

1986 April 30

[ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Π. ΜΑΛΑΧΤΟΣ, ΣΑΒΒΙΔΗΣ,
ΛΟΡΙΣ, ΚΟΥΡΡΙΣ, Ξ.]

1. ALEXANDROS KINANIS,
2. ANDREAS CHRISTODOULIDES,
3. CHARALAMBOS ONOUFRIOU,

Appellants.

v.

EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 396).

5 *Educational Officers—Promotions—Interviews, performance at —Belated recording of impressions—Sub judice promotions annulled, where impressions tilted scales in favour of interested parties, but not where other much stronger factors made selection of interested parties reasonably open to the Commission, because in such a case the belated recording resulted to an immaterial irregularity.*

10 *Educational Officers—Promotions—“Recommendations of Appropriate Department of Education” in section 35(3) of the Public Educational Service Law 10/69, as amended by Law 53/79—Meaning of said phrase.*

15 The appellants appealed from the first instance judgment of a Judge of this Court, by virtue of which their recourses against the validity of the promotions to the post of Headmaster in Secondary Education were dismissed as regards all interested parties, except Stassini Demetriou.

20 Council for the appellants complained, inter alia, that the views expressed by the two Heads of Department before the respondent Commission had not been adopted by means of a collective decision of the officials of the Department concerned and, therefore, they did not comply

with section 35(3) of Law 10/69 as amended by Law 53/79.

It should be noted that the promotions of the interested parties were originally made in 1980, but as they were annulled by this Court (*Angelidou v. The Republic* 5 (1982) 3 C.L.R. 520), the respondent Commission reconsidered the case and effected the sub judice promotions. The interviews of the candidates were held in 1980, but as the Commission had not then recorded its impressions, it proceeded to record such impressions in respect of such interviews, when deciding to make the new sub judice promotions. 10

Held: (1) The submission as regards the views of the Heads of the Department cannot be accepted. The phrase "ουσιώσεις οικείου τμήματος" ("recommendations of 15 the appropriate Department of Education") in the said section does not denote recommendations adopted by means of a formal deliberative process by the official of the Department, but envisages recommendations on behalf 20 of the Department by its Head or other authorised official, who must be presumed, unless the contrary is proved, to have based them on his knowledge as well as the views of the officials of his Department, which he had the opportunity to know (*Ioumidou v. The Republic* (1984) 3 C.L.R. 1283 cannot be read as being contrary to this 25 view).

(2) Where the recorded impressions of the interviews of 1980 appear to have been treated as material considerations tilting the scales in favour of any interested party, the sub judice promotion of such party has to be annulled 30 as in the absence of a contemporaneous record such impressions cannot be treated as safely and accurately reliable. This is the case as regards interested parties, G. Michaelides and S. Kontopoulos. As regards, however, the other interested parties and as in their case there existed 35 other, much stronger, factors making their selection reasonably open to the Commission, the belated recording of

the impressions of their performance at the interviews has not resulted in any material irregularity

5

Appeals dismissed, except as they relate to interested parties Michaelides and Kontopoulos Sub judice promotions of Michaelides and Kontopoulos annulled No order as to costs.

Cases referred to:

- 10 *Stylianou v The Educational Service Commission* (1984) 3 C.L.R 776),
Angelidou v. The Republic (1982) 3 C.L.R 520;
Loizidou Papaphoti v The Educational Service Commission, (1984) 3 C.L.R 933,
- 15 *Georghiou v The Republic* (1985) 3 CLR 2105,
Ioannidou v The Republic (1984) 3 CLR 1283

Appeal.

20 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Stylianides, J.) given on the 18th May, 1984 (Revisional Jurisdiction Cases Nos. 352/82, 397/82 and 410/82)* whereby appellants' recourses against the promotion of the interested parties to the post of Headmaster in the secondary Education were partly dismissed.

Ph Valiantis, for appellant 1.

25 *A S Angelides*, for appellant 2

N Papaefstathiou, for appellant 3

R Vlahimi (Mrs), for respondent

Cur adv. vult

30 TRIANTAFYLILDES P. read the following judgment of the Court. The appellants have appealed against a first instance judgment of a Judge of this Court by means of which

* Reported as *Stylianou and Others v Educational Service Commission and Another* (1984) 3 CLR 776

there were partly dismissed three recourses of theirs under Article 146 of the Constitution (Nos. 352/82, 397/82 and 410/82).

By means of such recourses the appellants had challenged promotions to the post of Headmaster in Secondary Education, which were published in the Official Gazette of the Republic on the 23rd July 1982.

Those whose promotions were thus challenged will be referred to hereinafter in this judgment as the "interested parties".

By virtue of the first instance judgment, against which this appeal has been made, the recourses of the appellants succeeded only in so far as they related to the promotion of interested party Stassini Demetriou, and were dismissed as regards all the other interested parties.

We will not repeat the salient facts of this case which are most adequately set out in the judgment of the learned trial Judge (*see Stylianou v. The Educational Service Commission*, (1984) 3 C.L.R. 776).

It is useful to note that the interested parties had been promoted on previous occasions to the post of Headmaster in Secondary Education by decisions of the respondent Commission which were reached on the 7th June 1980 and the 30th August 1980 and that such earlier promotions were annulled by this Court on the 12th May 1982 (*see Angelidou v. The Republic*, (1982) 3 C.L.R. 520). Then the respondent Commission reverted again to the matter on the 21st June 1982 and effected the promotions which have been challenged by the present recourses of the appellants.

We should state at this stage that we cannot accept as correct the submission of counsel for the appellants that the recommendations of two Heads of Department, namely of the Head of Department of Secondary Education and of the Head of Department of Technical Education, which were stated to the respondent Commission by them and were recorded in its minutes on the 21st June 1982, had not been adopted by means of collective decisions of the officials of the Departments concerned and, therefore, they

did not comply with section 35(3) of the Public Educational Service Law, 1969 (Law 10/69), as amended by the Public Educational Service (Amendment) Law, 1979 (Law 53/79). We are, indeed, of the opinion that the
5 phrase “ουστάσεις του οικείου Τμήματος Εκπαιδύσεως” (“recommendations of the appropriate Department of Education”) does not denote recommendations which are adopted by means of a formal collective deliberative process by the officials of such Department, as was submitted
10 by counsel for the appellants, but that it envisages recommendations made on behalf of the appropriate Department by the Head of such Department, or other properly authorized official of the Department, who, until the contrary is proved, must be presumed to have based his recommenda-
15 tions on the knowledge possessed by him as well as on views of the officials of his Department which he had the opportunity to know.

In this respect we endorse as correct the approach adopted in cases such as *Loizidou-Papaphoti v. The Educational*
20 *Service Commission*, (1984) 3 C.L.R. 933, 937-938 and *Georghiou v The Republic*, (1985) 3 C.L.R. 2105, 2114-2115, and we do not consider that the judgment in *Ioannidou v. The Republic*, (1984) 3 C.L.R. 1283, 1292-1293, can properly be read as being contrary to our above ex-
25 pressed view, because we read such judgment as dealing with the philosophy behind the recommendations of a Department, but as not excluding the making of such recommendations by the Head of the Department concerned in the manner which we have already explained in this
30 judgment.

As regards, next, the issue of the interviews of the candidates for promotion to the post in question we are faced with the situation that when the promotions of the inter-
35 ested parties were initially made, as aforesaid, in 1980, there had not been recorded the impressions of the respondent Commission about the performance of the candidates when interviewed.

Two years later, when deciding to make the now sub-
40 judice promotions, the Commission recorded its impressions about the performance of the candidates when interviewed

in 1980. as part of its reasoning for preferring the interested parties instead of the appellants.

What the respondent Commission has done in this respect was, indeed, a "better late than never" cure of its failure to record contemporaneously its impressions about the performance of the candidates at the interviews two years earlier in 1980.

After much anxious consideration we have decided that where such impressions, as recorded, appear to have been treated as material considerations which have tilted the scales in favour of any one of the interested parties, especially when other considerations militated against promoting such interested parties instead of the appellants, we have to proceed to annul the promotions of the interested parties concerned; and these interested parties are Georghios Michaelides and Soteris Kontopoulos. It is to be noted that Michaelides was junior to the other candidates and Kontopoulos had not been recommended by his Head of Department: and it is quite clear to us that in these two instances the impressions of the Commission about the performance of the interested parties concerned at the interviews two years earlier, which in the absence of any contemporaneous official written record could not be treated as safely and accurately reliable, were treated as *being of decisive significance in leading up to the choice for promotion of the two interested parties in question.*

As regards the remaining interested parties it is correct that the impressions of the Commission about their performance at the interviews two years earlier were recorded in the minutes of the Commission in 1982, even though they were not recorded contemporaneously in 1980, and such impressions were taken into account by the Commission in making the now sub judge promotions; but there existed other, much stronger, factors on the basis of which it was reasonably open, in any case, to the respondent Commission to choose for promotion the remaining interested parties and, thus, we have to find that the taking into account in relation to such promotions of the very belatedly recorded impressions of the Commission from the interviews has not resulted, in so far as the remaining

interested parties are concerned, in any material irregularity which should now lead to the annulment of their promotions.

5 In the result these appeals are dismissed, except in so far as they relate to the promotions of the aforementioned interested parties Michaelides and Kontopoulos which are hereby declared to be null and void and of no effect whatsoever; but we shall not make any order as to the costs of this appeal.

10

*Appeals partly allowed.
No order as to costs.*