

1985 January 24

[A. LOIZOU, MALACHTOS, DEMETRIADES, STYLIANIDES  
AND PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

v.

*GEORGHIOS HARIS,*

*Respondent*

*(Revisional Jurisdiction Appeal  
No. 334).*

*Public Officers—Promotions—Head of Department—Recommendations—Disregarded by Public Service Commission because confidential reports of candidate recommended inferior to those of the candidate not recommended—Confidential reports of the former tainted with bias—Recommendation of Head of Department disregarded without proper reasoning—Sub judice decision annulled.* 5

The respondent was a candidate for promotion to the post of Agricultural Officer, 2nd Grade. The appellant Public Service Commission did not adopt the recommendation of the Head of Department in favour of the respondent and gave as a reason for so doing that his confidential reports presented him as inferior to the interested party. From the administrative files before the Court it could be safely inferred that the reports, in respect of the respondent, for the years to which the Commission directed its mind and on which the sub judice decision was based were tainted with bias. 10 15

The trial Judge annulled the decision of the appellant Commission to promote the interested party in preference and instead of the respondent having stated the following: 20

“As against this confused and unsatisfactory material presented by the aforesaid confidential reports the

P.S.C. had before it the clear recommendations of the Director; in the circumstances it was not open to it to disregard them as they had no other solid soil to step on; in view of the above I cannot subscribe, with  
 5 respect, to their reasoning.\*

*Upon appeal by the Commission.*

*Held*, that this Court shares the view of the trial Judge, that the reports were nullified because they were tainted with bias; that the recommendations of a departmental head  
 10 carry considerable weight because he is in a unique position to evaluate in the correct perspective the competing merits of the candidates, on the one hand, and appreciate the needs of the post to be filled, in terms of ability, knowledge and  
 15 experience of the beholder, on the other; that in the present case the Commission had the opportunity of hearing the reasoned recommendations of the Head of the Department; that they disregarded them without due reasoning and the trial Judge rightly annulled the decision for the  
 20 promotion/secondment in respect of interested party Iacovides: accordingly the appeal must be dismissed.

*Appeal dismissed.*

Cases referred to:

- Iacovides v. Republic* (1981) 3 C.L.R. 305;  
*Koudounas v. Republic* (1981) 3 C.L.R. 46;  
 25 *Menelaou v. Republic* (1969) 3 C.L.R. 36 at p. 41;  
*Theodossiou v. Republic*, 2 R.S.C.C. 44 at p. 48;  
*Evangelou v. Republic* (1965) 3 C.L.R. 292 at p. 297;  
*Lardis v. Republic* (1967) 3 C.L.R. 64;  
*HjiConstantinou v. Republic* (1973) 3 C.L.R. 65;  
 30 *Petrides v. Public Service Commission* (1975) 3 C.L.R. 284;  
*Mytides and Another v. Republic* (1983) 3 C.L.R. 1096;  
*Gavriel v. Republic* (1971) 3 C.L.R. 186 at p. 199;  
*Protopapa v. Republic* (1981) 3 C.L.R. 456;

- Cleanthous v. Republic* (1978) 3 C.L.R. 320;
- Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417  
at pp. 427-428;
- HjiIoannou v. Republic* (1983) 3 C.L.R. 1041;
- HjiGregoriou v. Republic* (1975) 3 C.L.R. 477; 5
- Larkos v. Republic* (1982) 3 C.L.R. 513 at p. 518;
- Aristocleous and Another v. Republic* (1974) 3 C.L.R. 321  
at pp. 325-326;
- Papaphoti v. Educational Service Commission* (1984)  
3 C.L.R. 933; 10
- Christou v. Republic* (1980) 3 C.L.R. 437 at p. 449.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 16th September, 1983 (Revisional Jurisdiction Case No. 74/82)\* whereby the promotion/secondment of interested party Andreas Iacovides to the post of Agricultural Officer 2nd Grade was annulled. 15

*R. Gavrielides*, Senior Counsel of the Republic,  
for the appellant. 20

*A. Haviaras*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal is directed against the judgment of a Judge of this Court whereby the promotion/secondment of interested party Andreas Iacovides to the post of Agricultural Officer, 2nd Grade, with retrospective effect as from 15.6.78 was declared null and void and of no effect for lack of due reasoning by the Public Service 25  
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\* Reported in (1983) 3 C.L.R. 995

Commission in disregarding the relevant recommendations of the Director of the Department of Agriculture.

5 The appellant is the Public Service Commission (hereinafter referred to as "the Commission") and the respondent is a public officer in the service of the Agricultural Department.

10 The respondent and other officers were promoted/seconded to the post of Agricultural Officers, 2nd Grade, in 1978 and their such promotion/secondment was published in the Official Gazette of the Republic on 14th July, 1978, under Notifications No. 1377 and 1378. The promotion and the secondment aforesaid were declared null and void by a Judge of this Court on the sole ground that Iacovides and Koudounas were not promoted or seconded because they  
15 were reported upon to the Commission by the Central Information Service that they were not loyal and they were not respecting the Law—(*Iacovides v. The Republic*, (1981) 3 C.L.R. 305; *Koudounas v. The Republic*, (1981) 3 C.L.R. 46). The Court in the two recourses of 1978 did  
20 not deal with the qualifications and/or comparison between the interested parties and the applicants.

25 After the decision of the Supreme Court the Commission at two meetings, namely, on 21.10.81 and 23.11.81, reconsidered the matter and took the decision impugned by the respondent in this recourse. The Commission promoted to the permanent (Dev.) post Charalambos Ipsarides and seconded to the temporary (Dev.) post Iacovos Yiakoumettis, Georghios Xistouris and Andreas Iacovides. The  
30 three first were promoted/seconded in 1978 as well. The recourse was aiming at the promotion/secondment of all four officers but the first instance Judge annulled the decision of the Commission seconding interested party Iacovides only.

35 It is well settled that, on reconsideration of a case after annulment by the Court, the Commission has to take into account all facts which existed at the time of the original decision, irrespective of whether the decision annulled was in effect based on such facts or not, and they are not bound to base their new decision exclusively on the facts and  
40 circumstances on which the original decision was based.

The Commission followed and applied this principle in the present case. The Head of the Department—the Director of Agriculture—as it appears from the extract of the minutes of 21.10.81 (p. 1 of Appendix 2), after being properly instructed on the Law applicable in the circumstances, evaluated the candidates, having in mind the facts in connection with the candidates existing at the time of the annulled decision. 5

The claim of officers to promotion should be considered on the basis of merit, qualifications and seniority. Merit should carry the most weight because the functions of a public office are better performed in the general interests of the public by a public officer better in merit than seniority or qualifications—(*Menelaou v. The Republic*, (1969) 3 C.L.R. 36, at p. 41). 10 15

The recommendations of a Head of a Department were always considered a most vital consideration not lightly to be disregarded. Long before the enactment of the Public Service Law, No. 33/67, the Supreme Constitutional Court in *Theodossiou v. The Republic*, 2 R.S.C.C. 44, at p. 48. 20 had this to say:—

“In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where specialized knowledge and ability are required for the performance of certain duties, is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded. If the Public Service Commission is of the opinion that for certain reasons such recommendation cannot be adopted then as a rule such Head of Department or other officer concerned should be invited by the Public Service Commission to explain his views in order that the Public Service Commission may have full benefit thereof, a course which has not been followed in this case. 25 30 35

If, nevertheless, the Public Service Commission comes to the conclusion not to follow the aforesaid recommendation, it is to be expected for the effective 40

protection of the legitimate interests, under Article 151 in conjunction with Article 146 of the Constitution, of the candidates concerned, that the reasons for taking such an exceptional course would be clearly recorded in the relevant minutes of the Public Service Commission. Failure to do so would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power.”

In *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, at p. 297, Triantafyllides, J., as he then was, said:—

“Had there been made a recommendation by the Head of the Department concerned in relation to the filling in 1963 of the vacancies in question and had in such report a comparison been made between the Applicant and Interested Parties Marinou and Ellinides and had Applicant been described therein as more fit for promotion than those other two candidates, the Commission would normally have been expected to either follow it or give reasons for not doing so”.

The Public Service Law, No. 33/67, s.44(3), reads as follows:—

“In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists”.

The Head of a Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidates to discharge the duties of the post. It is well established that the Public Service Commission has to pay heed to such recommendations and if they decide to disregard them, they have to give reasons for doing so— (See inter alia, *Lardis v. The Republic*, (1967) 3 C.L.R. 64; *HjiConstantinou v. The Republic*, (1973) 3 C.L.R. 65; *Petrides v. Public Service Commission*, (1975) 3 C.L.R. 284; *Mytides and Another v. The Republic*, (1983) 3 C.L.R. 1096).

“Recommendations” in the context of this section has to be given its popular meaning rather than taken as being used in any narrow legal or technical sense. It carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post. He has to make an assessment of the suitability of every candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto—(*Evangelou v. The Republic*, (supra); *Georghios Gavriel v. The Republic*, (1971) 3 C.L.R. 186. at p. 199; *Mytides & Another v. The Republic*, (supra)).

The recommendations of a Director, when he gives reasons for such recommendations, are subject to judicial review by this Court. The Commission, certainly, is not a rubber-stamp of the recommendations of the Director but it should not lightly disregard them, and if they decide not to act in accordance with such recommendations, they have to give specific reasons for so disregarding them and such reasons are subject to scrutiny by the administrative Court—(See, inter alia, *Protopapas v. The Republic*, (1981) 3 C.L.R. 456).

This principle has been consistently followed by this Court, and counsel for the appellant Commission admitted that the first instance Judge correctly stated the Law in his judgment.

The material part of the recommendations of the Director in the present case runs as follows:—

«Ως τέταρτον εισηγήθη τον κ. Γεώργιον Χαρήν, ο οποίος ωσαύτως ήτο πολύ καλός υπάλληλος. Διέθετεν επιπρόσθετον ακαδημαϊκόν προσόν και προηγείτο εις αρχαιότητα των άλλων.

Ο κ. Ανδρέας Ιακωβίδης θεωρείται πολύ καλός υπάλληλος. Έχει και αυτός επιπρόσθετον προσόν πλην όμως θεωρείται ως κατώτερος των κ.κ. Υψηρίδη, Ξυστούρη και Γιακουμεττή. Οι κ.κ. Ιακωβίδης και Χαρής θεωρούνται ως πολύ καλοί υπάλληλοι, αλλά εν τω συνόλω των κριτηρίων είναι καλύτερος ο κ. Χαρής.

Λαμβανομένων υπ' όψιν των κριτηρίων εν τω συνόλω των, οι κ.κ. Ιακωβίδης και Μαρκίδης θεωρούνται ολιγώτερον καλοί των συστηθέντων».

5 (“As fourth it recommended Mr. Georghios Haris, who was also a very good officer, had an additional qualification and was senior to the others.

10 Mr. Andreas Iacovides is considered as a very good officer. He also has an additional qualification but he is considered as inferior to Messrs. Ipsarides, Xystouris and Yiakoumetti. Messrs. Iacovides and Haris are very good officers but in the overall criteria Mr. Haris is better.

15 Taking into consideration the criteria in their totality, Messrs. Iacovides and Markides are considered as lacking a little to those recommended”).

The Commission disregarded the aforesaid recommendations of the Head of the Department and preferred Andreas Iacovides to the respondent.

20 The Commission on 23.11.81 reached its decision; they promoted/seconded the three first recommended by the Director but preferred the interested party Iacovides to Haris. The relevant part of their decision for disregarding the recommendations of the Head of the Department runs as follows:—

25 «Η Επιτροπή εν προκειμένω εξήτασε με ιδιαιτέραν προσοχήν την περίπτωσιν του κ. Γεωργίου Χαρή, ο οποίος έχει συστηθή υπό του Διευθυντού του Τμήματος δια προαγωγήν και παρετήρησεν ότι αι εν γένει περί αυτού Εμπιστευτικαί Εκθέσεις (κατά τον ουσιώδη χρόνον) παρουσιάζουν αυτόν κατώτερον του κ. Ιακωβίδη. Η Επιτροπή παρετήρησεν ωσαύτως ότι αμφότεροι χαρακτηρίσθησαν υπό του Διευθυντού του Τμήματος ως πολύ καλοί, παρ' όλον ότι ούτος συνέστησε τον κ. Χαρήν και ότι ο κ. Ιακωβίδης υπερτερεί εις προσόντα του κ. Χαρή. Ο κ. Χαρής προηγείται εις αρχαιότητα λόγω του ότι εισήλθεν εις τήν υπηρεσίαν ως προσωρινός Βοηθός Γεωργικός Λειτουργός από 15.10.64, έναντι 1.9.65 του κ. Ιακωβίδη, πλήν όμως εις την υψηλότεραν μόνιμον θέσιν Βοηθού Γεωργικού Λειτουργού υπη-



ρετούν από του αυτού χρόνου, ήτοι από μηνός εις μήνα από 1.8.66 και μονίμως από 1.6.69».

(“The Commission in this respect examined with special attention the case of Mr. Georghios Haris, who has been recommended by the Director of his Department for promotion and observed that in general the confidential reports about him (at the material time) present him inferior to Mr. Iacovides. The Commission observed also that both have been described by the Director of the Department as very good, even though he recommended Mr. Haris and that Mr. Iacovides is superior in qualifications to Mr. Haris. Mr. Haris is senior due to the fact that he entered the service as a temporary Assistant Agricultural Officer as from 15.10.64 against 1.9.65 of Mr. Iacovides, but at the higher permanent post of Assistant Agricultural Officer they are serving as from the same time, i.e. from month to month as from 1.8.66 and permanently as from 1.6.69”).

In the required qualifications set out in the scheme of service we read: “At least three years’ experience in the post of Assistant Agricultural Officer. Post-graduate studies in appropriate specialities shall be deemed as an additional qualification”.

The respondent possesses a certificate to the effect that he has participated in the complete course on Improvement of Olive Production Techniques, conducted by the Food and Agriculture Organization of the United Nations, in collaboration with the Government of Spain, and with the assistance of the United Nations Development Programme, held from 15.10.70—15.4.71 in Cordova, Spain—(See Red 39 in his Personal File, exhibit No. 1A).

Interested party Iacovides possesses (a) a diploma in Comprehensive Regional Development Planning, Israel, having completed his studies in this course from 18.5.71—6.4.72 and (b) a certificate that “he participated in the International Course in Fertilizer Use and Extension Methods held in Israel from 19.7.70—5.10.70.”

The Head of the Department, bearing in mind the afore-

said, stated to the Commission that "the applicant and the interested party had an additional academic qualification" and no more. In the judgment of the trial Judge we read:-

5 "The Director has never stated that the interested party Iacovides 'surpasses in qualifications the applicant' and I cannot see where does the P.S.C. base such a finding".

We were invited by counsel for the appellant to construe the part of the decision referring to the qualifications aforecited as meaning that it is not the Director of the Department who observed that Iacovides was superior in qualifications to Haris but that the Commission itself observed this superiority. Even if we were to assume this construction, again this part of the decision is not supported either by 10 any reasoning or by the material before the Commission to which we have just referred. Both had the additional qualification and none was superior to the other in qualifications. The qualifications of both were only and simply such as to cover the qualifications and the additional qualification 15 required by the scheme of service and no more.

It was decided in *Cleanthous v. The Republic*, (1978) 3 C.L.R. 320, and *Bagdades v. Central Bank of Cyprus*, (1973) 3 C.L.R. 417, at pp. 427-428, that a qualification cannot be considered as an advantage over other candidates if it is 20 not expressly stated to be so by the relevant scheme of service.

In *Myrianthi HjiIoannou v. The Republic*, (1983) 3 C.L.R. 1041, a Full Bench case, in delivering the unanimous judgment of the Court, I said:—

30 "Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service, as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them". 35

In this case, however, having regard to the qualifications of the respondent and the interested party, we are of the view that their qualifications are equal and the interested party was not superior.

The recommendations of the Director were disregarded for the further general reason that in general the confidential reports (at the material time) present the respondent inferior to Iacovides.

In deciding on the merits of candidates, it is necessary to look at past annual confidential reports, and especially at the most recent ones, in order to evaluate the performance of the candidates during their career as a whole—*Andreas HjiGregoriou v. The Republic*, (1975) 3 C.L.R. 477; *Larkos v. The Republic*, (1982) 3 C.L.R. 513, at p. 518). 5  
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The most recent confidential reports at the material time were those for the year 1977. They were made by two different reporting officers. The respondent was rated with 3 “Excellent” and 7 “Very Good” and the interested party with 4 “Excellent” and 6 “Very Good.” Different reporting officers, however, inevitably use different standards in their evaluation of the performance of the various officers serving under them— (*Aristocleous and Another v. The Republic*, (1974) 3 C.L.R. 321, at pp. 325-326). Furthermore one mark higher or one mark lower does not count and is not indicative that one candidate is superior to another— (*Papaphoti v. The Educational Service Commission*, (1984) 3 C.L.R. 933). 15  
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At the first meeting of the Commission for this case— 21.10.81—they considered the confidential reports of the respondent for 1974, 1975 and 1976 and they took due note of the marks of the applicant. The reporting officer for 1974, 1975 and 1976 was Georghios Agrotis. These reports were never brought by the reporting officer to the knowledge of the respondent. 25  
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In the confidential report for 1975 the respondent was rated by the same reporting officer with 2 “Fairly Good”, 7 “Good” and 1 “Very Good” but the countersigning officer disagreed with the above assessment and noted that “Mr. Haris is a very likeable and courteous officer and has considerable competence in his work particularly as regards olive tree culture in which he has specialized. The above assessment is rather unfair in all respects”. 35

Early in 1976 he suspected that the report by Agrotis

might be adverse to him for lack of impartiality and by letter dated 6.2.76 addressed to the Ag. Director of Agriculture and Natural Resources he lodged a complaint. The Ag. Director-General of the Ministry on 24.2.76 addressed  
 5 a letter to the Chairman of the Public Service Commission transmitting, pursuant to the provisions of s.45(3) of Law No. 33/67, the confidential report of the applicant to the Commission together with the views of the Ministry to the effect that the evaluation of the reporting officer on the  
 10 performance of the respondent was "in all respects unjust and they would be replaced by a general 'Very Good'".

In spite of the above the same reporting officer, Agrotis, rated the applicant in the confidential report of 1976 with  
 6 "Good" and 4 "Very Good", and the countersigning officer modestly observed: "I feel that he is better than he  
 15 has been assessed".

From the above, the file of the Administration and the relevant administrative records, it is safely inferred that  
 20 Agrotis was not an impartial reporting officer. It is to be noted further that even the general intelligence of the respondent dropped from "Very Good" to "Good". We fail to understand how, without any intervening disease or other event—and nothing of the sort took place—a person with very good general intelligence becomes simply good.

25 Triantafyllides, P., in *Christou v. The Republic*, (1980) 3 C.L.R. 437, at p. 449, observed:-

30 "The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts."

From the administrative files before us we safely infer, as the trial Judge did, that the reports of Agrotis for the  
 35 years to which the Commission directed its mind on 21.10.81 and on which they based the sub judice decision are tainted with bias.

The trial Judge said the following about these reports:-

"As regards the confidential reports of the appli-

cant for the years 1975 and 1976, I shall confine myself in saying this much: they have created an unsatisfactory state of affairs rendering their value next to nil; no administrative organ can depict therefrom with the required certainty the real picture of the merit of the candidate concerned. 5

As against this confused and unsatisfactory material presented by the aforesaid confidential reports the P.S.C. had before it the clear recommendations of the Director; in the circumstances it was not open to it to disregard them as they had no other solid soil to step on; in view of the above I cannot subscribe, with respect, to their reasoning." 10

We share the view of the trial Judge. The reports for the years to which we have referred are nullified for the reasons we have endeavoured to explain and which emerge clearly from the file. 15

The recommendations of a departmental head carry considerable weight because he is in a unique position to evaluate in the correct perspective the competing merits of the candidates, on the one hand, and appreciate the needs of the post to be filled, in terms of ability, knowledge and experience of the beholder, on the other. 20

In the present case the Commission had the opportunity of hearing the reasoned recommendations of the Head of the Department. They disregarded them without due reasoning and the trial Judge rightly annulled the decision for the promotion/secondment in respect of interested party Iacovides. 25

This appeal is hereby dismissed but in all the circumstances we make no order as to costs. 30

*Appeal dismissed with  
no order as to costs.*