

1986 July 25

[TRIANTAFYLIDIS, P., SAVVIDES, LORIS,
STYLIANIDES, KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

(Appellant-Respondent),

v.

MICHALAKIS MARATHEFTIS AND ANOTHER,

(Respondents-Applicants).

(Revisional Jurisdiction Appeal No. 575).

Educational Officers—Promotions—Qualifications—Due inquiry into—In the circumstances of this case there was no need for any special inquiry into the qualifications of the interested party.

5 *Educational Officers—Promotions—Interviews, performance at—*
Undue Weight—Ground of annulment—Absence of con-
temporaneous records relating to the evaluation of such
performance and recording of the relevant rating after
10 *passage of more than five months—In the circumstances*
said facts lead to the conclusion that the evaluation was
tainted with misconception of fact.

Educational Officers—Promotions—Personality of candidates—
An element related to the performance of the candidates
at the interview—Finding that interested party was
15 *superior to other candidates as regards personality—Dis-*
proportionate weight attached to such element—Ground of
annulment—Absence of contemporaneous record and re-
recording of finding after the passage of more than five
months from the time of the interviews—In the circum-
20 *stances lead to conclusion that finding was tainted by a*
misconception of fact.

Practice—Revisional Jurisdiction Appeal—Additional issue
raised and argued by respondents—Respondents not en-
titled as of right to a final reply on such issues.

The respondents in this appeal, namely M. Maratheftis and A. Psomas filed recourses 570/83 and 79/84, whereby they impugned the validity of the appointment of the interested party St. Philippides to the post of Director of Higher and Highest Education in the Ministry of Education as from 1.1.1984. 5

The said appointment was annulled by the judgment appealed from, issued by a Judge of this Court, on the ground that the appellant Commission did not embark into details as regards the qualifications of the candidates and it did not carry out a due inquiry as to whether such qualifications satisfied the requirements of the relevant scheme of service. 10

During the hearing of the appeal there were raised additional issues relating to the validity of the sub judice appointment. The appellant Commission selected the interested party because he was rated as "very very good" when interviewed and had impressed the Commission with his practical approach. Moreover, the Commission stated that he was superior to the other candidates as regards "personality". 20

The interviews had been held on the 15th and 16th of July 1983, but no contemporaneous records were kept. The Commission recorded its evaluation of the performance of the candidates at its meeting of the 21.12.83, that is after there had elapsed since the interviews more than five months. Respondent Maratheftis was rated "very good", and respondent Psomas as "nearly very good". The interested party was the only one of the eleven candidates, who was rated as "very very good". 30

Held, dismissing the appeal: (1) In the light of the arguments advanced during the hearing of the appeal this Court is of the opinion that the post-graduate qualification in paedagogics, which the interested party had obtained in Greece after studies of two years, is a post-graduate qualification within the ambit of paragraph 2 of the scheme of service. In the circumstances and in the light of the arguments advanced before this Court, but not before the trial Judge, there was no need for the 35

appellant Commission to conduct any special inquiry in respect of such qualification of the interested party.

5 (2) In view of the absence of any contemporaneous records relating to the evaluation of the performance of the candidates at the interviews and of the period of more than five months which intervened between the interviews and the recording of the evaluation of such performance by the Commission, there exists a strong probability that the Commission was labouring under a material misconception due to inaccuracies, which, because of the passage of time, may have crept in and distorted the evaluation of the performance of the candidates. Likewise, the views of the Commission as regards the interested party's personality are tainted with probable misconception.

10
15 This Court might not have reached the same conclusion, if only respondent Psomas had been a party to this proceedings, because he was rated as "nearly very good" and thus there is a greater margin of safety against error.

20 (3) The Commission attached disproportionate importance to the factor of the performance of the candidates at the interviews and to the related thereto element of personality.

25 (4) In the circumstances it was reasonably open to the Commission not to attribute any sinister significance to the fact that the interested party was rated in the last two confidential reports as regards character as only "very good", whereas he was rated as "excellent" as regards many other respects.

30 *Appeal dismissed.*
No order as to costs.

Appeal.

35 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 27th March, 1986 (Revisional Jurisdiction Cases Nos. 570/83 and 79/84)* whereby the appointment of the interested

* Reported in (1986) 3 C.L.R. 533.

party to the post of Director of Higher and Highest Education in the Ministry of Education was annulled.

N. Charalambous, Senior Counsel of the Republic, for the appellant.

A. S. Angelides, for the respondents. 5

G. Triantafyllides, for the interested party.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant Public Service Commission, which was the respondent in recourses Nos. 570/83 and 79/84, under Article 145 of the Constitution—which were filed, respectively, by respondents Michalakis Maratheftis and Andreas Psomas, as applicants—has appealed against the first instance judgment of a Judge of this Court by means of which there was annulled the appointment of interested party Stavros Philippides to the post of Director of Higher and Highest Education, in the Ministry of Education, as from the 1st January 1984. 10 15

It is useful to quote the following passage from the first instance judgment, which was given on the 27th March 1986, and which contains the reasoning of the trial Judge for the annulment of the appointment, and promotion as well, of the interested party to the aforesaid post: 20

“In the relevant minutes of the respondent Commission, dated the 21st December, 1983, it is stated that the Commission considered that all candidates possessed the qualifications required by the scheme of service for the post concerned. 25

In the circumstances of the present case, however, and, in particular, from the contents of the relevant minutes of the Commission, it does not appear that the Commission embarked into details as regards the evaluation of the qualifications possessed by the candidates and that it carried out a due inquiry as to whether such qualifications satisfied the requirements of the relevant scheme of service. A mere statement in the minutes of the Commission that the candidates 30 35

5 possessed the required by the scheme of service qualifications is not sufficient to satisfy me that a due inquiry was carried out into this aspect of the case or that it was reasonably open to the Commission to have come to such conclusion.

10 The fact that the interested party was holding at the material time a post for which the same qualification was required does not absolve the Commission from its duty to satisfy itself that in the present instance, for this particular post, the interested party was qualified for promotion. In view of the foregoing, the sub judge promotion of the interested party has to be annulled.”

15 In view of the fact that when it hears a revisional jurisdiction appeal, such as the present one, this Court has to deal with the case before it as a whole, we have allowed counsel for the respondents to argue additional issues which, though they are not included in the notice of appeal, they had been raised at the hearing before the trial
20 Judge, but were not pronounced on by him in his first instance judgment since he had annulled the sub judge appointment of the interested party for the reasons stated in the aforementioned passage from such judgment.

25 We might add, at this stage, that after we had heard counsel for appellant, as well as counsel for the interested party, in support of the appeal, and after counsel for the respondents had replied to them and had proceeded to argue the aforementioned additional issues, and after counsel for the appellant, as well as counsel for the
30 interested party, had replied to him, counsel for the respondents claimed a final right of reply as regards such additional issues. We took the view that, in a proceeding of this nature, he was not entitled as of right to a final reply but we granted to him leave to reply only as regards
35 certain specified matters in respect of which we needed to hear him further in the interests of justice.

In the light of the detailed and lengthy oral arguments which were advanced before us during the hearing of the present appeal, and which have, certainly, thrown ample

light on the matter of the qualifications of the interested party, we are of the view that his post-graduate qualification in paedagogics, which he obtained after studies for two academic years (1961/1962, 1962/1963) in Greece, is indeed, a post-graduate qualification relating to education and comes fully within the ambit of the qualifications required by paragraph 2 of the relevant scheme of service. In the circumstances, and especially in the light of the arguments in this respect which were advanced before us, but not also before the trial Judge as well, we are of the opinion that there was no need for the appellant Commission to conduct any special enquiry in respect of such qualification of the interested party and that the Commission was entitled to treat such qualification, on the basis of the relevant diploma, as satisfying the requirements of paragraph 2 of the scheme of service.

As the possession by the interested party of the required by the scheme of service qualifications for appointment to the post in question has not been disputed in any other respect in the course of the present proceedings, we have no difficulty at all in finding that the interested party was properly treated by the appellant Public Service Commission as duly qualified, under such scheme of service, for appointment to such post.

Had no other issues, apart from that regarding the qualifications of the interested party, been raised in this case we would have allowed this appeal and set aside the annulment of the appointment of the interested party.

There have, however, been raised additional issues regarding the validity of his appointment and our attention was, in particular, drawn to the reasons given by the appellant Public Service Commission for selecting the interested party as the best candidate. By means of such reasons the Commission went on to explain in detail why it had preferred the interested party and, in particular, why it had selected him instead of respondent Maratheftis: It recorded in its minutes that the interested party had been found by the Commission to have been "very very good" (πάρα πολύ καλός) when interviewed and had especially impressed the Commission by his practical approach to various matters. Moreover, it was stated by the Com-

mission that the interested party was superior to respondent Maratheftis, and generally to all the other candidates, from the point of view of personality (προσωπικότητα) and the Commission stressed in its minutes that this factor was
5 taken particularly into account by it because the post to be filled was that of a director and thus the personality of the person who would occupy such post was of great importance.

10 All the candidates had been interviewed by the Commission at two consecutive meetings on the 15th and 16th July 1983. On both occasions there was present the Director-General of the Ministry of Education who, together with the Chairman and Members of the Commission, put questions to the candidates.

15 No contemporaneous official record was made by the Commission as regards its own evaluation of the performance of the candidates at the interviews, but the Commission recorded in its minutes, on the 16 July 1983, the views of the Director-General of the Ministry of Education about the performance of the candidates when inter-
20 viewed. He rated the interested party and the respondent Maratheftis, as well as two other candidates (Michaelides and Persianis), as "very good" (πολύ καλοί) and he rated respondent Psomas as "good" (καλός).

25 The appellant Commission reverted on the 2 August 1983 to the matter of filling the post in question but it did not record its own evaluation of the performance of the candidates at the interviews till its meeting on the 21st December 1983, that is after there had elapsed since
30 the interviews more than five months. According to its minutes of the 21st December 1983 the Commission rated respondent Maratheftis and two other candidates (G. Christodoulides and Persianis) as having been "very good" (πολύ καλοί) at the interviews, respondent Psomas was
35 rated as having been "nearly very good" (σχεδόν πολύ καλός) and the interested party was the only one out of eleven candidates who was rated as having been "very very good" (πέρα πολύ καλός).

40 We have reached the conclusion that in view of the absence of any official contemporaneous record of the Com-

mission regarding the performance of the candidates when interviewed and, also, in view of the period of more than five months which intervened between the interviews in July 1983 and the recording, on the 21st December 1983, of the evaluation by the Commission of the performance of the candidates at such interviews, there exists a quite strong probability that the Commission, notwithstanding its undoubted good faith, was labouring under material misconceptions due to inaccuracies, which, because of the passage of time, may have crept in and distorted the evaluation of the performance of the candidates at the interviews; and the said probability is enhanced when in such evaluation there have been used only marginally different ratings such as "very good" and "very very good" in assessing the leading candidates.

We, likewise, have to treat as tainted with probable misconception the view of the appelland Commission, which must have been based on impressions formed at the interviews of the candidates, that the interested party was superior to all the others as regards "personality."

Consequently, we have reached the conclusion that the selection of the interested party as better, in particular, to respondent Maratheftis, on the basis of the performance at the interviews, has to be treated as being the product of the exercise in a defective manner of the relevant discretionary powers of the appelland Commission and, for this reason, we have decided to annul the sub judice appointment of the interested party.

We might not have adopted such a course if only respondent Psomas was a party to these proceedings, because he was rated by the Commission as having been only "nearly very good" when interviewed, as compared to the interested party who was rated as having been "very very good", and thus there seems to exist a greater margin of safety against error, due to passage of time.

Moreover, we would like to add that the appelland Commission appears to have attached disproportionate, in the circumstances of this case, importance to the factor of the performance of the candidates when interviewed, and to

the related thereto element of personality, and this is another reason for which we think that its relevant discretionary powers were defectively exercised and, therefore, the appointment of the interested party has to be annulled.

5 We think that, in the light of all the foregoing in this judgment, we should at this stage point out that when the appellant Commission will revert to the matter of selecting, once again, the candidate to be appointed, on the basis of the legal and factual situation prevailing on the
10 21 December 1983, when its just annulled decision was taken, it has to pay due regard to the present judgment and, consequently, it has to avoid accordingly any decisive importance to the evaluation in December 1983 of the performance of the candidates at the interviews in July
15 1983, since it has been found to be tainted with a grave risk of inaccuracy.

As regards the rest of the reasons which were given by the appellant Commission for preferring the interested party we are of the opinion that it was reasonably open
20 to the Commission not to attribute any sinister significance to the fact that in the two most recent reports about him the interested party was rated as only "very good" as regards character, whereas he was rated as "excellent" in many other respects.

25 We have reached this view after perusing the confidential reports about many other candidates for the post in question and noting that their character has also been rated as "very good" only, apparently because of an unfortunate tendency of the reporting and countersigning officers concerned in the Ministry of Education to be
30 unduly too strict in rating character in particular, without, however, actually intending to convey a really poor view about the character of the educationalist concerned.

Lastly, as regards the question whether the somewhat
35 adverse for the character of the interested party opinion which was expressed by the Director-General of the Ministry of Education, in his special report to the appellant Commission dated the 29th November 1983, might be attributed to the aforementioned too strict tendency regarding the rating of character in confidential reports we
40

think that it is up to the Commission to deal with this matter together with all other relevant considerations.

In the light of all foregoing reasons we have decided, as already stated, to annul the appointment of the interested party to the post of Director of Higher and Highest Education. We shall make no order as to the costs of this appeal. 5

Appeal dismissed.