1986 July 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CONSTANTINOS P. SAVVA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 387/85).

Administrative Law—Due inquiry—The need of such inquiry into all material factors well established—Absence of a reasonably sufficient inquiry or absence of knowledge of a material fact leads to defective exercise of discretion—Promotion of public officers—Confidential reports—Disappearance of a report—New report prepared by another officer—Inquiry in depth as to the circumstances of the disappearance—But the missing report was never reconstructed and its contents remained unknown to the respondent Commission—In the circumstances the discretion was exercised in a defective manner.

The applicant impugns by means of this recourse the promotion of interested party G. Georghiou to the permanent post of Animal Husbandry Officer, Grade 1 in the Department of Agriculture.

At its meeting of the 26.10.84 the P.S.C. selected the interested party for promotion to the said post. By letter dated 29.10.84 counsel for the applicant invited the Commission to inquire into the following allegations, namely that the confidential report for the year 1983 for the interested party was prepared by Mr. Cl. Pratsos, that the said report "disappeared" and never sent to the Com-

mission, that the officer in charge of the Animal Hasbandry, who was on leave prior to retirement, namely Mr. Constantinides was recalled for the purpose of making a new confidential report i.e. the one actually forwarded to the Commission in which the interested party was rated excellent in all items and that the said report by Mr. Pratsos was not at all "a good report".

On the 6.11.84 the chairman of the Commission asked the views of the Director of the Department of Agriculture, who by letter dated 22.11.84 replied that on the 7.12.83 the forms of the confidential reports were transmitted to Mr. Pratsos in order that he would act as reporting Officer, but as at a subsequent date, the officers of the sub-section of swine production visited his office and protested against the appointment of Mr. Pratsos and as the relations between them and Mr. Pratsos were found to be tensed, he asked Mr. Constantinides to act as reporting officer, that Mr. Pratsos by letter dated 16.11.84 mentioned that he had submitted the report on the interested party through the head of the Animal Production and that such report had never reached his office.

By letter dated 18.12.84 the Chairman of the Commission requested the Director to specify the time, when the officers of the sub-section of swine production visited the Director and to investigate what happened to the report of Mr. Pratsos.

The Director replied by letter dated 11.1.85. He placed the time of the visit in January 1984. He stated that around the end of February 1984 Mr. Constantinides delivered to the Chief Clerk a sealed envelope containing the reports on the officers of Animal Production (about 30), that he transmitted by letter dated 29.2.84 to the Commission the reports for all—as he believed—officers of the Department (about 400), that an officer of the Commission informed the Chief Clerk of the Department that the reports for four officers, including the interested party, had not been submitted, that as such reports were not found, instructions were given to the officers affected to complete new forms and that on account of the tense relations between Mr. Pratsos and the other officers of

the sub-section of swine production, he asked Mr. Constantinides to act as reporting officer

On the 18.12.84 the Chairman of the Commission required Mr. Constantinides to give the necessary explanations as to the allegation that the report of Mr. Pratsos did not reach the Director. By letter dated 8.1.85 Mr. Constantinides informed the Commission that the reports for 1983 on Messrs Georghiou (interested party) Kyriacou and Gavrielides were made by Mr. Pratsos and that he himself acted as a countersigning officer, making the necessary corrections, a matter which he brought to the knowledge of Mr. Pratsos, that he delivered such reports to the Chief Clerk of the Department, that he was later asked by the Officer in charge of the Animal Husbandry to prepare new reports on Georghiou and Kyriacou, as the first reports had been lost, and that it was stated to him that after representations by the said two officers the Director decided that he should act as the reporting officer.

The Commission, also, asked the views of the Chief Clerk, who by letter dated 19.2.85 stated inter alia that he could not say with certainty whether the missing reports were delivered to him, as the envelope handed to him was not accompanied by a list of the reports it contained and that after the Officer of the Commission informed him of the missing reports and as such reports were not found, instructions were given by the Director to complete new reports.

Mr. Pratsos stated in his evidence before the Court that in accordance with his notes he had rated the interested party as follows: For items 5 and 6 "Excellent", for items 2 and 7 "Good" and for the remaining items "Very good." The report of Mr. Constantinides rated the interested party "Excellent" on all items, except item 4 for which he was rated "Very good".

The Public Service Commission re-examined the matter at its meeting of the 21.3.85 and decided that although there has been a certain irregularity as regard the confidential reports for 1983 for Georghiou and Kyriacou, the

reports were not contrary to the relevant Regulatory Orders and, therefore, there is no reason to re-examine the matter of the filling of the post in question.

Held, annulling the sub judice decision. (1) The need for a proper and due inquiry into material factors is well established in our administrative law and the absence of a reasonably sufficient inquiry into and knowledge of all material facts concerning the candidates for promotion and matters relevant thereto amounts to defective exercise of discretion.

(2) In this case it is significant to note that the complaint against the objectivity of Mr. Pratsos was made after his assessment, which had been duly examined by the countersigning officer and that, although the interested party from 1970 to 1982 had "Excellent" ratings in five, four or three items (except 1980 when he had such rating on 8 items), for the year 1983, when the report of Mr. Pratsos disappeared, he was assessed with 11 "Excellent" and 1 "Very good".

(3) Though the Commission inquired in depth into the matter, yet it never had before it either the lost confidential report or a reconstruction of its contents. In the circumstances this led to a defective exercise of discretion.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Hji Paschali v. *The Republic* (1980) 3 C.L.R. 101;

Mikellidou v. *The Republic* (1981) 3 C.L.R. 461;

Louca v. *The Republic* (1966) 3 C.L.R. 854.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the port of Animal Husbandry Officer, Grade I in preference and instead of the applicant.

Chr. Mitsides, for the applicant.

A. Vladimirou, for the respondent.

Ch. Ierides, for the interested party.

Cur. adv. vult.

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 respondent Commission published in the Official Gazette of the Republic on the 11th January, 1985, by which Georghios A. Georghiou, (hereinafter to be referred to as the interested party), was promoted to the permanent post of Animal Husbandry Officer Grade I, in the Department of Agriculture is null and void and with no legal effect. Two other incidental or alternative prayers of relief are sought but it serves no purpose to refer to them as the matters will be considered in connection with the arguments advanced in this case.

The post in question is a promotion post and the respondent Commission in accordance with Section 36 of the Public Service Laws 1967 - 1983 and Regulatory Order 3, set up a Departmental Board to advise it in respect of the promotion to the said vacant post.

The Departmental Board by letter of its Chairman dated 15th September 1984, submitted its report in which three out of eight candidates were recommended for promotion. Among them were the applicant and the interested party. The respondent Commission after deciding to consider as candidate together with those recommended by the Departmental Board a certain Kyriakos Fantaros, who during the last two preceding years had excellent confidential reports, examined the question of promotions at its meeting of the 26th October, 1984.

The minutes of that meeting at which the sub judice decision was taken are appended to the Opposition under No. 7 and they read as follows:

> "Present at the meeting was the Director of the Department of Agriculture Mr. Avraam Louca.
>
> He mentioned the following regarding the additional qualification.

Georghiou Georghios attended 'a Course in Soil Fertility and Fertilizer Use, Israel' from the 30th May, 1963 until the 8th August 1963, and he was given the relevant certificate.

Savva Constantinos attended 'The First International Course on Dairy Cattle Husbandry, the Netherlands' between the 19th March, 1973 until the 22nd June 1973.

Taliotis Nicolaos has 'Diploma in Agriculture Roseworthy Agricultural College, South Australia and attended the International Course on Intensive Dairy Cattle Production, and Extension Methods, Israel' (17.4.75 - 3.9.75).

Regarding Fantaros he said that the first two titles mentioned are exactly the same thing. As regards the 'Certificate in the Nutrition of Domestic Animal Thuringer Zoo, Erfurt GDR, it is an academic certificate. From the information given by the officer himself it is simply in respect of work done there for a certain period. As regards the Certificate in Mastitis, Bonn University, F.R.G., the information he received from the officer himself is that he never enrolled as a student but only as guest student and he was working at the Institute of Anatomy, Physiology and Domestic Animals Hygiene of the University of Bonn as a free collaborator. In his view this certificate cannot be considered as prostgraduate qualification.

Further the Director of the Department of Agriculture mentioned the following:

He recommends Georghiou Georghios who served at the Central Offices in Nicosia in the sub-section of swine production. His grading for 1984 until to-day is about the same as last year. During the last two years he has made very substantial improvement in relation to the previous years. His English is considered as very good.

Savva Constantinos serves at the District Agricultural Office, Nicosia. He is an Area Husbandry Of-

ficer in the central area of Akaki. His English is very good. His performance until now is the same as last year.

Taliotis Nicolas serves in the District Agricultural Office, Paphos, and he possesses a very good knowledge of English. His performance this year until now is about the same as last year.

Fantaros Kyriakos, serves in the District Agricultural Office, Famagusta, his English is considered very good and his performance this year until now is about the same as last year.'

The Public Service Commission considered that Georghiou, Savva and Taliotis possess the additional qualification. Fantaros cannot be considered that he possesses the additional qualification.

The Commission taking into consideration all material factors before it considered on the basis of the established criteria in their totality (merit, qualifications, seniority) that Georghios Georghiou is superior to the other candidates and adopting the recommendation of the Director it decided to promote him, as being the most suitable, to the permanent (Ordinary Budget) post of Animal Husbandry Grade I in the Department of Agriculture as from 1st November 1984."

Six days later counsel for the applicant addressed the following letter dated 29th October, 1984, (Appendix 8) to the Chairman of the respondent Commission, it reads:

"On instructions from our client Constantinos P. Savva, from Nicosia, Animal Husbandry Officer we wish to refer to the filling of a vacant post of Animal Husbandry Officer, Grade I in the Department of Agriculture and in view of the fact that our said client is one of the candidates for the said post and the fact that its filling is at an advanced stage, we wish to inform you and invite you to inquire into the following in relation to the other candidate Georghios Georghiou who appears as the favourite on account of the 'Excellent' confidential reports.

(a) from reliable information of our client the annual confidential report for M. Georghiou at least for the year 1983 which was prepared by Cleanthis Pratsos, Agricultural Officer Grade A, who happened to be the immediate superior of the said candidate, was not at all a good report. The said report at a certain period before its transmission to the respondent Commission 'disappeared' and was never sent to you.

(b) In view of the fact that it ought to be sent to you within a specified time period, this annual confidential report for the said candidate for the year 1983 and for this purpose only the officer in charge of Animal Husbandry who was on leave prior to retirement at that time was recalled and he prepared a new annual confidential report in which the said candidate was assessed by him with twelve 'Excellent.'

It is noteworthy:-

I. That Mr. Constantinides during the time of the said assessment period, was not the immediate superior officer of the said candidate (such was and is Mr. Pratsos), in order to justify the preparation by him of an annual confidential report for the said candidate.

II. That the annual confidential report was prepared by a person being on leave prior to retirement at the time of its preparation.

III. That there were prepared two annual confidential reports for the same candidate for the same year, *that is* 1983, *by two different persons.*

IV. That these annual confidential reports differed between them immensely as regards the assessment by them of the same candidate.

V. That only the second annual confidential report which was prepared by Mr. Constantinides who was not the immediate superior of the said candidate was placed before the respondent Commission, by which he is described as 'excellent' whereas the

first report prepared by Mr. Pratsos his immediate superior, disappeared and or was lost and in any event was never placed before you.

VI. That the first report was not a good report whereas the second one was excellent.

In view of the aforesaid facts which came to the knowledge of our client, we request you to inquire into the said subject and that your decision for the filling of the aforesaid post be not based on annual confidential reports prepared subsequently with a possible intention of misleading the decision of the Public Service Commission and/or with the possible intention of more favourable treatment of the said candidate as against the others."

The Chairman of the respondent Commission by letter dated 6th November, 1984, (Appendix 8) forwarded the said letter to the Director of the Department of Agriculture, and asked his views regarding the allegations contained therein. The Director of the Department of Agriculture replied to it by letter dated the 22nd November 1984, (Appendix 10), as follows:

"

Mr. Georghiou serves in the Animal Production Section and together with three other officers, including Mr. Cleanthis Pratsos, constitute the sub-section of Swine Production. In charge of the Animal Production Section was until his retirement on 1st April, 1984, Mr. Costas Constantinides Senior Animal Husbandry Officer in charge of Swine Production, Mr. Cleanthis Pratsos, Agricultural Officer Grade I.

On the 7th December 1983, I transmitted by letter to Mr. Pratsos through the officer in charge of Animal Production, forms of annual confidential reports for the three officers who serve in the sub-section of swine production in order that he would act as reporting officer. At a subsequent stage, the officers of the sub-section of swine production visited my office among them was also Mr. Georghiou and they com-

plained in a strong manner that Mr. Pratsos for purely personal reasons, would not make an objective assessment on them and they mentioned to me various acts with which they justified this allegation of theirs. Having been persuaded that in fact the relations of Mr. Pratsos and the other officers in this sub-section were tense, I discussed the matter with Mr. L. Serghis, Officer in Charge of the Animal Production and I took also the views of Mr. C. Constantinides, Head of the Section of Animal Production. In order to avoid any misunderstandings and doubts as regards the objectivity of the assessment I asked from Mr. Costas Constantinides, who on account of his duties as head of the section of Animal Production, had regular contacts with them, followed their work and knew very well their performance, to act as reporting officer and from Mr. Lambros Serghi, Head of Animal Production who also knew very well their work and performance to act as countersigning officer. I note in parenthesis that in reply to a recent letter dated 16th November 1984, Mr. Pratsos mentions that he had submitted to me the confidential report for Mr. Georghiou on 31st December 1983, through the head of Animal Production. The report by Mr. Pratsos never reached my office.

On the basis of Regulatory Orders relating to confidential reports the countersigning officer in case of disagreement with the reporting officer, may give his own assessment in red ink, which becomes accepted. Consequently the allegation that the report was destroyed with the intention of submitting a more favourable one, does not stand because the countersigning officer had the possibility on the basis of these orders to give his own assessment."

On the 18th December 1984, the Chairman of the respondent Commission addressed a letter (Appendix 11) to the Director of the Department of Agriculture making the following observations:-

"

(2) In paragraph 3 of your aforesaid letter (Appendix 10) you mention that 'at a later stage they visited my office....' and further '.... in reply to a recent letter of mine dated 16th November 1984, Mr. Pratsos mentions that he had submitted.... The assessment of Mr. Pratsos never reached my office.'

(3) In order to have before us a complete picture of the whole matter you are requested:

(a) to specify the time that the officers of the subsection of swine production visited you, and

(b) to investigate and inform our Office what happened to the Confidential Report which Mr. Pratsos submitted for Mr. Georghiou for the year 1983."

In reply the Director of the Department of Agriculture addressed the following letter dated 11th January 1985, (Appendix 12) to the Chairman of the respondent Commission:

"I refer to your letter file No. P 13949 dated 18th December 1984, regarding the subject of confidential reports which was submitted for Mr. Georghios Georghiou, Animal Husbandry Officer for the year 1983 and I submit the following information you asked from me:

(a) I cannot specify the exact date that the officers of the Section of Animal Production visited me but I place it in January 1984.

(b) As regards the confidential report which Mr. Pratsos submitted for Mr. Georghiou, from an inquiry that I carried out the following transpired:

(1) Mr. Pratsos in his letter dated 16th November 1985, mentions that he submitted the confidential reports to me on the 31st December, 1983, through the Head of the Section of Animal Production, Mr. Costas Constantinides.

(2) Around the end of February 1984, Mr. Constantinides delivered to the Chief-Clerk of the Department a sealed envelope with the confidential reports of the officers of the section of Animal Production (about 30). In the envelope there was no accompanying letter nor a list of names of the officers for which confidential reports were submitted. Unfortunately there had not been checked as regards the number of reports that the envelope contained and consequently I cannot say with certainty whether in them there was the report for Mr. Georghiou.

(3) With my letter, file No. 161/41/11 dated 29th February 1984, I transmitted the confidential reports for all, as we believed, officers of the Department (about 400) without attaching a list containing names as it was usual in the past. In my letter there was attached a list only of the officers who were, during 1983, outside Cyprus on scholarship, secondment, to the United Nations or on leave without pay and for which no confidential report was submitted.

(4) After the submission of the reports to you an officer of your Office telephoned to the Chief Clerk of the Department and mentioned that there had not been submitted to your office confidential reports for four officers among whom there were Messrs. Georghios Georghiou and Georghios Kyriakou of the sub-section of Swine Production of the Animal Production Section.

(5) The reason, that after an inquiry the above confidential reports were not found, instructions were given to the officers affected to complete new forms. Because, as I mentioned in letter under the same number dated 22nd November, 1984, at the meeting that I had with the officers of the sub-section of Swine Production, I was convinced that the relations of Mr. Pratsou and the other officers in the sub-section of Swine Production, were tense, in order to secure objective assessment, I asked from

Mr. Costas Constantinides who as Head of the Section of Animal Production knew very well their performance to act as Reporting Officer and from Mr. Lambros Serghi, Head of Animal Husbandry who also knew very well their work and performance to act as Countersigning Officer. Following that, the completed reports were submitted to you.

I would like also to mention that as a result of the aforesaid experience it has been decided that the confidential reports which are submitted, be accompanied always by a list of names."

On the 18th December, the Chairman of the respondent Commission wrote the following letter (Appendix 13) to Mr. Costas Constantinides at his private address in Nicosia.

"From the material before us it appears that Mr. Cleanthis Pratsos, Agricultural Officer, 1st Grade prepared and submitted through you on or about the 31st December 1983, an annual confidential report for Mr. Georghios Georghiou Animal Husbandry Officer for the year 1983.

2. As the Director of the Department of Agriculture informed us that the said report never reached his office you are requested to give the necessary explanations."

Mr. Constantinides by his letter dated 8th January 1985, (Appendix 14) wrote to the Chairman of the respondent Commission:

".... it is in fact true that Mr. Cleanthis Pratsos Agricultural Officer, 1st Grade, prepared and submitted through me the annual confidential reports for the year 1983, on Messrs. Georghios Georghiou, Georghios Kyriakou and Antonis Gavrielides, officers in the section of Animal Production of which I was in charge.

In my turn as a Countersigning Officer I completed the said annual confidential reports to which I made the relevant in my judgment corrections, a

matter which I brought to the knowledge of the Reporting Officer and together with the annual confidential report of Mr. Cleanthis Pratsos for whom I was the Reporting Officer, I delivered them by hand to Mr. Andreas Serafides, Chief Clerk of the Department of Agriculture.

At a later stage, I was asked by Mr. Lambros Serghiou, officer in charge of Animal Husbandry, on instructions from the Director of the Department of Agriculture to act as a Reporting Officer for the preparation of new annual confidential reports on Messrs. Georghios Georghiou, Animal Husbandry Officer and Georghios Kyriakou, Animal Husbandry Inspector, 1st Grade in the sub-section of Swine Production because, as it was mentioned to me, that the first annual confidential reports of these officers were lost. It was stated to me that after representations of the two interested officers, the Director of the Department had decided that I be asked to act as Reporting Officer because as Mr. Georghiou in charge of Animal Husbandry would be the Countersigning Officer..".

The respondent Commission addressed the following letter, (Appendix 15) to Mr. Andreas Serafides, Chief Clerk at the Department of Agliculture.

"From material brought to our consideration it appears that Mr. Costas Constantinides, ex Senior Animal Production Officer, delivered by hand to you at the end of February 1984 the annual confidential reports for the year 1983 on Messrs Georghios Georghiou, Georghios Kyriakou, and Antonios Gavrielides, officers in the sub-section of Swine Production. These reports had been prepared and submitted to Mr. Constantinides by Mr. Cleanthis Pratsos who acted as Reporting Officer.

2. As the reports which refer to Messrs Georghiou and Kyriakou and which are prepared by Mr. Pratsos never reached their destination please give the necessary explanations."

Mr. Serafides replied to the above letter by his letter

dated 19th February 1985, (Appendix 16) and he gave the following information:

"(a) Towards the end of February 1985, I communicated with Mr. Costas Constantinides, Head of the Section of Animal Production and reminded him that the confidential reports on the officers of his section had not been submitted to the Director and that he should submit them the soonest as all confidential reports had to be submitted to the Public Service Commission before the 1st March, 1984.

(b) A few days later Mr. Constantinides came to my office and delivered to me a sealed envelope with the confidential reports on the officers of the section of Animal Production. In the envelope there was not included an accompanying letter nor a list of names of the officers for which confidential reports were submitted. Because of that I cannot say with certainty whether the confidential reports on Mr. Georghios Georghiou and Georghios Kyriakou were included in the envelope. Following that I delivered the envelope with the confidential reports of the section of Animal Production to the Director of the Department of Agriculture for further action.

(c) The Director on the 29th February, 1984, summoned me to his office and delivered to me the confidential reports that he had in his office which after I placed in envelopes and sealed them I sent them to you with a letter of the Director under file No. 161/51/II dated 29th February 1984. In the letter there was not attached a list of names of the officers for which the confidential reports were submitted, but only a list of the officers who were during 1983 outside Cyprus on scholarships, secondment to the United Nations or on leave without pay and for whom no confidential reports were submitted. This procedure was followed and on previous years.

(d) A few days after the submission of the reports to you, an officer of your Office telephoned to me and mentioned that among the confidential reports

that were submitted there were no reports for four officers among whom and those on Messrs Georghios Georghiou and Georghios Kyriakou of the sub-section of Swine Production of the section of Animal Production.

(e) When I received the telephone call from the officer of your Office, the Director was absent abroad and as soon as he returned I informed him accordingly. In the meantime I had also informed Mr. Constantinides who mentioned to me that the confidential reports on the aforesaid officers had been submitted together with the others of the section of Animal Production. As, after an investigation the aforesaid reports were not found, instructions were given by the Director to those officers affected to complete new reports. When the new confidential reports were completed they were submitted to you. It must be mentioned that never in the past any confidential reports of the Department were lost ...."

This completes the factual aspect of the case as it emanates from the documents placed before me.

Mr. Cleanthis Pratsos was called as a witness and gave evidence on behalf of the applicant. He spoke of the structure of the Department of Agriculture which is divided into various sections, one of them being the Section of Animal Production and under it the sub-section of Swine Production of which he is in charge. The interested party Mr. Georghiou served in this sub-section.

By letter dated the 2nd February 1983, (exhibit B, appended to the written address of the applicant) this witness was asked to be the reporting officer for the interested party. As already stated the report was prepared by him and handed together with other confidential reports at the office of Mr. Constantinides who was the Head of the section of Animal Production. The witness was asked to see the confidential reports prepared subsequently on the interested party for the year 1983 and he observed that he is rated therein on all items as "Excellent" except on item 4 for which he is rated "Very Good", the total assess-

ment being "Excellent", whereas the rating made by him in the confidential report which was lost was as he testified according to his notes the following: For items 5 and 6 "Excellent" for the remaining items except items 2 and 7 for which the rating was "Good" it was "Very Good," and as a result the total assessment was "Very Good". He further stated that he was never informed that he was removed from being the reporting officer on the interested party as a result of any representations made to the Head of the Department or for any other reason.

It may be relevant to refer to the confidential report on the interested party for the year 1982. He was rated by Mr. Lambros Serghis in charge of Swine Production with "Excellent" on all ratable items except items 7 and 9 for which he was rated "Very Good" and as result the total rating was "Excellent". There is an explanatory comment in the said report regarding the assessments made saying that "the contribution of this officer to the various activities of the section during the period for which the assessment is made was "Excellent". The improvement of his productivity and his devotion to duty, his zeal and the performance he showed were an example for imitation. His scientific and educational training with the managerial leadership and organizing abilities were tested with excellent results during the period that he was in charge of Swine Production. His promotion is warmly recommended.

The countersigning officer, however, the then Director of the Department of Agriculture, now the Director-General of the same Ministry, changed the rating with red ink as regards items 1, 2, 4, 10 and 11 to "Very Good" which made the total assessment "Very Good."

The confidential report for the year 1981 again prepared and countersigned by the same officers had three ratings as "Excellent" and nine ratings as "Very Good" which made the total assessment as "Very Good". For the year 1980 the ratings in his confidential report were eight as "Very Good" and four as "Good" with the total as "Very Good". It is noteworthy that a comment appearing in the report of 1981 in addition to the interested party's dedication to duty being described as exemplary special

reference is made to his ability to express himself in writing and orally and that he contributed very much to the carrying out of the various jobs of the section without delay.

I shall make now a brief reference to the confidential reports on the applicant for the same years. For the year 1983, he was rated on five items as "Excellent" and on seven as "Very Good", the total assessment being "Very Good". The comment of the reporting officer is that Mr. Savva is rated "Excellent" for his performance and devotion to duty, his reliability as well as his ability for oral and written expression. In the confidential report for the year 1982 he was originally rated "Excellent" on five items but the countersigning officer changed the rating to "Very Good" on items 5 and 6, that is the ability to express himself in writing and orally. He was also rated "Very Good" for the remaining items. This brought down the general assessment to "Very Good". In the confidential report for the year 1981 he was rated with two "Excellent" and ten "Very Good" which makes the total assessment "Very Good".

As regards the length of their service and seniority it may be noted that the applicant entered the service on the 15th July, 1969 as Assistant Animal Husbandry Officer and became permanent to that post on the 1st January 1978. The interested party entered the service on the 1st October 1967, as Assistant Husbandry Officer and became Assistant Animal Husbandry Officer permanent, on the 15th July 1973. For all intents and purposes the interested party is senior to the applicant.

The respondent Commission at its meeting of the 21st March, 1985, re-examined the matter. Its minute is headed "Re-examination of the subject of filling one (Permanent Ordinary Post of Animal Husbandry Officer Grade I, (Promotion Post). (Challenge of the validity of the Annual Confidential Report for 1983), which was submitted for the officer who has been promoted to the post." There follows an extract from the letter dated 19th February 1985 by Andreas Serafides, the Chief Clerk in the Department of Agriculture. Then the respondent Commission concludes as follows:

"The Public Service Commission having taken into consideration the aforesaid and examined all before it relevant material decided that although there has been noted certain irregularity on the subject the preparation and submission of the annual confidential reports for 1983 for Georghios Georghiou and Georghios Kyriakou were not contrary to the Regulatory Orders which govern the preparation and submission of confidential reports for public officers.

After this, there does not exist any reason for re-examining the filling of the post of Animal Husbandry Grade I and so the decision of the Commission for promotion of Georghios Georghiou to this post as from 1st November 1984. stands."

The first ground of law to be examined is that there has been no sufficient inquiry as regards the allegations put forward by the applicant before the respondent Commission by his letter dated 29th October, 1984. The need for a due and proper inquiry into material factors is well established in our administrative Law and the absence of a reasonably sufficient inquiry into and knowledge of all material facts concerning the candidates for promotion and matters relevant thereto amounts to defective exercise by the respondent Commission of its discretionary powers leading to the annulment of the administrative act challenged by a recourse. (See *Hadji Pashali* v. *The Republic* (1980) 3 C.L.R. 101 at p. 106 and *Mikellidou* v. *The Republic* (1981) 3 C.L.R. 461 at p. 470 - 471; *Georghios Louca* v. *The Republic* (1966) 3 C.L.R. 854 p. 860.)

No doubt the respondent Commission inquired in depth as to the circumstances of the disappearance of the first report prepared by Pratsos and this is obvious from Appendices 9-17. What is missing from the inquiry carried out was to have before the respondent Commission that confidential report which was never traced and in any event, for the respondent Commission to know its contents. It is significant to note that the complaint of the various officers regarding the objectivity of Mr. Pratsos took place in January 1984 when Pratsos had already been appointed as reporting officer and after the assessment had already

been made and duly examined by the countersigning officer (see the letter of Mr. Constantinides dated 8th January, 1985).

In fact from the comparison made regarding the confidential reports in the written address of counsel for the respondent Commission, although the interested party from the year 1970 to the year 1982 had Excellent Rating in five, three or four items, and only in 1980 on eight items, for the year 1983 when the confidential report prepared by Pratsos disappeared and was replaced by that of Mr Constantinides the interested party is assessed therein with eleven "Excellent" and with one "Very Good".

The respondent Commission did not have before it all material facts concerning the candidates for promotion inasmuch as though it inquired in depth, and spared no effort to do so, into the circumstances as to the existence or not of the first confidential report that was lost or that it never reached it, yet it never had before it either the lost confidential report or a reconstruction of its contents In the circumstances of this case and as it would shed more light in the irregularity pertaining to the missing report, I find it led to the exercise of a defective discretion and I hereby annul the sub judice decision

As the matter will have to be re-examined I do not intend to say anything more on the subject lest I may be transgressing into the functions of the respondent Commission.

For all the above reasons the recourse succeeds and the sub judice decision is annulled with no order as to costs

Sub judice decision annulled
No order as to costs