

1983 August 23

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLITOS MAKRIDES,

Applicant,

v.

- 1. THE EDUCATIONAL SERVICE COMMITTEE,
- 2. THE MINISTER OF EDUCATION,

Respondents.

(Case No. 454/80).

Public (or Educational Officers)—Promotions—Head of Department—Recommendations—Principles applicable.

Public (or Educational Officers)—Promotions—Mere superiority not being of a striking nature not sufficient to lead to conclusion that appointing authority acted in excess or abuse of power—Difference of one or two marks in the reports of the applicant and the interested parties not such as to constitute striking superiority of the applicant over the interested parties. 5

Public (or Educational Officers)—Schemes of service—Qualifications constituting an advantage thereunder—Applicant possessing additional qualifications but interested parties senior and better in merit—Not necessary for the Commission to give reasons for preferring the interested parties instead of the applicant who possessed additional qualifications—When does express reference to give such reasons arise. 10

Public (or Educational Officers)—Promotions—Interview of candidates—Whether members of respondent Commission required to record in detail what their impressions were as a result of the interview—Angelidou v. Republic (1982) 3 C.L.R. 520 distinguished. 15

The applicant in this recourse, a secondary education school master, challenged the decision* of the respondent Commission

* The decision is quoted at pp. 754-755 post.

to promote the interested parties to the post of Assistant Headmaster of Secondary Education.

Counsel for the applicant mainly contended:

- 5 (a) That the respondent disregarded the recommendations of the Head of Department without giving any specific reasons.
- 10 (b) That though the applicant possessed qualifications which according to the relevant scheme of service constituted an additional qualification, nevertheless these were ignored, he was not promoted and no cogent reasons were given for preferring other candidates, who did not possess any such qualifications, to the applicant.
- 15 (c) That the Commission took into consideration "the opinion which its members formed for each of the candidates during the personal interview" without recording this opinion in the relevant minutes so that its judicial control may be possible (see *Kleri Angelidou v. The Republic* (1982) 3 C.L.R. 520).

20 Applicant and 7 of the interested parties possessed additional qualifications as provided by the scheme of service. As far as the remaining interested parties were concerned they were senior to applicant; and though they were graded more or less the same in the confidential reports as the applicant as regards their performance, they were better graded on the subject of Organisation, Administration and Human Relations which obviously
25 for the holder of a managerial position was a most important factor.

30 *Held*, (1) that though the recommendations of a Head of Department, or other senior responsible officer especially where specialised knowledge and ability were required, was a most vital consideration not lightly to be disregarded all interested parties promoted had been recommended by the Head of Department; accordingly contention (a) must fail.

35 (2) That it is clear from the perusal of the personal files and confidential reports of the 7 interested parties who like the applicant possessed additional qualifications, that it was reasonably open to the respondent Commission to prefer any one of them and to promote them instead of the applicant; that any difference of one or two marks in their reports is not such as to be con-

sidered as constituting striking superiority of the applicant over the interested parties, justifying thus, the annulment of the sub judice decision, because 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. 5

(3) That, as regards the remaining interested parties, in the circumstances of this case, the subject decision is duly and cogently reasoned, its reasoning being supplemented from the material in the file in all respects and it would have been futile to expect more express reference to the additional qualification of the applicant when there were so many factors in the file establishing overwhelming superiority on the part of the interested parties that were promoted instead of him; that there would be expected express reference to the reasons for disregarding what is an additional qualification in cases where there were not so many apparent reasons in the file. 10 15

(4) That *Angelidou v. Republic* (1982) 3 C.L.R. 520 is distinguishable and consequently not applicable, as in that case the respondent Commission failed to record the subjective opinion and personal knowledge and information which the members of the Commission possessed about the candidates, obviously prior to the interviews; that in the present case no such personal element arises; that the "opinion" of the members is the impression which they formed during and as a result of the interviews and not before them; that the respondent Commission were not required to record in detail what their impressions were as a result of the interviews, which impressions in any event were born out from the material in the file; and that, therefore, contention (c) should fail as the sub judice decision is in this respect duly reasoned. 20 25 30

Application dismissed.

Cases referred to:

- Protopapas v. Republic* (1981) 3 C.L.R. 456 at pp. 459, 460;
Georghiou v. Republic (1983) 3 C.L.R. 17 at p. 34; 35
Tourpekki v. Republic (1973) 3 C.L.R. 592;
Andreou v. Republic (1979) 3 C.L.R. 379 at p. 388;

Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 300;

Angelidou v. Republic (1982) 3 C.L.R. 520;

Frangos v. Republic (1970) 3 C.L.R. 312 at pp. 335-338.

Recourse.

- 5 Recourse against the decision of the respondents to promote the interested parties to the post of Assistant Headmaster of Secondary Education in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

G. Constantinou (Miss), for the respondents.

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Cur. adv. vult.

- 15 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and/or decision of the respondents which was published in the Official Gazette of the 3.10.1980 to promote the interested parties, later to be named in this judgment, to the post of Assistant Headmaster of Secondary Education is null and void and of no legal effect whatsoever.

- 20 The post of Assistant Headmaster of Secondary Education, according to the relevant scheme of service (Appendix 'C' of the bundle of documents attached to the Opposition) is a first entry and promotion post and the qualifications required are:

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- 25 1. At least three years service at salary scale B. 12 of the post of Master or Instructor -
or
Service of any duration in the post of Technologist at salary scale B.13

- 30 2. At least satisfactory service according to the last two confidential reports.

3. Good knowledge of one of the prevailing European languages.

4. Post graduate studies abroad or additional title, preferably in paedagogics or subjects concerning the administration

of schools, is considered as additional qualification.

_____”
 The Educational Service Commission at its meeting of the 14.4.1980 as it appears from the relevant minutes (Appendix ‘D’; decided, inter alia, as follows:-

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(a) To advertise according to the Scheme of Service in force, the vacant posts of Assistant Headmaster —

(b) Having studied the personal and confidential files of the Masters (Scale B.12), Technologists and Instructors who are entitled to promotion to the post of Assistant Headmaster and because the number of the said candidates is large, while the number of the vacant posts is limited, decides to select from these the prevailing ones on the basis of merit, qualifications, seniority and to call them to a personal interview on the 28, 29 and 30 April — and 16 May, 1980”.

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The Ministry of Finance gave its approval for the filling of the posts and on the 31.5.1980 the Director-General of the Ministry of Education gave his approval by his letter to the respondent Commission of the 31.5.1980 (Appendix ‘E’).

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On the 7.6.1980 the respondent Commission, inter alia, decided as follows (Appendix ‘H’):

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(c) *Promotions to the post of Assistant Headmaster* 25

The Educational Service Commission having studied the personal and confidential files of all the Masters, Technologists and Instructors who are entitled to promotion to the post of Assistant Headmaster and having in mind the provisions of the Law and of the Schemes of Service and the recommendations of the Heads of Department of Higher and Secondary Education and Technical Education decides that on the basis of merit, qualifications and seniority of the candidates, the above recommendations of the Heads of Department, the service reports and the opinion which its members formed for each of the candidates during the personal interviews, the following Masters, Techno-

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logists and Instructors are the most suitable for promotion to the post of Assistant Headmaster —”.

Twenty five candidates, other than the applicant, were promoted to the post of Assistant Headmaster.

5 Hence the present recourse which is based on the following grounds of Law:-

1. The sub judice act or decision was taken under a misconception of fact in that the respondents:

10 (a) disregarded and/or did not evaluate properly or at all the fact that the applicant is superior to the interested parties in qualifications, merit, seniority and experience;

(b) disregarded and/or did not evaluate properly or at all the fact that the applicant is superior in merit and priority for promotion to the interested parties;

15 (c) disregarded and/or did not evaluate properly or at all the confidential reports in respect of the applicant;

(d) disregarded and/or did not evaluate properly or at all the postgraduate studies of the applicant;

20 (e) failed to make a due inquiry of all the facts concerning the promotions;

(f) no evaluation and comparison was made of the qualifications of the applicant;

25 (g) disregarded and/or did not evaluate properly the fact that the applicant was already exercising the duties of Assistant Headmaster at the Technical School of Limassol since 1979.

2. The respondents acted in a discriminatory manner as regards the applicant who was subjected to unequal treatment vis-a-vis the interested parties.

30 3. The sub judice decision was reached in breach of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972.

4. The sub judice decision lack any or due reasoning.

5. The respondents acted in excess and/or in abuse of powers in that they failed to select the most suitable candidates.
6. The respondents took into account extraneous considerations foreign to the educational needs. 5
7. The respondents acted in excess and/or in abuse of power in deciding the transfer of the applicant from the 2nd Technical School to the Paedagogical Academy and revoking the acting appointment of the applicant to the post of Acting Assistant Headmaster. 10

The recourse was filed as against 21 interested parties out of the 25 candidates who were promoted, namely (as they appear in Appendix 'A' to the Application):

1. Vassilios Chr. Venizelos, 2. Evanthia Symeonides, 3. Agapios Horatas, 4. Georghios Drousiotis, 5. Vassilis Economou, 6. Savvas Lambrianides, 7. Andreas Christofides 15
8. Charalambos Petrou, 9. Demetrios Finios, 10. Andreas M. Economou, 11. Antonios Patsias, 12. Polycarpus Ieronymides, 13. Michael Damianides, 14. Soterios K. Theophanous, 15. Christos Neocleous, 16. Antonios Chr. Ioannou, 17. Xenis F. Xeni, 18. Kyriacos Chr. Kyriacou, 19. Andreas K. Michaelides, 20. Georghios Lambrianides, 21. Phoebus Miltiadou. (The recourse, however, was eventually withdrawn and struck out as against the last one). 20

The applicant has a degree of the Philosophical School of the University of Athens. From 1965 to 1969 he worked as a master in Kyrenia, Omodos and Limassol. In 1970 he received the title of Master of Education in Social Science of the State University of Georgia, U.S.A. after a one year course on a scholarship. From 1970-1976 he worked as a master in Limassol. In 1976-1978 he was given a scholarship for a postgraduate course in paedagogics at the State University of New York at Albany and received the following: (a) Diploma of Doctor of Education and also (b) Master of Science in Education Administration. In 1978 he worked as Master in Limassol. In 1979-1980 he worked as Acting Assistant Headmaster at the Technical School of Limassol. 25
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Counsel for the applicant has argued that the respondents in effecting the said promotions disregarded the recommendations

of the Heads of Department without giving any specific reasons for so doing. The case of *Protopapas v. The Republic* (1981) 3 C.L.R. 456 was cited, where at pages 459, 460, it was said:

5 “... As far as the disregarding of the recommendations of
the Head of the Department and the failure to give reasons
for doing so, we have the case of *Michael Theodosiou and
The Republic*, 2 R.S.C.C. p.44 where it was held that the
10 recommendation of a Head of Department, or other senior
responsible officer, especially where ‘specialised knowledge
and ability were required, was a most vital consideration
not lightly to be disregarded. If the recommendation
could not be acted upon then the Head of Department, or
15 other officer concerned should be invited by the Public
Service Commission to explain his views before it; and,
if, nevertheless, the Public Service Commission still felt it
could not act on such recommendation, the reasons for not
so acting should be clearly recorded in the minutes of the
Commission, for the protection of the legitimate interests
of the candidates concerned, Arts. 151 and 146;

20 This principle has been consistently followed by this
Court in a number of cases. (See, inter alia, *Evangelou v.
The Republic* (1965) 3 C.L.R. p. 292; *Nissiotis v. The Re-
public* (1979) 3 C.L.R. 379, at p. 388;”.

25 Also in *Georghiou v. The Republic* (1983) 3 C.L.R. 17 at p. 34,
it was stated:

30 “... 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”.

35 From the recommendations of the Heads of Department
(Appendix ‘Z’) it is clear that all interested parties promoted
had been recommended with the exception of interested party
No.21, Phoebus Miltiadou, who was promoted without having
such a recommendation, obviously through his seniority, but as
against this interested party the recourse was withdrawn and
consequently this ground fails as against all other interested
parties who had been duly recommended.

The second ground argued by counsel for the applicant is that the applicant possessed qualifications which according to the relevant scheme of service constituted an additional qualification, nevertheless these were ignored, he was not promoted and no cogent reasons were given for preferring other candidates who did not possess any such qualifications, to the applicant. To support his argument he has cited the cases of *V. Tourpeki v. The Republic* (1973) 3 C.L.R. 592; *Nissiotis v. The Republic* (1977) 3 C.L.R. 388; *Andreou v. The Republic* (1979) 3 C.L.R. 379, at p. 388.

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From the 20 interested parties promoted, only 7 that is, interested parties 6, 9, 10, 15, 17, 18 and 20, possessed additional qualifications, i.e. post graduate studies abroad or additional title as provided by the Schemes of Service and of which interested parties Nos. 6, 9 and 10 were also senior to the applicant. As regards these seven parties it is clear from the perusal of their personal files and confidential reports that it was reasonably open to the respondent Commission to prefer any one of them and to promote them instead of the applicant. Any difference of one or two marks in their reports is not such as to be considered as constituting striking superiority of the applicant over the interested parties, justifying thus the annulment of the sub judice decision. As said in *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300:

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“— 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 1954Γ p.1737))”.

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In the light of the above this ground should in any event fail as against the said seven interested parties possessing additional qualifications, the applicant having failed to prove striking superiority over them.

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There remains to examine, as it is, to my mind, relevant, the position as regards the remaining 13 interested parties, that is, Nos. 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14, 16 and 19 who do not possess additional qualifications as required by the scheme of

service, although interested party Horatas, possesses a certificate of In-Service Post-Graduate Education. Out of the aforesaid, interested parties Nos. 1, 2, 5, 7, 8, 11, 12, 14 and 16 are senior to the applicant. Interested parties 1, 2, 5, 11, and 12, had both
5 longer service and were promoted to Scale B.12 in August 1969, whereas interested party 14 had longer service and was promoted to Scale B.12 on 1.3.70. Interested Parties 7, 8 and 16 are senior to the applicant though promoted to Scale B.12 on the same day, by virtue of their previous appointment.

10 Interested party 3 has a year's longer service but is junior by a year to the applicant by virtue of his promotion to Scale B.12 on 31.8.1971 and interested parties 13 and 19, though with longer service, are junior by virtue of their having been promoted to Scale B.12 on the 1st January, 1971.

15 With regard to interested party 4, Georghios Droushiotis, his present first appointment was made in the year 1970 and he was promoted to Scale B.12 on 15.10.1971, but he had resigned in 1970. He had, however, prior service to that in the secondary education since 1955. When he was promoted to Assistant
20 Headmaster on the 15.9.1965 and posted at the Lefkara Gymnasium when he was also assigned to perform the duties of a Headmaster. He was then given an acting appointment as a Headmaster Class 'B' under section 22(1) of Law 10/63 as from 1.9.1968 and as from 1.12.68 he was promoted to the permanent
25 post of Headmaster Class 'B' and he held that post at the Lefkara Gymnasium until the date of his resignation.

As far as the merits are concerned, the applicant in the school year 1975/76 was graded with 35 marks and for the year 1978/79, 37 marks, and on Organisation, Administration and Human
30 Relations, 8 and 9 marks respectively.

Interested parties 1, 2, 8, 12, 14 were graded for the year 1975/76 with 35 marks and for the year 1977/78 with 36 marks. Interested parties 5 and 11 were graded for the same years with 35 and 37 marks respectively, whereas interested parties 7 and
35 16 with 34 and 35 marks respectively. All of them, however, were graded with 9 marks on Organisation, Administration and Human Relations for both periods, except interested parties 11, 12 and 14 who are graded with 9 and 10 marks for the two respective periods.

It is clear, therefore, that as far as the aforesaid interested parties are concerned, in addition to their seniority they are graded more or less the same in the confidential reports as the applicant as regards their performance, but better graded on the subject of Organisation, Administration and Human Relations which obviously for the holder of a managerial position is a most important factor. 5

As far as interested parties 3, 13 and 19 are concerned, who are junior to the applicant by virtue of their last promotion but who have longer service than him, we have 35 marks for the same periods for interested party 3, 36 for interested party 13, with 9 marks for both periods for Organisation, Administration, etc., whereas interested party 19 has been graded with 36 marks for both periods and on Organisation, Administration, etc., with 9 and 10 marks respectively. 10 15

Interested party 4, Drousiotis, was graded with 35 marks for both periods and with 9 marks for Organisation, Administration, etc., but the case of this interested party is unique in that, in spite of his technically being junior to the applicant, his service and experience is such that it cannot be ignored that when the applicant was beginning his career in the Secondary Education in 1965 after his graduation from the Athens University, he was promoted to Assistant Headmaster having already served by then for 10 years in the Secondary Education. 20

It is clear, therefore, that in the circumstances of this case, the subject decision is duly and cogently reasoned, its reasoning being supplemented from the material in the file in all respects and it would have been futile to expect more express reference to the additional qualification of the applicant when there were so many factors in the file establishing overwhelming superiority on the part of the interested parties that were promoted instead of him. I would have expected express reference to the reasons for disregarding what is an additional qualification in cases where there were not so many apparent reasons in the file. 25 30

As a final comment, however, on this ground, I would like to stress that had the reasoning of the subject decision been more elaborate on the basis of the material that was before the respondent Commission, my task would have been made easier as it would have saved me from going through all the records of the 35

case in order to find out if the reasons given for the subject decision were duly born out and warranted by such material.

5 The third ground upon which the applicant relied is that the Commission took into consideration "the opinion which its members formed for each of the candidates during the personal interview" without recording this opinion in the relevant minutes so that its judicial control may be possible and has cited in support of his case the case of *Kleri Angelidou v. The Republic* (1982) 3 C.L.R. 520.

10 In my view, however, *Angelidou* case is distinguishable and consequently not applicable, as in that case the respondent Commission failed to record the subjective opinion and personal knowledge and information which the members of the Commission possessed about the candidates, obviously prior to the
15 interviews. In the present case no such personal element arises; the "opinion" of the members is the impression which they formed during and as a result of the interviews and not before them.

20 Clearly the impression of the members of the respondent Commission is one of the factors taken into consideration by them in reaching their decision together with as stated "— merit, qualifications, seniority, the recommendations of the Heads of Department, the service reports —" etc.

25 On this issue of taking into account the personal views of the members of a collective organ, relevant is what has been at length said by reference to the Greek Case Law in the case of *Frangos v. The Republic* (1970) 3 C.L.R. 312, at pages 335-338. Moreover, the passage quoted from *Economou* (*supra*) supports the view that the respondent Commission were not required to
30 record in detail what their impressions were as a result of the interviews, which impressions in any event are born out from the material in the file and therefore this argument of the applicant should fail as the sub judice decision is in this respect duly reasoned.

35 Ground of Law No.3, as set out in the application, was abandoned by the applicant's lawyer during the hearing of the recourse and grounds of Law 2, 6 and 7 were not argued at all.

As regards grounds Nos. 2 and 6, i.e. that the respondents acted in a discriminatory manner towards the applicant and that

they took into account extraneous considerations, I have to dismiss them without more as the applicant has offered no evidence to support such allegations.

Finally regarding ground of Law No.7 that the respondents acted in excess and/or in abuse of power as regards the transfer of the applicant and the revocation of his acting appointment, these matters cannot be dealt with in the present recourse as they concern different acts which are not connected or related to the present sub judice decision; in any case they were not pleaded in the prayer for relief.

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For all the above reasons this application is dismissed but in the circumstances there will be no order as to costs.

Application dismissed. No order as to costs.