

1983 November 26

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KARAGEORGHIS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondents.*

(Case No. 258/82).

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5 *Administrative Law—Public Officers—Promotions—Annulment by administrative Court—On ground of striking superiority of applicant over interested party—New decision by respondents promoting the interested party—No new facts before them other than those which were before them when they reached the annulled decision—Nor any other facts which annulling Judge had not before him—New decision reached on insufficient reasoning and on grounds of re-assessment of the interested party which were inexistent—Annulled.*

10 *Res judicata—Recourse for annulment—Issue decided and no appeal filed—Constitutes a res judicata with regard to the parties to the recourse.*

15 The applicant and the interested party were candidates for promotion to the post of General Inspector of Elementary Education. On the 22nd October, 1980, the respondents decided to promote the interested party to the above post. This promotion was annulled by the Supreme Court upon a recourse by the applicant (see *Karageorghis v. Republic* (1982) 3 C.L.R. 435) on the main ground\* that applicant was an eligible candidate  
20 who was strikingly superior to the one selected.

On the 11th May, 1982 the respondents decided\*\* to promote

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\* The grounds of annulment are found at pp. 1214–1216 post.

\*\* The decision is quoted at pp. 1216–1218 post.

again the interested party to the said post, retrospectively, as from the 1st November, 1980; and hence this recourse.

*Held*, that the respondents, in reaching their decision did not have before them any facts other than those which were before them when they reached their decision on the 22nd October, 1980, nor any other facts which the annulling Judge had not before him when he came to the conclusion that the decision challenged by Recourses Nos. 371/80 and 483/80 had to be annulled; and that, therefore, the respondents reached their new decision to promote the interested party to the said post on insufficient reasoning and on grounds of re-assessment of the interested party which were inexistent; accordingly the sub judice decision must be annulled.

*Held*, further, that the issue of the eligibility of the interested party as a candidate to the said post was in fact decided in his favour in the previous recourse and since no appeal was filed by the applicant, the present applicant, against the judgment delivered in that recourse on this issue, such issue is, with regard to the present parties, a *res judicata*.

*Sub judice decision annulled.*

**Cases referred to:**

*Karageorghis v. Republic* (1982) 3 C.L.R. 435 at pp. 437-439;  
*Pieris v. Republic* (1983) 3 C.L.R. 1054.

**Recourse.**

Recourse against the decision of the respondents to promote the interested party to the post of General Inspector of Elementary Education in preference and instead of the applicant.

*A. Triantafyllides*, for the applicant.

*R. Vrahimi (Mrs.)*, for the respondents.

*A. S. Angelides*, for the interested party.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicant, an Inspector of Elementary Education since 1966, is, by means of the present recourse, challenging the decision of the Educational Service Committee, which was taken on the 11th May, 1982, to promote Mr. George Papalcontiou (here-

inafter referred to as the "interested party") instead of him to the post of General Inspector Elementary Education, retrospectively, as from the 1st November, 1980.

5 The applicant based his application on the following grounds of law:

10 "1. The decision complained of has been taken in excess or abuse of powers in that the respondents disregarded the striking superiority of applicant vis-a-vis the interested party as well as the very superior seniority, experience, qualifications and merit of applicant vis-a-vis the interested party.

15 2. Interested party Papaleontiou is not qualified under the Scheme of Service (Exhibit 1) because he does not possess the requirement of service of at least two years in the post of Inspector of Elementary Education.

3. The decision complained of has been made in spite of the fact that the interested party has no confidential reports in his file for the last several years.

4. The decision complained of is not duly reasoned.

20 5. The decision complained of is in direct contravention of the judgment of the Supreme Court in Appl. Nos. 371/80 and 483/80, wherein the Court decided that the applicant was 'strikingly superior' to the interested party, as well as with several other parts of the above judgment, reference  
25 to which will be made at the trial".

The respondents opposed the application and based their opposition on the ground that the sub judice decision was right, lawful and within the limits of the discretionary power given to them by the Educational Service Law, 1969 (Law 10/69).

30 The facts of the case are in brief the following: The applicant, after serving as an elementary school teacher, was, on the 15th September, 1966, appointed to the post of an Inspector of Elementary Education, in which post he has been serving since then. The interested party was appointed to the same post  
35 on the 1st February, 1977, but as he was granted a scholarship for higher studies in the United States, he served in that post only till the 18th August, 1977. Having completed his studies,

he resumed his duties as an Inspector of Elementary Education on or about the end of May, 1980. On the 22nd October, 1980, the respondents, after a request by the Director-General of the Ministry of Education and after they proceeded to interview a number of candidates, amongst whom were the applicant and the interested party, decided to promote the latter to the post of General Inspector of Elementary Education as from the 1st November, 1980. As a result of that decision of the respondents, the applicant filed Recourses Nos. 371/80 and 483/80, by means of which he applied to the Court for the annulment of the promotion of the interested party to that post. Mr. Justice HadjiAnastassiou who tried the said recourses, in annulling the decision of the respondents (see *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435) appears to have held (see pp. 437 to 439) as follows:

“(1) Seniority is one of the factors to be taken into account in effecting a promotion and it may be the decisive one if all other things are equal; that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority: that an administrative Court will intervene in order to set aside a promotion when satisfied by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; that looking at the relevant minutes of the respondent Commission, there are no reasons at all why applicant’s seniority was disregarded; that, therefore, this Court is bound to hold that, all other things being more or less equal, applicant’s seniority ought to prevail; that applicant has, therefore, discharged the onus of satisfying this Court that he was an eligible candidate who was strikingly superior to the one selected and the respondent has thus, exceeded the outer limits of its discretion, and, therefore has acted in abuse of its powers; that, moreover, this Court is bound to hold that the respondent Commission has not exercised its discretion in a valid manner through failure to take in its exercise into account all material considerations,

namely the consideration of seniority; accordingly the sub judice promotion of interested party Papaleontiou must be annulled.

5           (2) Under s.35(3) of Law 10/69 in making a promotion the Commission shall have due regard to the confidential reports on the candidates and to the recommendations made in this respect by the Head of Department; that this provision is taken to mean recommendations of the Head of Department relating to the candidates; that as it appears  
10 in the relevant minutes of the Commission, no definite recommendation was made in favour of any of the candidates by the Head of Department; and though he stated that his recommendations and views on each of the candidates appear in their files, no such, at least recent, views and recommendations appear in any of the files of the candidates; that, thus, the decision of the Commission was taken  
15 in a manner contrary to law, namely, the aforesaid s. 35(3) and also without sufficient knowledge of or inquiry into all relevant factors, a situation that renders the sub judice decision contrary to law in the sense of Article 146.1 of the Constitution (see *Tryfon v. Republic*, (1968) 3 C.L.R. 28, and *Christides v. Republic* (1966) 3 C.L.R. 732 where it was held that absence of knowledge of or inquiry into relevant factors leads to annulment of an administrative decision and that in exercising its discretionary powers, the administration must take into account all relevant factors); accordingly the sub judice decision must be  
20 annulled for this reason too.

30           (3) It is a settled principle of administrative law that a decision must be duly reasoned and that the lack of due reasoning renders a decision contrary to law and also in abuse and excess of powers; that the requirement of due reasoning must be more strictly observed in the case of a decision of a collective organ unfavourable to the subject  
35 (see *Eleftheriou v. The Central Bank*, (1980) 3 C.L.R. p. 85); that the sub judice decision was not duly reasoned and was, therefore, contrary to the principles of administrative Law and thus contrary to law in the sense of Article 146.1 of the Constitution; accordingly it must be  
40 annulled for this reason as well.

(4) The sub judge decision is invalid for the following reason too: Among other matters taken into consideration in preferring interested party Papaleontiou was 'the personal evaluation formed by the members of the Commission about each one of the candidates from their personal interviews'; that in the absence of any record in the relevant minutes as to the result of the interview and in the absence of any indication as to whether a system of marking was adopted so as to enable this Court to examine how and why it was reasonably open to the respondent to act upon the results of the personal interview, notwithstanding the substantially greater seniority of the applicant, such a general statement in the minutes of the respondent, as aforesaid, cannot have the effect of rendering the promotion of interested party Papaleontiou one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent.

(5) The sub judge decision must also be annulled for lack of due enquiry into a most material aspect of the case; that confidential reports are by law (s.35(3) of Law 10/69), a factor which is taken into consideration in considering promotions; that in spite of the absence of recent confidential reports on interested party Papaleontiou, the respondent Commission failed to initiate or conduct an inquiry into the existence or not of confidential reports; that a failure to make a due inquiry results due to contravention of well-settled principles of administrative law in the invalidity of the relevant administrative action because the notion of law under Article 146.1 of the Constitution has to be construed as including the well settled principles of administrative Law".

On the 11th May, 1982, that is to say six days after the above-mentioned judgment was delivered, the respondents, at a meeting that they held, decided to promote again the interested party to the said post retrospectively as from the 1st November, 1980. The reasons given by them in reaching their said decision, the sub judge one, appear in the minutes kept at their meeting and are the following:

" Η Έπιτροπή αφού έλαβε υπόψη όλα τα πιο πάνω και με βάση την άξία, τα προσόντα και την αρχαιότητα, τις συστά-

σεις του Διευθυντή Δημοτικής Εκπαιδύσεως (όπως είχαν  
 έκφρασει στις 22.10.1980 και διευκρινιστεί στη σημερινή  
 συνεδρίαση), τις υπηρεσιακές εκθέσεις τη γνώμη της για  
 5 τον καθένα από τους υποψηφίους και αφού έδωσε τη δέουσα  
 βαρύτητα στο κάθε νόμιμο κριτήριο και ασκώντας τη δια-  
 κριτική της εξουσία, κρίνει τον κ. Γ. Παπαλεοντίου ως καταλ-  
 ληλότερο για προαγωγή στη θέση του Γενικού Επιθεωρητή.

‘Η Έπιτροπή θεωρεί ότι η υπεροχή των άλλων υποψηφίων  
 10 όσον αφορά την αρχαιότητα δεν μπορεί να αντισταθμίσει  
 την υπεροχή του κ. Παπαλεοντίου στις διοικητικές και όργα-  
 νωτικές ικανότητες, στις προσωπικές σχέσεις, και στη συνο-  
 λική του προσφορά κατά τη μακρόχρονη εκπαιδευτική  
 υπηρεσία του και ιδιαίτερα στη θέση Διευθυντή. Κι’ αυτό  
 15 γιατί οι άλλοι υποψήφιοι ύστεροῦν (έναντι του κ. Παπα-  
 λεοντίου) σε βασικούς τομείς που η Έπιτροπή θεωρεί άπα-  
 ραίτητα προσόντα για την έπιτυχή έκτέλεση των καθηκόντων  
 τής θέσεως όπως προκύπτει άλλωστε και από τα προανα-  
 φερθέντα άποσπάσματα των υπηρεσιακών εκθέσεων και ειδι-  
 20 κότερα: ‘Ο κ. Κωνσταντινίδης δεν διακρίνεται στην ήγερική  
 ικανότητα και στην έπάρκεια στη παρούσα έργασία  
 (competence to present work). ‘Ο κ. Τορνάρης δεν διακρί-  
 νεται στην πρωτοβουλία και στην έπάρκεια (competence)  
 στην παρούσα έργασία. ‘Ο κ. Παντελίδης δεν διακρίνεται  
 25 στη διοικητική/έποπτική και την ήγερική ικανότητα. ‘Ο  
 κ. Καραγιώργης δεν θεωρείται συνεργάσιμος και δεν διακρί-  
 νεται στις ανθρώπινες σχέσεις και στην ήγερική ικανότητα.  
 Σ’ αυτούς άκριβώς τους τομείς, ό κ. Παπαλεοντίου κατα-  
 φανώς υπερέχει.

‘Η Έπιτροπή Εκπαιδευτικής Υπηρεσίας άποφασίζει όμό-  
 30 φωνα να προσφέρει στον κ. Γ. Παπαλεοντίου προαγωγή  
 στη θέση Γενικού Επιθεωρητή Στοιχειώδους Εκπαιδύσεως,  
 άναδρομικά από την 1.11.1980”.

(“The Committee having considered all the above and on  
 the basis of the merits, qualifications and seniority, the  
 35 recommendations of the Director of Primary Education  
 (as they have been expressed on 22.10.1980 and clarified  
 during to-day’s meeting), the confidential reports, its  
 opinion for every one of the candidates and after attributing  
 due weight to every lawful criterion and exercising its

discretionary power, considers Mr. G. Papaleontiou as more suitable for promotion to the post of General Inspector. The Committee is of the view that the superiority of the other candidates as regards seniority cannot counter-balance the superiority of Mr. Papaleontiou in administrative and organizing abilities, personal relations, and his whole contribution during his long existing educational service and particularly in the post of Director. And this because the other candidates are inferior (to Mr. Papaleontiou) in basic fields which the Committee considers as required qualifications for the successful execution of the duties of the post as it, also, appears from the above-referred extracts of the confidential reports and particularly: Mr. Constantinides is not distinguished in leading ability and in competence in present work. Mr. Tornaris is not distinguished in initiative and in competence in present work. Mr. Pantelides is not distinguished in administrative/supervising and leading ability. Mr. Karageorghis is not considered co-operative and is not distinguished in human relations and leading ability. Especially in those fields Mr. Papaleontiou is manifestly superior.

The Educational Service Committee unanimously decides to offer to Mr. G. Papaleontiou promotion to the post of General Inspector Elementary Education, retrospectively as from 1.11.1980".

Counsel for the applicant based his submissions mainly on three issues, namely that—

- (a) the interested party was not eligible for promotion under the relevant schemes of service;
- (b) the sub judge decision was reached in abuse of the powers of the respondents; and
- (c) the matter is res judicata.

The post of General Inspector, Elementary Education, is a promotion post and the relevant scheme of service, which is exhibit 1, reads as follows:

“ΓΕΝΙΚΟΣ ΕΠΙΘΕΩΡΗΤΗΣ ΣΤΟΙΧΕΙΩΔΟΥΣ ΕΚΠΑΙΔΕΥΣΕΩΣ  
(Θέσις Προαγωγής)

Έγκριμένη Μισθολογική Κλίμαξ:—ΛΚ1354Χ43—1483Χ50—  
1583Χ52—1635



Καθήκοντα καὶ Εὐθῦναι:

- 5 (α) Γενική ἐπιθεώρησις, βάσει προγράμματος ἢ συμφώνως ὀδηγιῶν, τῶν σχολείων στοιχειώδους ἐκπαιδεύσεως, νηπιαγωγείων καὶ ἐπιμορφωτικῶν κέντρων καὶ τοῦ διδασκτικῶν προσωπικῶν αὐτῶν, ὡς καὶ τῆς τηρήσεως τῶν κειμένων διατάξεων τῶν ἀφορωσῶν εἰς τὸ ἐν αὐτοῖς ἐπιτελούμενον ἐκπαιδευτικὸν ἔργον καὶ τὴν σχολικὴν ἐν γένει δραστηριότητα.
- 10 (β) Συντονισμὸς καὶ συστηματοποιήσις τῆς ἐργασίας τῶν Ἐπιθεωρητῶν Στοιχειώδους Ἐκπαιδεύσεως καὶ ὀργανωσις καὶ συμμετοχὴ εἰς μείζονας ἐπιθεωρήσεις.
- 15 (γ) Ἐνεργὸς συμμετοχὴ εἰς τὴν ὀργανώσιν καὶ διεξαγωγὴν συνεδρίων, σεμιναρίων καὶ ἐπιμορφωτικῶν μαθημάτων διὰ τοὺς Ἐπιθεωρητὰς καὶ τὸ διδασκτικὸν προσωπικὸν στοιχειώδους ἐκπαιδεύσεως, νηπιαγωγείων καὶ ἐπιμορφωτικῶν κέντρων.
- (δ) Οἰαδήποτε ἄλλα καθήκοντα ἠθελον ἀνατεθῆ εἰς αὐτὸν.

Προσόντα:

- 20 Πτυχίον Διδασκαλείου ἢ Παιδαγωγικῆς Ἀκαδημίας καὶ Πανεπιστημιακὸν δίπλωμα ἢ τίτλος εἰς τὸν ἐκπαιδευτικὸν τομέα.

Εὐδόκιμος ὑπηρεσία τουλάχιστον δύο ἐτῶν εἰς τὴν θέσιν Ἐπιθεωρητοῦ Γενικῶν Μαθημάτων Στοιχειώδους Ἐκπαιδεύσεως.

- 25 Ἐνημερότης ἐπὶ τῶν ἐν γένει ἐκπαιδευτικῶν προβλημάτων καὶ τάσεων τῆς στοιχειώδους ἐκπαιδεύσεως ἐν Κύπρῳ καὶ εἰς ἄλλας χώρας.

Καλὴ γνῶσις μιᾶς τουλάχιστον τῶν ἐπικρατεστέρων Εὐρωπαϊκῶν γλωσσῶν.

- 30 Μεταπτυχιακὴ ἐκπαίδευσις εἰς τὸ ἐξωτερικὸν ἑνὸς τουλάχιστον ἀκαδημαϊκοῦ ἔτους εἰς θέμα σχετικὸν πρὸς τὰ καθήκοντα τῆς θέσεως θεωρεῖται ὡς πρόσθετον προσόν.

(Ἐνεκρίθη ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου—Ἀπόφασις ὑπ' ἀρ. 5354 καὶ ἡμερομηνίαν 3.2.66)''

- 35 (“GENERAL INSPECTOR ELEMENTARY EDUCATION (Promotion Post). Approved Salary Scales—C£1354X43—1483X50—1583X52—1635.

*Duties and Responsibilities:*

- (a) General inspection, on the basis of curriculum or in accordance with instructions, of the schools of elementary education, kindergartens and cultural centres and their teaching staff, as well as the observance of the existing provisions concerning the educational work carried out by them and the school activity in general. 5
- (b) Coordination and systematization of the work of the Inspectors Elementary Education and organization and participation in major inspections. 10
- (c) Active participation in the organization and conduct of conferences, seminars and courses in further education for the Inspectors and the teaching staff of elementary education, kindergartens and cultural centres. 15
- (d) Any other duties that may be assigned to him.

*Qualifications:*

Diploma of Teachers College or Paedagogical Academy and University Diploma or degree in the educational field.

Satisfactory service, of at least two years in the post of Inspector General Subjects Elementary Education. 20

Awareness of the educational problems and tendencies in general of the elementary education in Cyprus and in other countries.

Good knowledge of at least one of the principal European languages. 25

Post-graduate training abroad for at least one academic year in a subject related to the duties of the post is deemed as additional qualification.

(Approved by the Council of Ministers—Decision No. 5354 and dated 3.2.1966.)” 30

As regards the first issue raised by counsel for the applicant, namely that the qualification required by the second paragraph of the Scheme of Service, i.e. “evdokomos ipiresia” (“satisfactory

service”), was not possessed by the interested party and that this issue, although extensively argued, was not decided by the judgment delivered in the *Karageorghis case* (supra), it has to be observed that Mr. Justice HadjiAnastassiou in his  
5 judgment made extensive reference to the arguments put forward in this respect by counsel appearing on behalf of all parties and that although it is not so expressly stated, one can, without hesitation, reach the conclusion that the learned Judge was of the view that the interested party was eligible to be considered  
10 by the respondents as a candidate for the post, in that he possessed the qualification of “evdokimos ipiresia” (“satisfactory service”), or else he would not have proceeded to decide the issues on which he ruled.

Having reached the conclusion that the issue of the eligibility  
15 of the interested party as a candidate to the said post was in fact decided in his favour in Recourses Nos. 371/80 and 483/80, and in the light of the unanimous judgment of the Full Bench of this Court delivered by Mr. Justice Pikis in the case of *Marinos Pieris v. The Republic*, (1983) 3 C.L.R. 1054 and since no appeal  
20 was filed by the applicant, the present applicant, against the judgment delivered in those Recourses on this issue, I find that this issue is, with regard to the present parties, a *res judicata*.

What now remains for decision is whether there was open  
25 to the respondents, after the judgment in those recourses was delivered, to promote again the interested party to the post in question.

Going through the minutes of the meeting of the respondents during which they reached the sub judice decision, one cannot lose sight of the fact that—

- 30 (a) the material which they had before them was the same, i.e. the personal files and confidential reports of the applicant and the interested party, when they, on the 22nd October, 1980, decided to promote to the post of General Inspector of Elementary Education the interested party.
- 35 (b) The report made by Mr. Anastassiades dated the 26th June, 1980, which is countersigned by Mr. Papaxenophontos and to which the respondents particularly referred to in their decision of the 11th May, 1982, which Mr. Papaxenophontos

described as having the force of a confidential report, was in fact in the personal file of the interested party when on the 22nd October, 1980, they decided to promote him to the post, the subject of this recourse. This document was, also, before the learned Judge who tried Recourses Nos. 371/80 and 483/80, in that it was in the file of the interested party which, it is admitted, it was one of the exhibits produced during the trial of those recourses. 5

Considering all the above, I find that the respondents, in reaching their decision did not have before them any facts other than those which were before them when they reached their decision on the 22nd October, 1982, nor any other facts which the annulling Judge had not before him when he came to the conclusion that the decision challenged by Recourses Nos. 371/80 and 483/80 had to be annulled. 10 15

I, therefore, find that the respondents reached their new decision to promote the interested party to the said post on insufficient reasoning and on grounds of re-assessment of the interested party which were inexistent.

In the result, I find that the decision of the respondents must be annulled and that in the circumstances of the case they should pay the costs of the applicant. 20

*Sub judice decision annulled  
with costs.*