

1980 December 16

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS L. PETRIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 225/78).

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*Public Officers—Appointments and promotions—Assistant Cultural Officer Ministry of Education—Interview of candidates—Undue weight should not be placed on impression created by.*

5 *Administrative Law—Inquiry—Due inquiry—Appointments in the Public Service—No inquiry carried out by Public Service Commission regarding issue of whether or not a candidate possessed a qualification constituting an advantage under the schemes of service—And personal files of candidates already in the service not taken into consideration—Sub judice appointments annulled.*

10 *Public Officers—Appointments and promotions—Qualifications—Schemes of service—Duty of the Public Service Commission to conduct an inquiry as to whether a candidate possesses a qualification which under the schemes of service constitutes an advantage—And duty to take into consideration personal files of candidates already in the service.*

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*Administrative Law—Administrative decisions—Due reasoning—Need for—Appointments and promotions in the Public Service—Public Service Commission has to reason duly its decisions.*

*Public Officers—Appointments—Annulled for lack of due reasoning.*

20 The applicant in this recourse challenged the validity of the appointment of Elli Constantinou and Stelios Hji Styllis (“the interested parties”) to the post of Assistant Cultural Officer in the Ministry of Education, a first entry post. In making

the appointments in question the respondent Public Service Commission had before it only the personal file of the applicant who was at the material time serving as Secretary/Library Supervisor in the Ministry of Education; and had not before it the files of the interested parties who were holding posts under the Educational Service Committee. 5

The relevant minutes of the respondent Commission stated that during the interview the interested parties "gave satisfactory replies to questions put to them"; and that "the personal files and the annual confidential reports of the candidates already in the service were also taken into account". After giving proper weight to the merits, qualifications, abilities and experience of the candidates, "as well as to their suitability for appointment to the above post as shown at the interview" it came to the conclusion that the two interested parties were on the whole the best. The applicant possessed a qualification which under the relevant scheme of service constituted an advantage but there was no reference to this qualification by the Commission. 10 15

*Held*, (1) that the interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications and undue weight should not be placed on the impression created by such interview; that as the Commission has given undue weight on the performance of the candidates during the interview it has erred in law and acted contrary to the well settled principles of administrative law; accordingly the *sub judice* appointments must be annulled (see *Savva v. The Republic* (1980) 3 C.L.R. 675). 20 25

*Held*, further (1) that an inquiry had to be conducted by the Commission regarding the issue of whether or not the applicant possessed the qualifications which under the scheme of service constituted an advantage and the outcome of such inquiry should have appeared in the reasoning of the *sub judice* decision; that nothing appears in the minutes of the Commission as to whether such inquiry has been carried out and no one made any reference to it during the deliberations; that, further, although reference was made by the Commission in its minutes to the personal files and the annual confidential reports of the candidates already in the service, the only documents before the 30 35

Commission were those of the applicant only, which shows that no proper inquiry has been carried out by the Commission; and that, therefore, the *sub judice* decision must be annulled on this ground too (see *Tourpeki v. Republic* (1973) 3 C.L.R. 592).

(2) That in view of the fact that the Commission had before it the personal file of the applicant it was bound to give due reasoning why he was not preferred (see *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417).

10 *Sub judice decision annulled.*

*Per curiam:*

The concept of justice is not confined to the interests of the particular litigants; it embraces and extends to the protection of the public weal. The issues involved in this litigation have an importance of direct concern to the whole of the public service.

Cases referred to:

*Myrriotis v. Republic* (1975) 3 C.L.R. 58 at p. 68;  
*Triantafyllides and Others v. Republic* (1970) 3 C.L.R. 235;  
 20 *Savva v. Republic* (1980) 3 C.L.R. 675;  
*Tourpeki v. Republic* (1973) 3 C.L.R. 592 at pp. 602, 603;  
*Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417.

**Recourse.**

Recourse against the decision of the respondent to appoint the interested parties to the post of Assistant Cultural Officer in the Ministry of Education in preference and instead of the applicant.

*A.S. Angelides*, for the applicant.

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

30 *Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment. In these proceedings, under Article 146 of the Constitution, the applicant, Savvas A. Petrides of Nicosia, seeks a declaration of this Court that the act and/or decision of the respondent which has been published in the Official Gazette of the Republic dated 14th April, 1978, (No. 1437) to appoint the interested parties, Elli Constantinou and Stelios Hji Styllis to the post of Assistant

Cultural Officer in the Ministry of Education, is null and void and of no effect whatsoever.

On 6th April, 1977, the Director-General of the Ministry of Education, by a letter, informed the Chairman of the Public Service Commission, that the Minister of Finance had approved the filling of two vacancies in the post of Assistant Cultural Officer in the Ministry of Education, and requested him to take the necessary steps for the filling of the two posts. The Public Service Commission, at its meeting of 29th April, 1977, decided that the vacancies in question should be advertised, allowing two weeks for the submission of applications. The relevant advertisement was published in the official Gazette of 6th May, 1977, under notification No. 1351, and in response to it, 16 applications, including those of the applicant and the interested parties were submitted for consideration.

On October 4, 1977, the Commission at its meeting, decided that 12 candidates should be invited for an interview—no reasons were given, on 28th November, 1977, and that the Director-General of the Ministry of Education and the Cultural Officer to be present. On that date, and in the presence of the Cultural Officer only, the Commission interviewed the nine candidates who were present. The Commission, as well as the representative of the Ministry of Education 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, and decided that another candidate who was abroad for post-graduate studies be invited for an interview on 17th December, 1977.

*The scheme of service:*

According to the relevant scheme of service, the post of Assistant Cultural Officer is a first entry post. The duties and responsibilities of the post in question are:—

“(α) Βοήθεια προς τὸν Μορφωτικὸν Λειτουργὸν εἰς τὴν ἐκτέλεσιν τῶν καθηκόντων του.

(β) Ἀσκήσις καθηκόντων ἀφορώντων εἰς τὰς δραστηριότητας τῆς μορφωτικῆς ὑπηρεσίας, ἐνεργὸς συμμετοχὴ εἰς ταύτας καὶ ἀνάπτυξις σχετικῆς πρωτοβουλίας, ἐν τῷ πλαίσῳ τῶν ὁδηγιῶν τοῦ Μορφωτικοῦ Λειτουργοῦ.

(γ) Οἰαδήποτε ἄλλα καθήκοντα ἤθελον ἀνατεθῆ εἰς αὐτὸν”.

And in English it reads:—

“(a) To assist the Educational Officer in the performance of his duties:

5 (b) The exercise of duties relevant to the activities of the Educational Service, active participation in them and the development of relevant initiative within the framework of the directions of the Educational Officer;

(c) Any other duties that may be assigned to him”.

The required qualifications are these:—

10 “Δίπλωμα ή τίτλος Πανεπιστημίου, Πολυτεχνίου ή Ἀνωτάτης σχολῆς Καλῶν Τεχνῶν ή ἄλλης ἀνεγνωρισμένης ἰσοδυνάμου ἀνωτάτης σχολῆς.

Ἐνημερότης ἐπί τῆς πνευματικῆς καί πολιτιστικῆς κινήσεως ἐν Κύπρῳ καί εἰς ἄλλας χώρας.

15 Καλή γνώσις μιᾶς τοῦλάχιστον τῶν ἐπικρατεστέρων εὐρωπαϊκῶν γλωσσῶν.

Συγγραφική ή καλλιτεχνική δημιουργικότης.

20 Μεταπτυχιακή ἐκπαίδευσις εἰς τὸ ἔξωτερικόν ή/καί ἐπισκέψεις πρὸς μελέτην εἰς ἰδρύματα τοῦ ἔξωτερικοῦ παρομοίων δραστηριοτήτων θεωρεῖται ὡς πρόσθετον προσόν”.

And in English it reads:—

“Diploma or title of a University or polytechnic or a higher school of Good Arts or any other recognized equivalent high school.

25 To be acquainted with the literal and cultural movement in Cyprus and in other countries.

A good knowledge of at least one of the most prevalent European languages.

A creative ability as an author or artist.

30 A post-graduate education abroad and/or visits for study in institutions abroad of similar activities will be considered as an additional qualification”.

I would like to state that the applicant possesses the last mentioned post-graduate qualification.

*Particulars of service:*

According to a table showing particulars of the Government service and the qualifications of the applicant and the interested parties, the applicant was appointed as a Clerical Assistant G.C.S. (Unest.) on 13.8.56, and was made permanent in that post on 1.3.58. On 1.2.66 he was promoted to Clerk, 2nd grade G.C.S., and on 1.12.67 he became a Secretary/Library Supervisor in the Ministry of Education, where he is serving to date. His qualifications are the following:-

|   |                 |    |
|---|-----------------|----|
| (i) Greek Gymnasium of Polis,   | 1948-1951       | 10 |
| (ii) Pancyprian Gymnasium, Nicosia,                                   | 1951-1954       |    |
| (iii) Diploma in Byzantine Music                                      | 1961-1962       |    |
| (iv) Associate of the Library Association                             | 1969            |    |
| (v) Participation in a UNESCO Course<br>for Teachers of Librarianship | 1.8.70-30.11.70 | 15 |
| (vi) M.A. of Library Studies  | 1976            |    |
| (vii) G.C.E.:   |                 |    |
| (a) English Higher,   | 1954            |    |
| (b) Greek Higher  | 1953            |    |
| (c) Mathematics "A",  | 1954&1958       | 20 |
| (d) Mathematics "B",  | 1954            |    |
| (e) History,  | 1953            |    |
| (f) Geography   | 1958.           |    |

The interested party Stylianos (Stelios) Hji Styllis, was appointed as a Secondary Schoolmaster (T) on 16.10.67 and was made permanent in that post on 1.9.68. On 1.3.78 he was promoted to Asst. Cultural Officer (T) (D), Ministry of Education, where he is serving to date. His qualifications are the following:-

|   |           |    |
|---|-----------|----|
| (i) Pancyprian Gymnasium                            | 1955-1961 | 30 |
| (ii) Degree of University of Athens<br>(Philosophy) | 1961-1966 |    |
| (iii) M.A. (Dist.) Univ. of Sheffield               | 1971-1973 |    |
| (iv) Studying Ph.D. course.                         |           |    |

The interested party Elli Constantinou was appointed as a Secondary Schoolmistress on 7.1.65, and on 1.3.78 she became

an Assistant Cultural Officer (T) (D) in the Ministry of Education. Her qualifications are the following:-

- |   |   |            |
|---|---|------------|
|   | (i) Pancyprian Gymnasium  | 1953-1959  |
| 5 | (ii) Degree of Univ. of Athens<br>(Philosophy)  | 1959-1964, |
|   | (iii) Registered post-graduate student<br>at Birkbeck College - Univ. of<br>London for two years. |            |

*Minutes of the Commission:*

10 On 17th December, 1977, the Commission met in order to fill the two vacancies in the post of Assistant Cultural Officer, and Mr. P. Chr. Seryis, Cultural Officer, was also present. The Commission interviewed Mr. Andreas Georghiou Thoma, who was unable to present himself for interview at the previous  
15 meeting of 28.11.77 as he was in London for post-graduate studies. The Commission, as well as the Representative of the Ministry of Education, put several questions to the above candidate on matters of general knowledge and on matters connected with the duties of the post in question.

20 Then, the Commission considered the merits, qualifications and experience of the above candidates, together with those of the candidates who were interviewed at the meeting of 28th November, 1977, 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.).  
25 The personal files and the annual confidential reports of the candidates already in the service, were also taken into account. The relevant minutes read:-

30 "The Commission observed that, during the interview, Eleni S. Nikita, Elli Constantinou and Stelios Ach. Hadjistyllis gave satisfactory replies to questions put to them.

35 The representative of the Ministry of Education stated that Eleni S. Nikita, Elli Constantinou and Stelios Ach. Hadjistyllis were very good during the interview but that he could prefer Eleni S. Nikita and Elli Constantinou, having regard to their work which he knows as they had been working under him for some time".

Then after a discussion, the Commission unanimously agreed

that Mrs. Elli Constantinou was the best candidate for the post of Assistant Cultural Officer. The Chairman as well as two of the Members of the Commission (namely Messrs. C. Lapas and Y. Louca) held also the view that Mr. Stelios Ach. Hadjistyllis should be preferred to Mrs. Eleni S. Nikita, 5  
 having regard to their performance at the interview. The Commission having observed that according to the relevant schemes of service candidates for appointment to the post of Assistant Cultural Officer must possess a good knowledge of one of the prevailing European languages, observed that both 10  
 Mrs. Elli Constantinou and Mr. Stelios Ach. Hadjistyllis had studied in England for a number of years. In the light of those observations, the Commission was satisfied that the two candidates in question did possess a good knowledge of English— 15  
 i.e. one of the prevailing European languages. Finally the Commission said:—

“After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, 20  
 qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided 25  
 that the candidates in question be appointed to the temporary (Dev.) post of Assistant Cultural Officer w.e.f. 1.3.78:

Elli Constantinou  
 Stelios Ach. Hadjistyllis

The decision regarding Mrs. Elli Constantinou was taken unanimously, whereas in the case of Mr. Stelios Ach. 30  
 Hadjistyllis the decision was taken by majority of 3 votes to 2 (Messrs. D. Proestos and S.C. Catsellis dissenting). Messrs. Proestos and Catsellis preferred Mrs. Eleni S. Nikita to Mr. Hadjistyllis”.

Before dealing with the submissions of counsel it is necessary 35  
 to repeat once again that the Commission had before it only the personal file of the applicant and in going through it, I am of the view that he has very good reports.

*Grounds of law:*

Counsel in support of his ground of law mainly put forward 40



the argument, that the Commission erred in law in appointing the two interested parties, once from the material before it, viz., the personal file the applicant had better qualifications, better confidential reports, and an overall experience in the government service; and in addition he was the holder of a post-graduate qualification which under the relevant scheme of service constituted an advantage. Counsel went even further and invited this Court to accept that the Commission acted in excess and in abuse of its powers in being unduly influenced from the interview, and particularly because it took into consideration the recommendations of Mr. Seryis and failed to warn itself that such a recommendation was made without a comparison regarding the merits of each candidate and in order to find out who was the most suitable for the post in question, or indeed to acquaint itself what was the previous service and their performance as educationalists. Finally counsel in concluding his argument said that the Commission acted contrary to the law and to well settled principles of Administrative Law once it has failed to carry out a sufficient inquiry regarding the issue as to whether the applicant possessed such a qualification and that it was the duty of the Commission to give reasons why it preferred the interested parties.

On the contrary, counsel for the respondent argued (a) that the Commission rightly used the personal file of the applicant only—being a civil servant once the two interested parties were under the jurisdiction of the Educational Committee; and that in any event the Commission was not even bound to go through their files once the post in question was a first appointment; and (b) that the Commission must have been aware of the qualifications of the candidates once such qualifications were in the file of the Commission, and that no reasons were necessary to be given particularly because the Commission had a discretion to choose who was the best candidate.

I have considered very carefully the submission of both counsel and I have decided for the reasons I shall give later on, to deal only with the two important issues raised during the argument, viz., (a) whether the Commission erred in being unduly influenced from the interview; and (b) once, as it was said earlier, the applicant had an additional post-graduate qualification which was an advantage and no reference at all was made by the Commission regarding that qualification.

In 1975, dealing with the very same point, regarding the impression created by such interview and the weight to be attached thereto, I had this to say in *Panayiotis Ioannou Myrriotis v. The Republic* (Educational Service Commission), (1975) 3 C.L.R. 58, at p. 68:-

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“However, there is a further point which is worrying me in this case, because in one of the minutes of the Committee, during the interview of the many candidates who appeared before them, they stated that they have also taken into account the impression created by such candidates. Regretfully, no specific reference was made with regard to the interested parties and the applicant, and although I do not underestimate their difficulties, nevertheless, once the Committee in promoting the two interested parties in preference and instead of the applicant, took that also into consideration, one would have expected a note to have been made of their impressions regarding the three candidates. Of course, I do not want to be taken that I do not approve of such a practice, because certainly the Committee, in considering the merits, qualifications and experience of a candidate may also take into account the impression created by such candidate at the relevant interview. However, I would like to point out that such interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications, and undue weight should not, therefore, be placed on the impression created by such interview”.

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In *Andreas Triantafyllides and Others v. The Republic (Public Service Commission)* (1970) 3 C.L.R. 235, Triantafyllides J., as he then was, had this to say on this point:-

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“It should be observed that it was not right to treat the performance at the interviews as something apart from the merits, qualifications and experience of the candidates; it was only a way of forming an opinion about the possession by the candidates of the said basic criteria; and not the most safe way because, *inter alia*, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit”.

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See also the case of *Andreas Savva v. The Republic of Cyprus, through The Public Service Commission* (1980) 3 C.L.R. 675, in which I have cited and reviewed a number of cases.

5 In the light of these judicial pronouncements and because  
the Commission has given undue weight on the performance  
of the candidates during the interview, I find myself in agreement  
with the submission of counsel for the applicant, that the Com-  
mission has erred in law in giving undue weight to the perform-  
10 ance, and acted contrary to the well settled principles of the  
administrative law.

Turning now to the second question as to whether the Com-  
mission has failed to carry out an inquiry as to whether the  
applicant possessed a post-graduate qualification unfortunately  
nothing appears in the minutes of the Commission, and no one  
15 made any reference at all to it during their deliberations.  
Indeed, I would go further and state that although reference  
was made by the Commission in the minutes to the personal  
files and the annual reports of the candidates already in the  
service, nevertheless, counsel for the respondent, quite rightly  
20 in my view, conceded that the only documents before the Com-  
mission were those of the applicant only, which shows in my  
view that no proper inquiry has been carried out by the Commis-  
sion. If authority is needed I think the case of *Vasso Tourpeki*  
*v. The Republic (Public Service Commission)* (1973) 3 C.L.R.  
25 592 provides the answer. Mr. Justice A. Loizou dealing with  
this point, said at pp. 602, 603:-

30 "The general reference to the qualifications of all  
the candidates serving in the post, does not, in my  
view, sufficiently disclose whether such material fact, as  
the possession or not, of a qualification possibly constitu-  
ting an additional advantage was duly inquired into, and  
in particular in view of the fact that the details of this  
course were not in the relevant file before the Commission,  
but in the possession of the Ministry. Consequently,  
35 I find that the Commission has not conducted the sufficiently  
necessary inquiry into such a most material factor and,  
therefore, it exercised its discretion in a defective manner;  
so the *sub judice* decision of the respondents having been  
arrived at contrary to the accepted principles of Admi-

nistrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

Moreover, the outcome of such inquiry should have appeared in the reasoning of the *sub judice* decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the *sub judice* decision contrary to law and in excess and abuse of power”.

But I would go further and state that in the present case, and in view of the fact that the Commission had before it the personal file of the applicant, I think, it was bound to give due reasoning why the applicant was not preferred. If further authority is needed on this point I think the case of *Kyriacos G. Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417, makes it very clear that reasons are needed. In delivering this judgment I had this to say at pp. 428, 429:—

“..... I think I ought to reiterate what I said in *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486, that due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, and particularly when such decision is unfavourable to the subject. The whole object, of course, of such rule is to enable the person concerned as well as the Court, on review, to ascertain in each particular case whether the decision is well-founded in fact and in accordance with the law. *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174.

Having considered the arguments of both counsel and in view of the fact that one of the concepts of administrative law is that administrative decisions must be duly reasoned, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out in the decision of the Committee whether they are right or wrong, ought to have been reasons which not only would

5 be intelligible, but also can reasonably be said to deal  
with the substantive points raised, i.e. why the interested  
party was preferred and what were the other relevant facts  
which weighed so much in the mind of the Committee  
in preferring the interested party instead of the applicant,  
who, as I said earlier, had a longer service with the bank.  
10 In the absence of those reasons, in reviewing the said  
decision, I am unable to ascertain whether the decision  
is well-founded in fact and in accordance with the law,  
and in the light of this finding that the said decision is  
not duly reasoned, exercising my powers under Article  
146, I would declare that such decision or act is null and  
void and of no effect whatsoever”.

15 See also the recent case of *Andreas Savvas v. The Republic,*  
*through the Public Service Commission* (1980) 3 C.L.R. 675.

20 For all the reasons I have given I would add that the Courts  
are here to administer justice. The concept of justice is not  
confined to the interests of the particular litigants; it embraces  
and extends to the protection of the public weal. The issues  
involved in this litigation have an importance of direct concern  
to the whole of the public service.

I would annul the decision of the Commission for lack of  
due reasoning also.

25 Decision declared null and void and of no effect whatsoever.  
No order as to costs.

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