

1983 February 2

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS GEORGHIOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 437/80)

Public (or Educational) Officers—Promotions—Judicial Control—Principles applicable—Seniority—Effect—All other factors more or less equal—No cogent reasons given why applicant's seniority over certain of the interested parties was disregarded—And why those of the interested parties who were not recommended for promotion were promoted in lieu of others who were specially recommended for promotion—Moreover no cogent reasons were given as to the results of the interviews and there was no indication as to the method adopted in such interview for the evaluation of the candidates—Commission's discretionary powers, with regard to those of the interested parties who were not recommended for promotion, not exercised in a valid way and that in any event its decision concerning these interested parties is wrong due to lack of due reasoning—Sub judice decision regarding remaining interested parties sustained because though applicant and these interested parties had the same marks and seniority the latter had been recommended for promotion—Slight difference of one or two marks in one report in favour of applicant does not amount to a striking superiority of the applicant.

20 The applicant and the 41 interested parties were teachers 'A' in the Elementary Education. On 5.6.1980 the respondent Committee decided to promote the 41 interested parties to the post of Assistant Headmaster to the exclusion of the applicant; and hence this recourse. The sub judice decision appears in
25 the relevant minutes of the Commission and reads and follows:

“(c) *Promotions to the post of Assistant Headmaster.*
 The Educational Service Committee having studied the personal and confidential files of all the teachers ‘A’ who are entitled to be promoted to the post of Assistant Headmaster and having in mind the provisions of the Law and the schemes of service and the recommendations of the Head of Elementary Education (see file 365/68/2), decides unanimously that on the basis of merit, qualifications and seniority of the candidates, the above recommendations of the Head of Department, the service reports and the opinion which its members have formed about each one of the candidates during the personal interviews, the following teachers ‘A’ are the most suitable for promotion to the post of Assistant Headmaster.

Therefore, it decides to offer to them promotion to the post of Assistant Headmaster Elementary Education as from 1.9.1980.....”.

In making the sub judge promotions the respondent Commission had before it a list containing the names of 74 teachers who were recommended for promotion by the Department of Elementary Education. The applicant was not included in such list but out of such list only 25 teachers were promoted and the remaining 16 out of the 41 promoted were not persons that had been recommended for promotion. The respondent Committee did not mention anywhere in its decision why it disregarded persons who were recommended and whose names were included in the list and promoted others for whom there was no recommendation for promotion.

Interested parties 12, 19, 20 and 21 and the applicant had the same marks and seniority, but the former had been recommended for promotion whereas the applicant had not. Interested parties 8, 9, 10 and 11, had the same seniority with the applicant. In their last report they had the same marks with the applicant but in the last-but-one they were graded a little lower.

Regarding the remaining interested parties applicant was senior to them by four years. Out of these interested parties Nos. 14, 15, 18, 22, 23, 27, 28, 29, 33, 34, 36, 37, 38, 39, 40 and 41 were recommended for promotion and Nos. 13, 16, 17, 24, 25, 26, 30, 31, 32 and 35 were not amongst those recommended.

Held, (after stating the principles governing effect of seniority and the principles governing judicial control of promotions):

5 *Held, (1) that it was reasonably open to the Commission to prefer interested parties 12, 19, 20 and 21 instead of the applicant once there was not any superiority of the applicant over them; and that, therefore, the recourse against them should fail.*

10 (2) That though applicant has shown a slight superiority as to the marks over interested parties 8, 9, 10 and 11, a difference of one or two marks in one report, is not such as to amount to a striking superiority of the applicant (the onus of which was upon him) over such interested parties, as to lead to the annulment of the sub judice decision; and that, therefore, the recourse against them should fail.

15 (3) That though applicant was senior to interested parties 14, 15, 18, 22, 23, 27, 28, 29, 33, 34, 36, 37, 38 the latter had been recommended for promotion and this goes to their credit; that, therefore, all factors were not equal so as to let the seniority of the applicant prevail even though in some cases such seniority is four years; accordingly the recourse against them should fail.

20 (4) That in the absence of any cogent reasons appearing in the minutes and showing (a) why in the case of those of the interested parties in respect of whom all factors were more or less equal with the applicant, the seniority of the applicant was disregarded; (b) why those of the interested parties who were not recommended for promotion were promoted, in lieu of others who were specially recommended for promotion; (c) as to the results of the interviews and the lack of any indication as to the method adopted in such interview for the evaluation of the candidates as to enable the Court, especially in the circumstances of the present case where persons not recommended were promoted instead of those recommended, whether it was reasonably open to the respondent to act upon the results of the personal interviews, I have come to the conclusion that concerning interested parties 13, 16, 17, 24, 25, 26, 30, 31, 32 and 35 the respondent Committee has not exercised its discretionary power in a valid way and that in any event its decision is wrong due to lack of due reasoning; accordingly

the sub judice decision as far as it concerns the above-mentioned interested parties must be annulled.

Sub judice decision partly annulled.

Cases referred to:

- Michaeloudes v. Republic and Another* (1979) 3 C.L.R. 56; 5
Lardis v. Republic (1967) 3 C.L.R. 64 at p. 77;
Vonditsianos and Others v. Republic (1969) 3 C.L.R. 83 at p. 91;
Partellides v. Republic (1969) 3 C.L.R. 480;
Thalassinios v. Republic (1973) 3 C.L.R. 386 at pp. 395, 396;
Karageorghis v. Republic (1982) 3 C.L.R. 435 at p. 458; 10
Zafirides v. Republic (1980) 3 C.L.R. 140 at pp. 147, 148;
Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 47;
Saruhan v. Republic, 2 R.S.C.C. 133 at p. 136;
Panayidou v. Republic (1978) 3 C.L.R. 144 at p. 153;
Nissis (No. 1) v. Republic (1967) 3 C.L.R. 473; and on 15
 appeal (1967) 3 C.L.R. 671;
Antoniou v. Republic (1975) 3 C.L.R. 510;
Ioannides and Another v. Republic (1979) 3 C.L.R. 628 at p.
 638;
Constantinou v. Republic (1980) 3 C.L.R. 551 at pp. 558-561; 20
Evangelou v. Republic (1965) 3 C.L.R. 292 at pp. 299, 300;
Georghiou v. Republic (1976) 3 C.L.R. 74;
Begdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417 at p. 428.

Recourse.

Recourse against the decision of the respondent to promote 25
 the interested parties to the post of Assistant Headmaster in
 preference and instead of the applicant.

A. Timothi (Mrs.), for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult. 30

SAVVIDES J. read the following judgment. The applicant
 and the 41 interested parties, whose promotion to the post of
 Assistant Headmaster of Elementary Education is contested,
 were prior to the sub judice decision teachers 'A' in the Elemen-
 tary Education. On 5.6.1980 the respondent Committee 35
 decided to promote the 41 interested parties to the post of

Assistant Headmaster to the exclusion of the applicant. Such decision is contained in the minutes of the meeting of the respondent Committee of 5.6.1980, extract of the material part of which, reads as follows:

5 “(c) *Promotions to the post of Assistant Headmaster.*
 The Educational Service Committee having studied the
 personal and confidential files of all the teachers ‘A’ who
 are entitled to be promoted to the post of Assistant Head-
 10 master and having in mind the provisions of the Law and
 the schemes of service and the recommendations of the
 Head of Elementary Education (see file 365/68/2), decides
 unanimously that on the basis of merit, qualifications and
 seniority of the candidates, the above recommendations
 15 of the Head of Department, the service reports and the
 opinion which its members have formed about each one
 of the candidates during the personal interviews, the follow-
 ing teachers ‘A’ are the most suitable for promotion to the
 post of Assistant Headmaster.

20 Therefore, it decides to offer to them promotion to the
 post of Assistant Headmaster Elementary Education as
 from 1.9.1980.....”

and then the names of the 42 teachers who were selected for
 promotion, are set out.

25 Though, according to the decision, offer for promotion was
 made to 42 teachers, when the decision was published in the
 official Gazette, on 12.9.1980, only the names of the 41 teachers
 - the interested parties in this recourse - are mentioned. It may
 be the case that the one not mentioned, namely, Yianoulla
 Vassiliou Lazaridou, did not accept the offer for promotion.

30 As a result of such decision the applicant filed the present
 recourse whereby he prays for -

35 “A decision and/or declaration declaring as null and void
 and of no effect the decision and/or act of the respondent
 Committee which was published in the Gazette of the
 Republic of 12.9.1980. under No. 1617 whereby the 41
 persons named below, to the exclusion of the applicant,
 were selected and/or promoted to the post of Assistant
 Headmaster Elementary Education.” (Then the list follows
 of the names of the persons so promoted).

The grounds of law on which this recourse is based and which were argued before me, are as follows:

“(1) The sub judge decision and/or act of the Respondent Committee violates in substance Law 10/69, s. 35, and the principles of Administrative Law, as the said decision and/or act was taken 5

(a) as a result of misconception of facts in that the organ which took the decision took the wrong view, that certain real and legal situations did exist and others did not exist and as a result proceeded to the act in question and, wrongly considered that the persons selected and promoted are better than the applicant regarding qualifications, merit, service reports, seniority and professional qualifications, etc. 10

(b) In abuse of the discretionary power vested in the Respondent Committee by law in that: 15

(aa) the contents of the said act and/or decision are manifestly contrary to common sense;

(bb) it is repugnant to the principles of good administration as it was not issued by proper exercise of discretion which governs generally the administrative organs in the exercise of their functions; 20

(cc) the sub judge act and/or decision was taken in violation of the principle of equality and, in particular, in the exercise by the Respondent Committee of its discretionary powers in that there was not equal consideration and evaluation in accordance with the law of similar legal and factual situations. 25

The above abuse of the exercise of discretionary power by the organ which took the sub judge decision is apparent by the fact that persons obviously inferior to the applicant were selected and promoted. 30

(c) There was a violation of the administrative principle which requires that, in cases of promotions and/or filling of public posts, the best from the candidates 35

are selected not only in the interests of the public service but also as a matter of justice to suitable candidates for public posts.

- 5 (d) There is no reasoning and/or there is defective reasoning and/or illegal reasoning. The sub judge decision does not contain as it ought full and special reasoning. It does not mention the real circumstances and the reasons why the Respondent Committee reached its decision concerning the suitability of the candidates; 10 it does not mention the material qualifications of the candidates and the assessment made after comparison between the candidates and, in particular, it does not mention the material qualifications of those selected for promotion and it does not make assessment of 15 such persons as compared with the applicant and in general it leaves considerable doubt as to the correctness of the decision of the Respondent Committee.

(e) It was taken in abuse of power.”

20 The application was opposed and the grounds of law relied upon in opposition are that the sub judge decision was taken lawfully and after proper exercise by the respondent Committee of its discretionary powers, on the basis of all material facts before it concerning the applicant and each one of the interested parties individually.

25 On 31.3.81, whilst the case was at the stage of directions, the recourse was withdrawn against interested parties 1 - 7 inclusive, and it was pursued only in so far as the remaining interested parties were concerned.

30 The gist of the argument of counsel for the applicant is that the promotions were made in contravention of the provisions of the law and that the applicant should have been preferred to the interested parties.

35 The relevant law is the Public Educational Service Law, 1969 (Law 10/69) and the material section is section 35(2)(3) which till 29.6.1979, when amended, used to read as follows:

“Section 35_____

(2) The claims of educational officers to promotion shall

be considered on the basis of merit, qualifications and seniority.

- (3) In making a promotion the Committee shall have due regard to the confidential reports of the candidates and to the recommendations made in this respect by the respective inspector.” 5

Both the above sub-sections have been amended by Law 53/79, section 5(b) and (c) respectively, which was enacted on 29.6.1979. The new sub-sections, as amended, read as follows:-

“Section 35 _____ 10

- (2) In examining the claims of educational officers for promotion, the merit, qualifications and seniority shall be duly taken into consideration in accordance with the procedure defined.
- (3) In making a promotion the Committee shall have due regard to the service reports of the candidates and the recommendations of the respective department of Education.” 15

The amendment of the law must have been necessitated as a result of the decision of this Court in the case of *Michaelouides & Another v. The Republic of Cyprus, through the Educational Service Committee & Another* (1979) 3 C.L.R. 56, which was delivered on 27.1.1979 and by which regulations 26, 28 and 29 defining the procedure to be followed in making promotions of educational officers, were found to be ultra vires the Law (section 35 of Law 10/69). 20 25

An amendment which was brought about by the amending law 53/79 was to change the term “confidential” reports, which, in fact, did not represent the true character of the report since same were made available to the persons concerned, and substitute same by “service” reports which means that the Committee will no longer consider the confidential reports of the candidates but their service reports. In the present case the decision was based on the reports appearing in the files which are entitled either “normal” or “special” reports without mentioning anywhere confidential reports. This is also clear from the phraseology of the sub judice decision where it is mentioned that the service reports of the applicants were the ones taken 30 35

into consideration. I, therefore, find that in this respect there has not been any contravention of the law.

The only point that poses for consideration is, whether the respondent Committee on the material before it, properly exercised its discretion in promoting the interested parties to the exclusion of the applicant, having taken into consideration the criteria set out by section 35 of Law 10/69 and its subsequent amendments. I have before me the files of the applicant and interested parties Nos 23, 24, 36, 37, 38, 39, 40 and 41. The files of the remaining applicants were made available for inspection by counsel for the applicant but their production was not deemed necessary by her.

Before proceeding to examine whether, from the material before me and which the respondent Committee took into consideration when considering the application for promotions, the sub judge decision was properly taken, I have to make the following observations which have arisen as a result of a perusal of the exhibits and, in particular, from a comparison of exhibit 2 (the list of teachers recommended by the Department of Elementary Education for promotion) with the list of the teachers finally selected and promoted by the respondent Committee:-

- (1) In exhibit 2 the names of 74 teachers are included as recommended for promotion by the Department of Elementary Education. The applicant was not included in such list.
- (2) Out of such list only 25 teachers from those recommended were promoted and the remaining 16 out of the 41 promoted were not persons that had been recommended for promotion.
- (3) The respondent Committee does not mention anywhere in its decision why it disregarded persons who were recommended and whose names were included in the list and promoted others for whom there was no recommendation for promotion.

A list showing the dates of appointments (seniority) and the marks of the last two years (merit) of the applicant and the 41 interested parties has been annexed to the opposition of counsel for respondents. No mention is made therein and no allegation has been advanced that applicant has any better qualifications than the interested parties. In her address to the Court, counsel

for applicant, conceded that a perusal of the minutes of the meeting at which the sub judge decision was taken, shows that all matters which should have been taken into consideration by the appropriate organ in reaching its decision were in fact taken into consideration. What is lacking in the said decision, counsel contended, is reference to comparable tables and any reasoning why certain candidates were preferred in comparison with others. In the present case, counsel added, though in the decision reference is made as to the matters which the respondent Committee took into consideration, such matters are not supported by the reports and the evaluation of the candidates as appearing in their respective files. There is nothing in the contents of the files, counsel contended, indicating that the applicant is in any way inferior to the interested parties. Counsel further submitted that the applicant compared to a number of the interested parties, though having the same merit and qualifications, his seniority is striking over them and no reason has been given why such factor was ignored. She concluded her argument by submitting that in any event there is lack of reasoning and or that the reasoning is defective and, therefore, the sub judge decision should be annulled.

Counsel for the respondent in his address submitted that there is ample reasoning in this case and that the applicant has failed in any case to prove that he was strikingly superior regarding merit and qualifications, and seniority by itself is not the determining factor but part of the overall picture of the candidate which must be weighed in relation to the contents of the reports and the performance at the interview. He contended that in the present case the respondent could legitimately give more weight to the recommendations of the Head of the Department and to the contents of the report about the candidates than to their seniority when effecting the promotions and that in taking its decision the respondent Committee exercised its discretionary powers correctly.

Before proceeding to examine whether the respondent in this case in taking the sub judge decision paid due regard to all relevant considerations and exercised its discretion properly, I wish to refer to our Case Law regulating such matters. Seniority is one of the three factors to be taken into consideration in case of promotions under the provisions of section 35(2) of the

Public Educational Service Law, 1969 (Law 10/69) as amended by section 5(b) of Law 53/79, the other two factors being merit and qualifications.

5 It has been held by this Court in a number of cases that when all other factors are equal, seniority may be a decisive factor. In *Lardis v. The Republic* (1967) 3 C.L.R. 64 at p. 77, Triantafyllides, J. as he then was, had this to say:

10 "It is the paramount duty of the Commission, in the proper exercise of its competence under Article 125 of the Constitution, to select the candidate most suitable for the post in question (see the *Theodossiou* case, *supra*, at p.47). Seniority is only one of the relevant factors to be taken into account in this respect, and not the decisive factor; it may be the decisive factor only if all other things are
15 equal as between two candidates."

In *Vonditsianos and Others v. The Republic* (1969) 3 C.L.R. 83 at p. 91, it was held by Triantafyllides, J. as he then was:

20 "On the whole of the material before the Court, and in the absence of any due reasons to the contrary - which I would expect to find duly recorded in the relevant minutes of the Respondent - I fail to see how it was open to the Respondent, in the proper exercise of its discretionary powers, to prefer Interested Party Vovides to Applicant Constantinou, in spite of the greater seniority and experience of the latter
25 over the former, and there being no difference in merit in favour of the Interested Party."

In *Partellides v. The Republic* (1969) 3 C.L.R. 480, the Court of Appeal found that the discretionary power of the respondent to promote the interested party in preference to the applicant
30 who had seniority of two years over the interested party, was exercised in an erroneous manner, in that once all other things were more or less equal, the applicant's seniority ought to have prevailed.

In *Thalassinou v. The Republic* (1973) 3 C.L.R. 386, A. Loizou, J. dealing with the question of seniority, said at pp. 395, 396:-

"The third ground of law deals with the question of applicant's seniority, in the sense that he was longer in the

service. On this point, I need only repeat what has been, on a number of occasions, stressed, that seniority is not the decisive factor which governs promotions, but one that should be duly taken into consideration and as stated in *Partellides v. The Republic* (1969) 3 C.L.R. 480, it should only prevail if all other things were equal.” 5

In *Karageorghis v. The Republic* (1982) 3 C.L.R. 435, Hadjiannastassiou, J. after reviewing most of the cases on the matter, concluded as follows at p. 458:-

“From the above case law there emerges clearly the principle that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority. 10

Looking at the relevant minutes of the respondent commission, I find no reasons at all why applicant’s seniority was disregarded. I am, therefore, bound to hold that, all other things being more or less equal, applicant’s seniority ought to prevail. Applicant has, therefore, discharged the onus of satisfying me that he was an eligible candidate who was strikingly superior to the one selected and the respondent has thus exceeded the outer limits of the discretion, and, therefore, has acted in abuse of its powers. Moreover, I am 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. The sub-judice promotion of interested party Papaleontiou is, therefore, annulled.” 15 20 25

The need for cogent reasons to be given for disregarding seniority when all other matters are equal, was also stressed in *Zafirides v. The Republic* (1980) 3 C.L.R. 140 in which A. Loizou, J. had this to say at pp. 147, 148:- 30

“In my view the seniority of the applicant is so substantial that in the circumstances of this case more cogent reasons were called for in disregarding same, as in that way an administrative Court would have been enabled to ascertain whether the administrative discretion of the appropriate organ was properly exercised and so become capable of 35

judicial control in the sense of Article 146 of the Constitution”.

(See, also *Vonditsianos and others v. The Republic* (supra)).

5 It is well settled by our Case Law that the Public Service Commission in effecting promotions is to select the most suitable candidate. The pronouncement of such principle goes as far back as 1961 when our Supreme Constitutional Court in *Theodossiou v. The Republic*, 2 R.S.C.C. 44, had this to say at p. 47:-

10 “In the opinion of the Court the paramount duty of the Public Service Commission in effecting appointments or promotions is to select the candidate most suitable, in all the circumstances of each particular case, for the post in question.”

15 The principle has been followed in *Saruhan and The Republic of Cyprus*, 2 R.S.C.C. 133 at p. 136 where it was held:-

20 “... that when the Public Service Commission has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations and without taking into account irrelevant factors, this Court will not interfere with the exercise of such a discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provision of the Constitution or of any law or has been made in excess or in abuse of the powers vested in the Public Service Commission.”

25 The above principle has been adopted by this Court ever since in a number of cases one of the most recent ones being *Kara-georghis v. The Republic* (supra) in which reference is made to a number of cases on the point. (See, also, *Lardis v. The Republic* (supra), *Panayidou v. The Republic* (1978) 3 C.L.R. 144).

30 In *Nissis (No. 1) v. The Republic* (1967) 3 C.L.R. 473 (and on appeal at page 671 of the same volume), L. Loizou, J. said at pages 477, 478:-

35 “It is quite clear to me that the only advantage which the applicant had over some of the interested parties was on the question of seniority. Seniority is, of course, a factor always to be considered and in case of equal qualifications and merits it may well be decisive but is not the exclusive

vital factor. The recommendations of the Head of Department and the assessment of the officer's capabilities and conduct as contained in the annual confidential reports, on the other hand, are matters that cannot lightly be disregarded. *Vide Michael Theodossiou and the Republic*, 2 R.S.C.C. p. 44." 5

In *Antoniou v. The Republic* (1975) 3 C.L.R. 510 in which *Partellides* case (supra) was referred to and distinguished, Triantafyllides, P. in delivering the judgment of the Full Bench, had this to say at page 515: 10

"We should say that we have felt some anxiety because of the fact that the most senior candidate was not selected for appointment even though he was described as an 'average officer'; one does not have to be 'exceptional' in order to enjoy the benefit of the advantage of seniority. 15
But, on the other hand, it appears that the Commission has exercised its relevant discretionary powers within the proper for the purpose limits, because it was reasonably open to it to find, on the basis of the reasons for which the Head of Department recommended the interested parties as being 20
more suitable, that the candidates before it were not otherwise more or less equal, and therefore, this was not a case where seniority ought to have been treated as a decisive factor. So, in this respect, the present case is distinguishable from that of *Partellides v. The Republic*, (1969) 3 C.L.R. 25
480, where there had not been recorded in the Commission's minutes any specific views of the Head of Department concerned which could be treated as justifying the course of overlooking the seniority of the appellant in that case; and, in any event, we should stress, while dealing with this 30
point, that the outcome in each case of this nature must depend on its own particular circumstances and it cannot be inevitably governed by the outcome in any other case, however comparable that case may, at first sight, appear to be." 35

Seniority of one candidate by itself cannot outweigh better qualifications of others. See, inter alia, *Ioannides and another v. The Republic* (1979) 3 C.L.R. 628 at p. 638, *Constantinou v. The Republic* (1980) 3 C.L.R. 551 at pp. 558-561 *Karageorghis*

v. *The Republic* (supra), *Michaeloudis v. The Republic* (1982) 3 C.L.R. 963.

It is also well settled that mere superiority of one candidate over others it not sufficient to lead to the conclusion that the appointing Authority has acted in excess or abuse of powers (see, inter alia, *Evangelou v. The Republic* (1965) 3 C.L.R. 292, *Panayidou v. The Republic* (supra), *Ioannides and Another v. The Republic* (supra), *Georghiou v. The Republic* (1976) 3 C.L.R. 74, *Karageorghis v. The Republic* (supra) and *Michaeloudis v. The Republic* (supra).

In *Evangelou v. The Republic* (supra) at pp. 299. 300 Triantafyllides, J. (as he then was) expressed his opinion as follows:-

“In my opinion, however, any margin that might be found to exist in favour of Applicant, over the two Interested Parties concerned, could only be described as mere superiority and it could never come anywhere near to being considered as striking superiority; and it is a settled principle of administrative law that mere superiority, not being of a striking nature, is not sufficient to lead to the conclusion that the appointing authority has acted in excess or abuse of powers. (see Conclusions from the Council of State in Greece 1929-1959 p. 268 and Decision 1406/1954 of the same organ (Reports 1954 p. 1737).

The following was stated by the Court in *Panayidou v. The Republic* (supra) at p. 153:-

“It was a selection for appointment or promotion on merit, qualifications and seniority and the respondent Commission did not fail in their paramount duty to select the candidate, most suitable for the post in question and this Court, as it has been repeatedly stated, cannot interfere with, and set aside such a decision unless it is established by the applicant on whom the onus always lies that she did have striking superiority over those selected; (See *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300 and *Georghiades and another v. The Republic* (1970) 3 C.L.R. 257 at p. 263).

In *Ioannides and Another v. The Republic* (supra), A. Loizou, J. in delivering his judgment had this to say at p. 638:-

“Bearing in mind the totality of circumstances that were before the respondent Commission, I have come to the conclusion that the sub judice decision was reasonably open to it. The exercise of its discretion in the circumstances was neither contrary to law nor arrived under any misconception of fact or/in abuse or excess of power. Applicant Ioannides has failed to establish any striking superiority over the two interested parties and his fourteen months seniority could not have been a decisive factor once not all relevant circumstances were equal.”

With the above principles in mind, I am coming now to consider whether the respondent Committee in taking the sub judice decision, has exercised its discretion properly and has discharged its paramount duty of selecting the most suitable candidate in the circumstances of the present case.

I have before me the personal files of eight of the interested parties which were produced as exhibits. The rest were made available for inspection by counsel for applicant, but their production was not insisted upon. All that is before me concerning those interested parties whose files have not been produced, is the comparable table attached to the opposition as Annex 3, showing the marks for the last two years and the date of appointment of such parties, as well as all other parties concerned, including the applicant. As already mentioned, the recourse against interested parties 1-7 has been withdrawn. A comparison of applicant with interested parties 12, 19, 20 and 21 shows that all of them have the same marks and seniority. These four teachers, however, had the additional advantage over the applicant in that they had been recommended for promotion, whereas the applicant had not been recommended. Irrespective, however, of any recommendations, once there was not any superiority of the applicant over them, it was reasonably open to the Commission to prefer any one of them instead of the applicant. Therefore, the recourse against them fails.

Interested parties 8, 9, 10 and 11, have the same seniority with the applicant. In their last report they have the same marks with the applicant but in the last-but-one they are graded a little lower. Though applicant has shown a slight

superiority as to the marks over such interested parties, a difference of one or two marks in one report, is not such as to amount to a striking superiority of the applicant (the onus of which was upon him) over such interested parties, as to lead to the annulment of the sub judice decision (vide *Evangelou v. The Republic* (supra) and *Panayidou v. The Republic* (supra)).

All other interested parties were appointed after the applicant. Applicant's seniority over them ranges from one to four years.

Before concluding as to whether all other factors are more or less equal, I have to consider the recommendations of the Department as they appear in exhibit 2, as well as the results of the interviews, since these form part of the overall picture of the parties concerned and they go to the merits of the parties. If in this respect the interested parties are superior to the applicant, then the question of his seniority does not arise. Certain of such interested parties were recommended for promotion and their names were included in the list of the persons so recommended. The persons recommended according to such list are interested parties 1, 2, 3, 5, 11, 12, 14, 15, 18, 19, 20, 21, 22, 23, 27, 28, 29, 33, 34, 36, 37, 38, 39, 40 and 41. Applicant was not, as already mentioned, recommended for promotion. Most probably, this was on account of what is stated in the last report in his file, in that—"he had a personal problem which affected him". There is no explanation, however, and no material in his file as to what such problem was, and whether such problem affected the execution of his duties. On the contrary, judging from his reports and his marks, it seems that such problem did not affect his work. In any case, the recommendation is a subjective criterion and one cannot say that applicant should have been recommended or not. However, the fact remains that the Committee did not choose to follow the recommendations of the Department all the way. Out of those recommended, 74 in all, only 25 were promoted, whereas the other 16 who were promoted were teachers who were not included in the list of those recommended for promotion. Therefore, special reasons should have been given by respondent why it chose to promote 16 interested parties who were not recommended for promotion as against the 49 who were specially recommended for promotion out of the 74 in exhibit 2, and who were not promoted. On account of this,

I would say that with regard to those of the interested parties who were recommended for promotion, that is interested parties 14, 15, 18, 22, 23, 27, 28, 29, 33, 34 36, 37, 38 39, 40 and 41 this factor goes to their credit and, therefore, all factors are not equal so as to let the seniority of the applicant prevail even though in some cases such seniority is four years. 5
 (*Antoniou v. The Republic* (supra)). With regard however, to interested parties 13, 16, 17, 24, 25, 26, 30, 31, 32 and 35, they were not amongst those recommended for promotion. 10
 Therefore, such factor does not operate in their favour and a comparison of those parties with the applicant shows that all factors are more or less equal. That being so, cogent reasons should have been given why applicant's seniority was disregarded. This in addition to what I have already said, that cogent reasons should have been given why such parties were preferred to others recommended for promotion. 15
 (See, *Ioannides v. The Republic* (supra)). This goes to the reasoning of the decision and makes it void for lack of due reasoning.

The last factor to consider is the performance at the interviews which was one of the factors taken into consideration. Nothing 20
 appears in the minutes about the results of the interviews of the candidates and no record has been produced as to the performance and marking (if such system was adopted) of the candidates at the interview. In *Bagdades v. The Central Bank* (1973) 3 C.L.R. 417, the Court in dealing with such matter, 25
 had this to say:-

“However, in the absence of any cogent reasons given in the minutes regarding what were actually the results of the interviews (whether a record was kept and the system of marking was adopted) as well as what were the other 30
 relevant factors which the Committee said they took into consideration, and the reason why they disregarded the greater seniority of the applicant, I have reached the view that the respondent had exercised their discretionary powers in a defective manner because it was not reasonably 35
 open to them to reach such a conclusion”.
 (per Hadjianastassiou, J. at p. 428).

(see, also, *Karageorghis v. The Republic* (supra) where the same principle was reiterated).

In the absence of any cogent reasons appearing in the minutes and showing (a) why in the case of those of the interested parties in respect of whom all factors were more or less equal with the applicant, the seniority of the applicant was disregarded; (b) 5 why those of the interested parties who were not recommended for promotion were promoted, in lieu of others who were specially recommended for promotion; (c) as to the results of the interviews and the lack of any indication as to the method adopted in such interview for the evaluation of the candidates 10 as to enable the Court, especially in the circumstances of the present case where persons not recommended were promoted instead of those recommended, whether it was reasonably open to the respondent to act upon the results of the personal interviews, I have come to the conclusion that concerning interested 15 parties 13, 16, 17, 24, 25, 26, 30, 31, 32 and 35 the respondent Committee has not exercised its discretionary power in a valid way and that in any event its decision is wrong due to lack of due reasoning.

In the result, the sub judge decision as far as it concerns 20 the above-mentioned interested parties is annulled, but in the circumstances of the case, I make no order for costs.

Sub judice decision annulled. No order as to costs.