr. Kouppas stated that an additional vacancy in the post of Radiographer will be created very shortly with the approval of the 1971 estimates and requested that, if possible, another person be placed on the waiting list. In
20 view of the above, the Commission decided that Mrs. Clelia Angelidou, who was the next best candidate, be placed on the waiting list for appointment to the above post in due course.

In reaching the above decision, the Commission paid particular attention to the merits and experience of those candidates, who were serving in the post of Assistant Radiographer and for whom the post of Radiographer is a Promotion Post; the merits and experience of these officers proved at the interview of lower standard than those of the
25 persons selected for appointment and who had special qualifications.

The persons selected for appointment possess the following qualifications:-

(a) Maria P. Nicolaidou

35 (i) Certificate from the Society of Radiographers in Radiography.

(ii) Certificate from the Society of Radiographers in Radiotherapy.

(b) Clelia Angelidou:

40 Certificate from the Society of Radiographers in Radiography.

The post of Radiographer is a First Entry and Promotion post. This shows that if there are candidates with higher and proper qualifications who have also proved at the interview to be better than those in the service, these candidates may be preferred. This will also help in the improvement of the standard of the staff serving in this post". 5

On the 16th February, 1971, the Chairman of the Commission addressed a letter to the interested party Maria Nicolaidou, offering her appointment on probation to the permanent post Radiographer as from the 1st March, 1971, and the offer was made subject, *inter alia*, to the production of evidence that she was the holder of a leaving certificate from a secondary school. 10

On the 4th May, 1971, the Commission met once again for the purpose of filling another vacancy in the post of Radiographer, and the interested party, Mrs. Clelia Angelidou, who was placed on the waiting list at its meeting of the 11th February, 1971, was appointed on probation to the permanent post w.e.f. 15th May, 1971 (blue 27). 15

On the 6th May, 1971, the Chairman of the Commission addressed a letter to Interested Party No. 2 offering her an appointment on probation on the condition that the offer was made subject, *inter alia*, to the production of evidence that she was the holder of a leaving certificate from a secondary school (blue 28). 20 25

On the 16th July, 1971, the Commission met in order to consider the educational qualifications of Mrs. Angelidou, and an extract from the minutes of that meeting reads as follows:-

“ At its meeting of 4. 5. 71, the Commission decided that Mrs. Clelia Angelidou be appointed, on probation, to the permanent post of Radiographer, in the Department of Medical Services w.e.f. 15. 5. 71. 30

The relevant offer was sent to Mrs. Angelidou on 6. 5. 71 and, in accordance with the relevant scheme of service, the offer was made subject to the production of evidence that she is the holder of a leaving certificate from a secondary school. 35

Mrs. Angelidou has attended the following schools:-
Kyrenia Gymnasium 1956-1961 (5 years)

English School, Nicosia 1961-1962 (1 year)
Queen's College, Glasgow, 1962-1963 (1 year)
School of Radiographers, Glasgow 1963-1966 (3 years).

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5 In view of the above qualifications, the Commission decided that Mrs. Angelidou should be considered as a holder of a leaving certificate of a secondary school and, therefore, her appointment to the post of Radiographer should be finalized”.

10 On the 20th February, 1971, the applicants, feeling aggrieved because they were not selected for promotion, filed these two recourses. The two grounds of law are identical, and are as follows:-

15 “ 1. The interested party does not fulfill the requirements of the scheme of service i.e. she has not graduated from a school of secondary education. Consequently, she does not possess the required certificate.

20 2. Respondents in abuse of their powers disregarded the experience, length of service, and merit of the applicants, by appointing a first entrant when there were suitable qualified candidates in the service”.

25 Although the opposition of the respondent was filed by two different counsel in the office of the Attorney-General, it was almost identical, to the effect that the decision complained of was properly and legally taken by the Commission in the exercise of its discretionary powers and in the light of all relevant facts and circumstances.

30 On the 14th July, 1972, counsel on behalf of the applicants raised a new legal point that the respondents erred in appointing the interested party Mrs. Clelia Angelides without re-advertising the post, and alleged that the correct procedure should have been to re-advertise the post so that new applications might be submitted to respondents by all concerned including the applicants, as well as any other person who wanted to apply.

35 Then on 23rd August, 1972, the same counsel raised another legal point that the meeting of the Commission was attended by Dr. Kouppas who is the Head of the Department of applicant 1 only, and that the Heads of Department of applicants 2 and 3 were not present. As a result, he claimed that the proceedings were defective in so far as those applicants were concerned.

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Before dealing with the contentions of counsel, I think it is necessary to state that all the applicants are holding a leaving certificate from a secondary school in Cyprus. Regarding the second requirement "A good knowledge of English", according to a table showing particulars of the service and qualifications of the parties, the first applicant has passed C.C.E. English Lower in 1955 and C.C.E. English Higher in 1957. The second applicant passed the C.C.E. English lower and C.C.E. English Higher. The third applicant passed no exams in English. 5

The first interested party has attended the Greek Gymnasium of Yialousa for the years 1955-1959; (b) Welsh Girls' School Ashford Middx. 1959-1962; (c) University Tutorial College, London 1962-1964; (d) Royal Northern Hospital School of Radiography and Radiotherapy 1964-1967 (1) in Diagnostic Radiography M.S.R. (R); (2) in Therapeutic Radiography M.S.R. (T); (e) Awarded the 'Radiographer of the Year' awarded for the International Competition of the Society of Radiographer in 1968; (f) member of the Society of Radiographers in Diagnostic and Therapeutic Radiography. She also passed London General Certificate of Education subjects including English Literature (O.L.) and English Language (O.L.) 10
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The second interested party, Clelia Angelides, has attended the Greek Gymnasium of Kyrenia for the years 1956-1961; (b) English School Nicosia, 1961-1962; Queens College Glasgow (1962-1963); (c) School of Radiographers (three years); and (d) holds a Diploma of the Society of Radiographers obtained in 1966. She has also passed London General Certificate of Education subjects including English language (O.L.) and History (O.L.). 25
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Regarding the confidential reports which were produced by counsel on 24th March, 1975, I think I can sum up the position as follows:- The first applicant was rated under the heading "General Assessment" as "very good" and "Excellent". The second applicant was considered as "excellent" and "very good", and the third was rated as "Good", "very good" and "excellent". The work of the interested parties was rated for the year 1971 as being "excellent" in all reports. 35

The first complaint of counsel on behalf of the applicants was that both the interested parties do not fulfil the requirements of the scheme of service once they have not graduated from a school of secondary education. 40

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5 It has been said in a number of cases that in determining whether a certain candidate in fact possesses the relevant qualifications required under the scheme of service is a matter of discretion for the Commission, and in *Petsas v. The Republic*, 3 R.S.C.C. 60, the Court had this to say at p. 63:-

“... this Court can only examine whether the Commission on the material before it could reasonably have come to a particular conclusion”.

10 In *Themis Koukoullis and 3 others v. The Republic* (P.S.C.), 3 R.S.C.C. 134, the Court, dealing with the question of the academic qualifications to be possessed by the applicants for the post in question, said at p. 136:-

15 “The issue, therefore, that falls to be decided is whether the Commission properly accepted the academic qualifications of the interested parties as being equivalent to the specific academic qualifications required by the scheme of service, and which admittedly are not possessed by such interested parties.

20 In a case, like the present, the burden lies upon the applicant to substantiate the allegation that the Commission, in coming to the conclusion that the relevant qualifications were equivalent to those required by the scheme of service, acted in excess or abuse of powers”.

25 I think I should have added that in that case inquiries were made and evidence was heard by the Commission to satisfy themselves that the applicants in question did possess equivalent qualifications required by the scheme of service.

30 In *Sophoclis Constantinou and Another v. The Republic*, (P.S.C.) (1966) 3 C.L.R. 174, the Court, dealing with the objection of counsel on behalf of the interested party that one of the applicants has not graduated from a recognized secondary school as required under para. (a) of the qualifications set out in the relevant scheme of service *exhibit 1(a)*, had this to say at p. 179:-

35 “... the evidence adduced till now indicates that this applicant has graduated from a secondary school in Cairo but it is not clear yet whether this school would meet the conditions required before it could be treated in Cyprus as ‘recognized’ in *exhibit 1(a)* to mean a school ‘recognized’ by

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the appropriate authorities in Cyprus as providing a sufficient standard of secondary education”.

Furthermore, the Court, having heard evidence from the Director of Education of the Ministry of Education, that the Ministry did not have at their disposal sufficient information about that school, said:-

“ But, I suppose, it would be an easy matter to investigate this question further and obtain definite information in due time.

The fact that such information was not available before the Court when the *sub judice* preliminary issue was gone into should not, in my opinion, operate to the prejudice of this applicant”.

See also *Michael Zinieris (No. 1) v. The Republic (P.S.C.)* (1975) 3 C.L.R. 13 at pp. 18-19. With regard to the position in Greece, see Kyriakopoulos on the Greek Administrative Law, Vol. 3 at p. 191, and the case quoted under note 21, the Decision of The Greek Council of State, 742/1932 at p. 502.

In the case in hand, it is true that the first interested party was appointed to the post in question of Radiographer without having adduced evidence before the Commission that she was the holder of a leaving certificate of secondary education. Nevertheless, it is clear that when the Chairman of the Commission made an offer to her, it was, *inter alia*, a condition that she would produce evidence that she was the holder of a leaving certificate from a secondary school. On the 28th February, 1971, she wrote to the Chairman of the Commission:

“ Referring to your letter of the 16th February, 1971, I would accept your offer of the permanent post of Radiographer in the Department of Medical Services.

I would like to let you know that I have had medical examination, and the District Medical Officer will send his report. I will produce evidence of secondary education as soon as I am able to get it”. (*Exh. 3*).

On the 18th March, 1971, apparently because of another letter by the Commission, this interested party informed the Commission that she sent a reminder to the school in question, and on the 1st April, 1971, the Headmistress, T.D. Alderson

M.A., certified that Maria Papadopoulou graduated from this school in July 1962. (*Exh. 4*).

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5 On the 11th April, 1971, this interested party addressed a letter to the Commission (as it appears from *exhibit 4*), in these terms:-

“ I would like to mention that as far as I know, leaving certificates are not issued by secondary schools in England”.

10 Then, for reasons not appearing on record, on the 18th March, 1971, a certificate of secondary education was issued in these terms:- (blue 22).

15 “ Maria Papadopoulos was a Boarder at this Independent Secondary School from September, 1959 to July, 1962, and worked through the secondary school course to the examinations of the Cambridge General Certificate of Education. She studied English, History, Geography, Greek, Mathematics, Chemistry, Physics, Biology, Art, Music and Scripture. She was very intelligent and studious. She has a very clear, logical mind and was always top in Physics and Chemistry. She won prizes for Physics, Chemistry and for her perseverance. She was good at physical activities and also played the violin well.

20 Maria gained a Cambridge General Certificate of Education for Modern Greek (3) English Literature (6) Mathematics (6) Biology (3) at ‘Ordinary’ level.

25 Later she gained a London General Certificate of Education for English Language at ‘Ordinary’ level and Biology and Chemistry at ‘Advanced’ level.

30 Maria finished her education with a training in Radiography. I am very glad to recommend her as an efficient worker and a conscientious and charming person”.

35 This alleged certificate of secondary education must have come as a surprise indeed, because this interested party herself had alleged earlier in a written statement to the Commission that the authorities were not granting Leaving Certificates in England. However, having had the occasion to go through the file, I find nowhere in it a record showing as to whether this certificate has been the subject of a new inquiry by the Commission as indeed it was considered that the qualifications appearing

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therein were equal to the qualifications required under the scheme of service for the said post.

In the light of the authorities and particularly of the case of *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653 at p. 669, it was in my view the duty of the Commission to inquire into this important aspect of the case regarding the requirement of the scheme of service as to the qualifications. There is further this difficulty in the case in hand, that the Commission having failed to inquire whether this certificate was meeting the requirements of the scheme in question, has also failed to finalize the said appointment which was made conditionally on the production of evidence that she was in possession of a leaving certificate of a secondary school. 5 10

For the reasons I have endeavoured to explain, I have come to the conclusion that the Public Service Commission has failed to carry out a proper inquiry and once they failed to finalize the act I would annul the said decision. 15

Having reached this conclusion, I think I must place on record that I do not share the contention of counsel that the true meaning of the words "leaving certificate of a secondary school" is that the leaving certificate should be of a secondary school of Cyprus only. In the light of the above decision, I do not think it necessary or indeed disrespectful to counsel if I do not proceed to consider the point as to whether the respondents acted in excess or abuse of powers in disregarding the experience, length of service and the merit of the applicants by appointing a first entrant once there were suitable qualified candidates in the service, because of the observations made by the Commission. 20 25

I shall now proceed to examine the validity of the appointment of the second interested party in the light of the new legal point raised by counsel for applicants, that is, that once the second post—being also a first entry and promotion post—was not advertised, then the appointment of the second interested party was contrary to the provisions of s. 31(1) of the Public Service Law 1967 (Law 33/67). Furthermore, counsel relies on the case of *Chloe Grimaldi v. The Republic* (1965) 3 C.L.R. 443. The Commission at its meeting of 16th July, 1971, has considered the years of studies of the second interested party in the various schools described, and decided that Mrs. Angelidou should be considered as being the holder of a leaving certificate of a secondary school. I do not think, therefore, that it 30 35 40

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is necessary for me, once again, to express an opinion on this point, once counsel mostly relies on the new point raised and which point he was allowed to file and argue in Court. (See minutes of the Court dated 16th June, 1974, where one can clearly see that leave was granted to file the new points of law raised in these proceedings within a period of 3 weeks). With this in mind, there is no doubt that in the case of a first entry and promotion post, the proper advertisement for such appointment is as much a part of, and an essential pre-requisite for the relative administrative act in selecting the most suitable candidate. The need for such an advertisement was provided also even by the General Orders II/I. 17 before the enactment of the Public Service Law, 1967.

In the *Grimaldi* case (*supra*) the Court made it clear at p. 450 that "it is inherent in the first entry nature of such a post that it can only be properly filled by appointment of a person outside the public service if it has been advertised, so that all willing candidates will come forward and the Public Service Commission may pick the most suitable candidate—as it is its paramount duty to do so". (Vide *Theodossiou and the Republic*, 2 R.S.C.C. 44 at p. 47). This principle has been adopted by our Legislature in enacting the Public Service Law, 1967, and s. 31(1) is in these terms:—

" A vacancy in a First Entry office or in a First Entry and Promotion office shall be advertised in the Official Gazette of the Republic";

And subsection 3 says:—

" An advertisement of a vacancy in an office shall give full particulars of the relevant scheme of service and shall specify the date by which applications shall be submitted".

In the light of this mandatory language of our own section, I have tried to find some explanation why the Commission has failed to follow the command of our legislature, and I think that the reasons are to be found in the minutes of the meeting of the Commission of the 11th February, 1971. It appears from that extract that the Commission was so impressed with the performance of Mrs. Angelidou during the interview, that when another post of Radiographer was filled by promoting the first interested party, the second interested party was put on the waiting list for the next appointment to the next vacant post of Radiographer. It is, therefore, clear in my view, that once the

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Commission thought that Mrs. Angelidou fulfilled all the requirements, it decided not to advertise in the official Gazette the new post which has been created after a period of 5 months. But of course there might be another reason, viz., that the decision not to publish the first entry and promotion post was due to a misconception or wrong construction of *Kyriacou v. 1. C.B.C. and 2. The Republic*, (1965) 3 C.L.R. 482, which lays down that a first entry and promotion post may be filled by promotion from the service if a suitable person exists in line for such promotion and if no such person exists then it should be advertised at large. With respect to the Commission, the fallacy here was that because the second interested party was placed on a waiting list that was sufficient to meet the requirements of the said decision of the Court. There is no doubt, therefore, that the appointment of Mrs. Angelidou was made contrary to the provisions of s. 31(1) of Law 33/67, and is, therefore, null and void and of no effect whatsoever. Indeed, quite fairly counsel appearing on behalf of the respondents conceded that the vacancy being a first entry and promotion post, should be advertised in accordance with s. 31(1) of Law 33/67.

For the reasons I have advanced, I have come to the conclusion that the Commission in appointing both interested parties, have acted contrary to the law and in excess or abuse of powers and I would, therefore, annul the appointment of both interested parties. I have considered the question of costs, but in view of the fact that these two cases have been adjourned on a number of occasions, and once it was made clear to me that those adjournments were intended to help the parties concerned, I have decided not to make an order for costs against the respondent.

Both decisions annulled with no order as to costs.

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