

1984 August 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELLI LOIZIDOU-PAPAPHOTI,

Applicant,

v.

THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 386/83).

5 *Educational Officers—Promotions—Recommendations of appropriate Department of Education—Under s.35(3) of the Public Educational Service Law, 1969 (Law 10/69) (as amended by Law 53/79)—They can be made by the Head of Department—No reasons therefor need be given.*

10 *Educational Officers—Promotions—Interview of candidates—Head of Department—Can be present at the interview—Presence of Acting Heads of Department—Section 4(2) of the Public Educational Service Law, 1969 (Law 10/69) (as amended by Law 53/79)—Respondent Commission not required to record in detail their impression formed at the interview.*

15 *Educational Officers—Promotions—Judicial control—Principles applicable—Additional qualifications to those provided by the scheme of service—Do not indicate by themselves striking superiority—Seniority—Not the decisive factor which governs promotions—It only prevails if all other factors are more or less equal—When is superiority of a candidate over another striking—Applicant failed to establish that she was strikingly superior over the interested parties.*

20 The applicant, a Headmistress of Elementary Education, was a candidate for the post of Inspector "B" General subjects; the respondent Educational Service Commission filled the vacancies by the promotion of the interested parties and hence this recourse.

With regard to merit applicant was more or less equal with the interested parties. She and the interested parties possessed the qualifications, including the post-graduate one, prescribed by the scheme of service but applicant possessed some additional academic qualifications to two of the candidates. She was by nine months senior to interested parties Christodoulou and Papanicolaou and by three years to interested party Soteriades. 5

At the material time the post of Head of the Department was vacant since the retirement of Papaxenophontos. A. Papadopoulos and G. Papaleontiou were, however, at the material time appointed as Acting Heads of the Department and they performed the duties of the Head of the Elementary Education by rotation. They attended the meetings of the Commission not in their capacity as General Inspectors but as Heads of the appropriate Department of Education. 10 15

Counsel for the applicant contended:

- (a) That the recommendation of the appropriate department was made not by the department but by two persons who at the material time were holding the substantive post of Inspector-General; and was not reasoned; 20
- (b) That the said two persons, Papaleontiou and Papadopoulos, were present during the interviews of the candidates by the Commission and this course was contrary to section 4(2) of Law No. 10/69, as amended by section 2 of Law No. 53/79; 25
- (c) That the performance of the candidates at the interviews was evaluated on the basis of notes taken by the members of the Commission which have not been recorded in the minutes; 30
- (d) That the applicant was superior to the interested parties in seniority and qualifications.

Held, (1) that the best possible representative as spokesman of a Department is no other than the head thereof; that he represents his department and his recommendations, unless the contrary is proved or a doubt is created by the applicant, are not his personal but the recommendations of the department; that it is presumed that he conveys to the Commission the recommen- 35

5 dations of the department; that it is not necessary for the recommending person or body to state reasons for such recommendations, but if reasons are given, they are subject to judicial scrutiny; that in this case there was no fault and nothing contrary to Law with regard to the recommendations conveyed on behalf of the Department to the Commission.

10 (2) That Papaleontiou and Papadopoulos were present at the interview not in their capacity as Inspectors but, as the post of Head of the Department was vacant, as Acting Heads of the Department, and that this was in conformity with s.4(2) of Law No. 10/69 as amended by s.2 of Law No. 53/79.

15 (3) That the respondent Commission is not required to record in detail their impressions formed at the interviews which impressions in any event are borne out from the material in the file (*Angelidou v. The Republic* (1982) 3 C.L.R. 520 distinguishable).

20 (4) That possession of academic qualifications additional to those required by the scheme of service should not weigh gravely in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them; that additional qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority; that seniority is not the decisive factor which governs promotions though it should be duly taken into consideration and should prevail if all other things are more or less equal; that an administrative Court cannot intervene in order to set aside a decision regarding a promotion unless it is 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, also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning; that superiority to be striking, it must be of such a nature as to emerge on any view of the combined effect of the merit, qualifications and seniority of the parties competing for promotion; that on the totality of the material before this Court applicant failed

to establish that she was strikingly superior over the interested parties or any of them as to lead to the conclusion that the sub justice decision was taken in excess or abuse of powers; accordingly the recourse must fail.

Application dismissed. 5

Cases referred to:

- Pattichis and Another v. Republic* (1968) 3 C.L.R. 374;
- Smyrnios v. Republic* (1983) 3 C.L.R. 124;
- Gavriel v. Republic* (1971) 3 C.L.R. 186 at p. 199;
- Triantafyllides and Others v. Republic* (1970) 3 C.L.R. 275; 10
- Angelidou v. Republic* (1982) 3 C.L.R. 520;
- Frangos v. Republic* (1970) 3 C.L.R. 312 at pp. 335-338;
- Markides v. Educational Service Committee* (1983) 3 C.L.R. 750;
- HjiAntoni and Others v. Republic* (1983) 3 C.L.R. 1145;
- HjiIoannou v. Republic* (1983) 3 C.L.R. 1041; 15
- Partellides v. Republic* (1969) 3 C.L.R. 480;
- Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Inspector "B", General Subjects, Elementary Education in preference and instead of the applicant. 20

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

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

Cur. adv. vult. 25

STYLIANIDES J. read the following judgment. The applicant is a Headmistress of Elementary Education. There were four vacancies of Inspector "B", General Subjects, of Elementary Education (First Entry and Promotion Post). The respondent Educational Service Commission filled the said vacancies by promotion of four headmasters. The applicant, being aggrieved, filed this recourse whereby she seeks the annulment of the decision of the promotion of the four said promotees who are named as interested parties in this case. She bases her such claim on the following grounds:- 30

- (a) That the recommendation of the appropriate department was made not by the department but by two per-

35

sons who at the material time were holding the substantive post of Inspector-General; and further that such recommendation was not reasoned;

- 5 (b) That the said two persons, Papaleontiou and Papadopoulos, were present during the interviews of the candidates by the Commission and this, counsel argued, is contrary to section 4(2) of Law No. 10/69, as amended by section 2 of Law No. 53/79;
- 10 (c) That the performance of the candidates at the interviews was evaluated on the basis of notes taken by the members of the Commission which have not been recorded in the minutes;
- (d) That the applicant was superior to the interested parties in seniority and qualifications.

15 The paramount duty of a collective organ dealing with promotions, especially in high posts of the hierarchy of education, is to select the best suitable candidate for the interest of education and of the people of the country in general. The decisions of the Commission are subject to judicial review by this Court.

20 The principles governing the judicial review of appointments, including promotions, are illustrated by numerous decisions of this Court. The first duty of this Court in reviewing promotions is whether the appointing authority exercised its discretionary power in conformity with statutory provisions and the rules and requirements of administrative law generally, including good faith. So long as the Authority acted within those limits, the Court cannot interfere. It cannot substitute its own opinion as to the merits of the candidates for that of the appointing Authority - (*Pattichis and Another v. The Republic*, (1968) 3 C.L.R. 374; 25 *Smyrnios v. The Republic*, (1983) 3 C.L.R. 124).

30

(a) *Recommendations by the Appropriate Department:*

It is correct that the post of Head of the Department was vacant since the retirement of Papaxenophontos. A. Papadopoulos and G. Papaleontiou were, however, at the material time appointed as Acting Heads of the Department and they performed the duties of the Head of the Elementary Education by rotation. They attended the meetings of the Commission not

35

in their capacity as General Inspectors but as Heads of the appropriate Department of Education.

Section 35(3) of Law No. 10/69 provided that the Commission should take due consideration of the recommendations of the appropriate Inspector. Law No. 53/79 substituted the recommendations of the appropriate Department of Education for the recommendations of the Inspector - (Section 5(c)).

It was submitted by counsel that the recommendations made by the persons who were Acting Heads of the appropriate Department of Education at the material time are contrary to law as the recommendations should have been formulated in such a way as to appear not only in substance but in form that all the services of the Department took part in arriving at such recommendations. An old written recommendation dated 20.11.80 was produced in support of such proposition.

I hold the view that the best possible representative as spokesman of a Department is no other than the head thereof. He represents his department and his recommendations, unless the contrary is proved or a doubt is created by the applicant, are not his personal but the recommendations of the department. It is presumed that he conveys to the Commission the recommendations of the department. "Recommendations" of the Head of the Department in the sense of s.44(3) of the Public Service Law No. 33/67 was the subject of consideration in *Georghios Gavriel v. The Republic*, (1971) 3 C.L.R. 186, 199.

The Head of the Department in the case of public servants and the appropriate Department in the case of educationalists, has the duty to make an assessment of the suitability of a candidate on consideration of all factors relevant to his merits, qualifications and seniority and then, after comparing the candidates, arrive at a conclusion and this would be the respective recommendation. It is not necessary for the recommending person or body to state reasons for such recommendations, but if reasons are given, they are subject to judicial scrutiny. The recommendation, however, could not and should not be inconsistent with the material in the file and the confidential reports.

In the present case the persons who were acting as Heads of

the Department conveyed to the Commission a list of the candidates who were recommended by the appropriate Department for promotion to the posts in question. The list contained 13 names. The applicant was not recommended. (See minutes
5 of the Commission dated 15.9.83, Appendix "E" to the opposition).

In the present case we find no fault and nothing contrary to law with regard to the recommendations conveyed on behalf of the Department to the Commission.

10 (b) *Presence at the Interview:*

Papaleontiou and Papadopoulos were present at the interview not in their capacity as Inspectors but, as the post of Head of the Department was vacant, as Acting Heads of the Department. This is in conformity with s.4(2) of Law No. 10/69 as
15 amended by s.2 of Law No. 53/79. They were simply present.

(c) *Performance at the Interview:*

The impression created by a candidate at the interview is not the safest way of assessing a candidate because, inter alia, of the necessarily rather short duration of each interview and of the
20 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 - (*Smyrnios v. The Republic* (supra); *Triantafyllides & Others v. The Public Service Commission*, (1970) 3 C.L.R. 275). For
25 some posts - senior posts - however, the performance at the interview is more important as a candidate's personality and administrative ability are revealed.

The interviews of the candidates were held on 27.4.83, 28.4.83, 29.4.83 and 21.5.83. Two candidates who were abroad were
30 interviewed on 28.6.83 and 16.7.83. The Commission evaluated the performance of the candidates at the interviews (on the basis of notes kept by the members). The interested parties were rated "Excellent" and the applicant "Very Good". Other candidates were rated "Average", "Good" or "Very Good".

35 It was contended that the opinion of the members of the Commission and the notes should be recorded in the minutes so as to make judicial control of same possible. The case of

Kleri Angelidou v. The Republic, (1982) 3 C.L.R. 520, was cited in support of such argument.

In *Angelidou* case the members of the Commission failed to record the prior personal knowledge of some of the members about the applicant. *Angelidou's* case is clearly distinguishable from the facts of this case. The respondent Commission is not required to record in detail their impression formed at the interviews, which impressions in any event are borne out from the material in the file and, therefore, this argument of the applicant should fail. (See, also, *Frangos v. The Republic*, (1970) 3 C.L.R. 312, at pp. 335-338; *Klitos Markides v. Educational Service Committee*, (1983) 3 C.L.R. 750; *Hji-Antoni & Others v. The Republic*, (1983) 3 C.L.R. 1145).

To sum up, the decision of the Commission was not contrary to Law with regard to procedure, attendance and keeping of record.

(d) *Superiority*:

The applicant and the interested parties possessed the qualifications, including the post-graduate one, prescribed by the scheme of service. The applicant possessed some additional academic qualifications to two of the candidates.

Possession of academic qualifications additional to those required by the scheme of service should not weigh gravely in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them. Additional qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority - (*Hji-Ioannou v. The Republic*, (1983) 3 C.L.R. 1041, a Full Bench case).

The applicant is by nine months senior to interested parties Christodoulou and Papanicolaou and by three years to interested party Soteriades.

Seniority is not the decisive factor which governs promotions though it should be duly taken into consideration and should prevail if all other things are more or less equal - (See *Partellides v. The Republic*, (1969) 3 C.L.R. 480, a Full Bench case, followed invariably in all later decisions of this Court).

The claim to promotion is based on merit, qualifications and seniority. With regard to merit, the applicant and the interested parties were rated during the last two years as follows:-

	Applicant	1980-81 : 39
5	I.P. Polydorou	1979-82 : 39
	" Christodoulides	1973-77 : 39, 1979-80 : 39
	" Papanicolaou	1974-77 : 38, 1979-80 : 39
	" Soteriades	1979-80 : 39, 1982-83 : 39

10 The applicant from 1978 was serving in the Educational Mission in England.

The applicant was more or less equal with the interested parties, according to the confidential reports, as one mark higher or one mark lower does not count and is not indicative that one candidate is superior to another. In her confidential reports
 15 for the period ending 31.8.83 under the heading "General Observations" it was written that she has a strong personality, excellent administrative and organizing abilities, which she is using for the good of the school. Her counsel argued strenuously that this should have weighed greatly in her favour in
 20 the minds of the Commission in reaching the decision for promotion.

The Commission in exercising their discretion have to take into consideration all relevant factors and not single out only one. The applicant was more or less equal to the others, with
 25 the exception of seniority and some additional qualifications, to which reference was made hereinabove and which were noted by the Commission in their decision. The applicant failed to satisfy the Court that she was strikingly superior to the interested parties. The Commission selects a candidate on the
 30 basis of comparison with others, and in order to justify such selection it is not necessary to show that the person selected was strikingly superior to the others.

On the other hand, an administrative Court cannot intervene in order to set aside a decision regarding such selection unless it
 35 is 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 dis-

cretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning - (*Hji-Ioannou v. The Republic*, (supra), at p. 1045; *Odysseas Georghiou v. The Republic*, (1976) 3 C.L.R. 74, at p. 83). 5

For superiority to be striking, it must be of such a nature as to emerge on any view of the combined effect of the merit, qualifications and seniority of the parties competing for promotion. 10 In other words, it must emerge as an unquestionable fact, so telling, as to strike one at first sight.

On the totality of the material before me, the applicant failed to establish that she was strikingly superior over the interested parties or any of them as to lead to the conclusion that the sub 15 justice decision was taken in excess or abuse of powers. I find no merit in the submission that the sub justice decision was not duly reasoned. The sub justice decision was reasonably open to the Commission in the light of the material before them.

For the aforesaid reasons this recourse fails and it is hereby 20 dismissed with no order as to costs.

Recourse dismissed. No order as to costs.