

1985 April 19

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

- 1. ANDREAS TSOUNTAS,
- 2. COSTAS PROTOPAPAS,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondents.*

(Cases Nos. 266/82, 285/82).

*Educational Officers—Promotions—Qualifications—Constituting an advantage under the scheme of service—Duty of respondent Commission to conduct a due inquiry into the matter—And to give convincing reasons for preferring a candidate not possessing such qualifications and ignoring one possessing them—No reference in the relevant minutes as to the construction of the schemes of service—And no indication as to how the qualifications of the applicants were evaluated—Therefore no due inquiry into their qualifications—Sub judice promotions annulled for lack of due inquiry—In view of absence of due inquiry question of whether the recommendation of some of the interested parties by the Head of Department provided a good reason for not preferring applicants, inspite of their additional qualifications, not considered.*

The applicants in these recourses challenged the decision of the respondents to promote the interested parties to the post of Headmaster of Schools of Elementary Education. The relevant scheme of service provided, inter alia, that “post-graduate training abroad or an additional title of studies in educational subjects or a certificate of successful attendance of a special series of cultural lessons

organized by the Ministry is considered as an additional qualification”.

5 Applicant in Case 266/82 followed a summer course of six weeks’ duration at the University of Beirut; and applicant in Case 285/82 possessed a B.A. diploma of the Cyprus College.

10 *Held*, that it is the duty of the Committee to evaluate duly the qualifications of candidates and conduct a due inquiry into the matter of whether they possess an additional qualification; that in case it was found by the Committee that the qualifications possessed by the applicants were additional qualifications then convincing reasons should have been given for ignoring them; that in the absence of any reference in the minutes of the Committee as to the construction of the scheme of service in question  
15 and the absence of any indication as to how they evaluated the qualifications of the applicants, they did not conduct the necessary inquiry into the qualifications of the applicants and the sub judge decision must be annulled for  
20 lack of due inquiry.

25 *Held, further*, that although the applicants were not recommended for promotion (as were the four out of the five interested parties) and although such recommendation provides a very good reason for not preferring a candidate in spite of his additional qualifications (see *Skarparis v. The Republic* (1978) 3 C.L.R. 106 at p. 116) no distinction will be made as far as the recourse against the interested parties so recommended are concerned, in view of the finding that no due inquiry seems to have been carried  
30 out nor was a decision taken as to the question of whether either of the applicants possessed an additional qualification as envisaged by the scheme of service, for the reason that this Court should not speculate as to what decision the Committee might have reached had they, in fact, conducted such inquiry and decided the issue of the possession  
35 or otherwise by the applicants of an additional qualification under the scheme of service.

*Sub judge decision annulled.*

## Cases referred to:

- Protopapas and Others v. Republic* (1981) 3 C.L.R. 456;  
*Nissiotis v. Republic* (1977) 3 C.L.R. 388;  
*Larkos v. Republic* (1982) 3 C.L.R. 513 at p. 519;  
*Tourpekki v. Republic* (1973) 3 C.L.R. 592 at pp. 5  
 602-603;  
*Petrides v. Republic* (1981) 3 C.L.R. 57;  
*Mytides v. Republic* (1983) 3 C.L.R. 1096 at p. 1112;  
*Skarparis v. Republic* (1978) 3 C.L.R. 106 at p. 116;  
*Papadopoulos v. Republic* (1982) 3 C.L.R. 1070. 10

## Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Headmaster, in the Elementary Education in preference and instead of the applicants. 15

*I. Typographos*, for applicant in Case No. 226/82.

*P. Angelides*, for applicant in Case No. 285/82.

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

*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. These re- 20  
 courses were, on the application of the parties, heard to-  
 gether as they challenge the same administrative act, that  
 is, the decision of the Educational Service Committee dated  
 30th March, 1982, and published in the official Gazette of  
 the 14th May, 1982, by which the following interested 25  
 parties were promoted to the post of Headmaster of schools  
 of Elementary Education as from the 1st September, 1980,  
 instead of and in preference to the applicants: 1. Michael  
 Vryonides, 2. Chrysanthos Zographos, 3. Elli Saranti, 4.  
 Koulla Physentzou, 5. Elli Sepou. 30

The two applicants, as well as the interested parties, were holding, prior to 1980, the post of Assistant Headmaster

in the Elementary Education having been promoted to that post on the 1st July, 1972.

5 In 1980 there were five vacant posts of Headmaster in the Elementary Education and the department of Elementary Education made, in view of the forthcoming promotions. its recommendations, recommending for promotion to the above posts, in order of priority, the following Assistant Headmasters: 1. Christos Theofilides, 2. Elli Saranti, 3. Elli Sepou, 4. Chrysanthos Zographos, 5. Michael Vryonides.

10 On the 5th June, 1980, the Educational Service Committee decided to promote the five interested parties to the above post.

15 The applicants in the present recourses, filed, together with a third educationalist, a Mr. Theofilides, also an Assistant Headmaster at the time, three separate recourses against the above decision of the Committee. The three recourses were heard together and by the judgment of a Judge of this Court (Mr. Justice A. Loizou) in the case of 20 *Protopapas and Others v. The Republic* (1981) 3 C.L.R. 456, the aforesaid promotions were annulled on the ground of lack of due reasoning in that the Committee did not give any special reasons why it disregarded, in the case of the said Theofilides, both the recommendations of the 25 Head of the Department regarding him and his qualifications which, under the scheme of service, constituted an additional qualification. The other two recourses (those of the two applicants in the present recourses) were withdrawn and dismissed in view of the annulment of the promotions as above.

30 The Committee met again on the 30th March, 1982, in order to fill the vacancies created in the post of Headmaster as a result of the annulment of their decision by the above judgment of the Supreme Court. At this meeting, 35 the Committee, after referring to the judgment of the Supreme Court and the recommendations of the Department of Elementary Education, at the time its annulled decision was taken proceeded as follows:

40 "The Educational Service Committee reconsiders the matter on the basis of the legal situation as it

existed on the 5th June, 1980, and the material existing at that time about the candidates.

The Director of Elementary Education repeats orally his recommendations about the persons that should be promoted which are included in his above note. 5

.....

The Committee, having considered the personal and confidential files of all the candidates for promotion to the post of Headmaster (as they appear on 5.6.80) and having in mind the provisions of the Law and the schemes of service (as they were in force at the time) finds that, on the basis of merit, qualifications and seniority of the candidates, the recommendations of the Head of Department, the service reports and the opinion formed by its members with regard to each candidate during the personal interviews, the following Assistant Headmasters are the most suitable for promotion to the post of Headmaster of Secondary Education." 10 15 20

And the Committee proceeded to offer promotion to the five interested parties.

The applicants filed the present recourses challenging the above decision of the Educational Service Committee.

The sole point that falls for consideration and decision is the alleged additional qualifications of these applicants which, in the contention of their counsel, constitute an additional qualification under the scheme of service and the failure of the Committee to make specific reference to them and state the reasons for disregarding them, which is in itself a ground for annulling the sub judice decision. Moreover, counsel argued that the Committee did not carry out the necessary inquiry into the possession, by the applicants, of an additional qualification under the scheme of service. 25 30 35

The need for special reasoning of administrative acts concerning appointments or promotions where a candidate possesses a qualification which is considered an additional

qualification under the relevant scheme of service has been stressed in a number of cases. (See, for example, the cases of *Nissiotis v. The Republic* (1977) 3 C.L.R. 388; and *Protopapas v. The Republic* (1981) 3 C.L.R. 456).

5 It has been argued by learned counsel for the respondents that with regard to Case No. 266/82), applicant's alleged additional qualification consists of a summer course of six weeks' duration at the university of Beirut, and that this cannot amount to the additional qualification envisaged  
10 by the scheme of service. The relevant part of the scheme of service reads as follows:

15 «3. Μετεκπαιδευσις εις τὸ ἔξωτερικὸν ἢ ἐπιπρόσθετος τίτλος σπουδῶν εις ἐκπαιδευτικὰ θέματα ἢ πιστοποιητικὸν ἐπιτυχοῦς παρακολουθήσεως ειδικῆς σειρᾶς ἐπιμορφωτικῶν μαθημάτων ὀργανουμένων ὑπὸ τοῦ Ὑπουργείου θεωρεῖται ὡς πρόσθετον προσόν».

20 (“3. Post-graduate training abroad or an additional title of studies in educational subjects or a certificate of successful attendance of a special series of cultural lessons organized by the Ministry is considered as an additional qualification”).

It will be seen that the above paragraph of the scheme of service does not specify what duration the “post-graduate training abroad” should have in order to qualify as  
25 an additional qualification thereunder and it is for this Court to construe the scheme of service and decide whether the summer course of six weeks' duration followed by this applicant at the university of Beirut is up to the requirements of the scheme. It has been held that the interpretation and application of the schemes of service and, consequently, the evaluation of the qualifications of the candidates is within the discretionary powers of the Committee and the Court will not interfere with such interpretation  
30 once it was reasonable. (See, *Larkos v. The Republic* (1982) 3 C.L.R. 513 at p. 519).

It is also the duty of the Committee to evaluate duly the qualifications of candidates and conduct a due inquiry into the matter of whether they possess an additional qualification. In the case of *Tourpeki v. The Republic* (1973)  
40 3 C.L.R. 592 at pp. 602-603 the Court had this to say:

“In the present case the applicant appears to possess, a diploma from the Agronomic Mediterranean Institute in Bari and Montpellier, France and in the letter dated the 13th July, 1964 (exhibit B. Red 9), it is mentioned that a programme of the course is kept by the Ministry of Agriculture. As already mentioned, under the scheme of service, ‘a college diploma or certificate in agriculture or another subject related to Animal Husbandry will be an advantage’. What is sufficient inquiry is, to my mind, a question of degree depending upon the nature of the matter to be inquired into. Whether such an inquiry has been duly carried out or not, is a matter to be deduced from the relevant minutes kept for the purpose.

In relation to the position created by the aforesaid circumstances, one has to observe that nowhere in the minutes of the Commission or in the recommendation of the Head of the Department, relied upon by the Commission, appears any reference whatsoever to this diploma. An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the sub judge decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub judge decision

and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the sub judge decision contrary to Law and in excess and abuse of power.”

The *Tourpeki* case was followed and applied in the case of *Petrides v. The Republic* (1981) 3 C.L.R. 57.

In the light of the above and in the absence of any reference in the minutes of the Committee as to the construction of the scheme of service in question and the absence of any indication as to how they evaluated the qualifications of this applicant, I find that they did not conduct the necessary inquiry into the qualifications of the applicant and the sub judge decision must be annulled for lack of due inquiry. (See, in this respect, *Mytides v. The Republic* (1983) 3 C.L.R. 1096 where at p. 1112 it was said:

“It is outside the limits of the jurisdiction of this Court to construe the scheme of service and to state whether the qualification held by the interested party sufficed. The Court should not substitute its own decision for the decision of the Commission. It was upon the Commission to take such a decision.”

The possession by this applicant of a diploma in Law from Salonica university is not a qualification expressly required by the scheme of service and does not, necessarily, put the applicant in an advantageous position vis-a-vis other candidates in the sense that it could be singled out for separate and distinct consideration.

The same considerations apply for applicant Protopapas in Case No. 285/82 who possesses a B.A. diploma of the Cyprus College. I do not have any indication as to its level and whether it has been considered by the respondents as amounting to “an additional title of studies in educational subjects” as provided by the scheme of service. In



the absence of such decision or indication this Court cannot pronounce whether the construction of the scheme of service, if any, was a reasonable one and I would, therefore, annul the sub judice decision as far as this applicant is concerned also and for the same reasons as in Case No. 266/82. 5

Although the applicants were not recommended for promotion (as were the four out of the five interested parties) and it has been held by this Court that such recommendation provides a very good reason for not preferring a candidate in spite of his additional qualifications (see, *Skarparris v. The Republic* (1978) 3 C.L.R. 106 at p. 116; *Larkos v. The Republic* (supra) and *Papadopoulos v. The Republic* (1982) 3 C.L.R. 1070), I am not prepared to make a distinction as far as the recourse against the interested parties so recommended are concerned, in view of my finding that no due inquiry seems to have been carried out nor was a decision taken as to the question of whether either of the applicants possessed an additional qualification as envisaged by the scheme of service, for the reason that I should not speculate as to what decision the Committee might have reached had they, in fact, conducted such inquiry and decided the issue of the possession or otherwise by the applicants of an additional qualification under the scheme of service. 10 15 20 25

Nor can this Court decide, in these circumstances, whether the decision they have arrived at was reasonably open to them.

For the above reasons both these recourses succeed and the sub judice decision is hereby annulled. 30

*Sub judice  
decision annulled.  
No order as to costs.*