

1987 February 6

[TRIANAFYLLIDES P MALACHTOS, SAVVIDES, LORIS, STYLIANIDES JJ]

GEORGHIOS PAPALEONTIOU,

*Appellant,*

v

1 ANDREAS KARAGEORGHIS,  
2 THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondents*

*(Revisional Jurisdiction  
Appeal No 350)*

*Educational Officers—Promotions—Qualifications—Scheme of Service—  
Interpretation and application of—Judicial control—Principles applicable—  
Appellant promoted from post of Inspector, Elementary Education to post of  
General Inspector, Elementary Education—«Inspector» is not «teaching staff»  
5 or «educational officer» in the sense of the Educational Officers (Teaching  
Matters) Regulations, 1972 as amended by Reg 250/74—Therefore,  
regulations 39 and 34 (re-numbered 38) not applicable—Nevertheless they  
could have been relied upon by way of guidance—«Satisfactory service» in  
10 the post of Inspector as a requirement for promotion to the sub judge post—  
Reasonably open to the Commission to interpret the said term as not limited  
to actual service, but as including a period during which the candidate was on  
scholarship abroad in order to obtain a post-graduate degree which was not  
a required qualification for promotion to the sub judge post*

15 *Administrative Law—Annulment of promotions—Duty of administration in case  
of—Principles applicable*

*Educational Officers—Promotions—Judicial control—Principles applicable*

20 *On 22 10 80 the appellant was promoted to the post of General Inspector,  
Elementary Education with effect as from 1 11 80 The said promotion was  
annulled by Hadjianastassiou, J in Karageorghis v The Republic (1982) 3  
C L R 435 and it was again declared by the same Judge as null and void in  
Tomans v The Republic (1982) 3 C L R 1165*

25 *On 11 5 82 respondent 2 promoted again the appellant to the said post  
retrospectively as from 1 11 80 Respondent 1 challenged the validity of this  
promotion and a Judge of this Court annulled it As a result the interested  
party in the said recourse filed the present appeal Respondent 1 filed a cross-*

appeal contending that the appellant was not eligible for promotion, because he had not completed at least two years satisfactory service in the post of Inspector, General Subjects, Elementary Education The issue of eligibility of the appellant for promotion to the post in question had, also been raised before the trial Judge, who, however, decided that the matter had been decided, though not expressly, by Hadjianastassiou, J in the said two recourses and was, therefore, as far as the present parties were concerned res judicata

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The appellant was promoted to the post of Inspector General Subjects, Elementary Education on 1 2 77 On 17 8 77 he left on scholarship to U S A From 18 8 77-22 12 78 he took his Master's Degree and from 23 12 78 he remained in U S A on Scholarship for a Ph D Degree He returned to Cyprus on 21 5 80 and actually resumed the duties of his post The Ph D degree is not a necessary qualification for promotion to the sub judge post

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Counsel for respondent 1 argued that «satisfactory service» in the relevant scheme of service means actual performance of the duties of Inspector Counsel for the appellant and respondent 2 contended that the appellant was eligible for promotion and in support of their argument they invoked decision No 12 655 of 13 9 73 of the Council of Ministers and reg 39(1) of The Educational Officers (Teaching Staff) (Appointments Emplacements, Transfers, Promotions and Relevant Matters) Regulations, 1972 as amended by Reg 250/74 Counsel for respondent 2 referred also to reg 34 (renumbered 38) of the said regulations

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The said decision of the Council of Ministers provides that for the purpose of a scheme of service of a post in which certain service or experience is required, a post-graduate diploma or degree acquired after studies abroad and not constituting a required qualification for the post should be reckoned on the basis of the required time for its attainment, as service or experience upto two years maximum Counsel for respondent 1 argued that the said decision is not applicable to the present case, because an Inspector, General Subjects, Elementary Education is not «a public officer» as defined in the Public Service Law 33/67

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Reg 39 provides that the period of post-graduate studies or other post-graduate education abroad upto two years in a subject relevant to the duties of the educational officer is reckoned as service or experience in a subject for the purpose of the scheme of service of any post for which a certain period of service or experience is required Regulation 34 provides that as service or educational service for purposes of promotion, according to the approved scheme of service, is taken into consideration the period which by virtue of the relevant regulations, is recognised for the purpose of increments unless otherwise is provided in the scheme of service or in the regulations During the period of his post graduate studies the appellant was receiving his increments

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**3 C.L.R. Papaleontiou v. Republic**

Held, *allowing the appeal and dismissing the cross-appeal* (1) There is no need to delve upon the issue of *res judicata* in administrative law because Judge Hadjianastassiou had not decided or expressed any opinion on the matter of appellant's qualifications

5 (2) Neither the post of Inspector nor the sub judge post are within the ambit of «public service» or «public officer» as defined in Law 33/67 and «Inspector» is not «teaching staff» or «educational officer» as these two expressions are defined in the said regulations. It follows that the post of Inspector is not covered by either the aforesaid decision of the Council of Ministers or the said regulations. Nevertheless, respondent 2 could rely on the said regulations by way of guidance. The regulations regulate posts with close affinity to the post of Inspector. It was open to respondent 2 to follow the rules contained therein, though not bound by them. This Court does not interfere in a case in which the interpretation and application of a scheme of service was reasonably open to the appointing Authority in the particular circumstances. «Service» and «satisfactory service» could not be limited to actual service and exclude a person who is on scholarship abroad to enhance his knowledge in order to render better services to the education of the country.

10 (3) After annulment of a promotion the Administration has to make a new inquiry, to make a duly reasoned comparison of the candidates concerned and reach a new decision on the basis of the factual and legal situation existing at the time the annulled decision was taken, though it is not bound to base the new decision exclusively on the facts and circumstances on which the original decision was taken.

15 (4) The trial Judge wrongly found that respondent 2 was precluded from selecting the appellant, whose first promotion had been annulled by Hadjianastassiou, J for lack of due inquiry, lack of reasoning and failure to take into consideration material factors.

20 (5) Respondent 2 arrived at the sub judge decision after a thorough investigation, taking all relevant matters into consideration. Its decision was duly reasoned. It was reasonably open to respondent 2. This Court as an administrative Court does not interfere with a decision which, in accordance with the law applicable and the facts of the case, was reasonably open to the appointing authority.

25 *Appeal allowed*  
*Cross-appeal dismissed*

*Cases referred to*

*Papapetrou v The Republic, 2 R S C C 61*

*Josephides v The Republic 2 R S C C 72*

<i>Petsas v The Republic</i> , 3 R S C C 60,	
<i>Neophytou v The Republic</i> , 1964 C L R 280	
<i>Georghiades v The Republic</i> , (1966) 3 C L R 827,	
<i>Georghiades v The Republic</i> (1967) 3 C L R 653	
<i>Tryfon v The Republic</i> (1968) 3 C L R 28,	5
<i>The Republic v Aivaliotis</i> (1971) 3 C L R 89	
<i>Paraskevopoullou v The Republic</i> (1971) 3 C L R 426	
<i>Piendes v The Cyprus Broadcasting Corporation</i> (1972) 3 C L R 149	
<i>Lambrakis v The Republic</i> (1973) 3 C L R 29,	
<i>Ktondes v The Republic</i> (1973) 3 C L R 171	10
<i>Kynacou v The Republic</i> (1975) 3 C L R 37,	
<i>Skarpanis v The Republic</i> (1978) 3 C L R 106,	
<i>Andreou v The Republic</i> (1979) 3 C L R 379,	
<i>Stylianou v The Public Service Commission</i> (1980) 3 C L R 11	
<i>Sotenou v The Republic</i> (1980) 3 C L R 237	15
<i>Kolokotronis v The Republic</i> (1980) 3 C L R 418,	
<i>Larkos v The Republic</i> (1982) 3 C L R 513,	
<i>Sotenadou v The Republic</i> (1983) 3 C L R 921,	
<i>Makndes v The Republic</i> (1983) 3 C L R 622,	
<i>Mytides v The Republic</i> (1983) 3 C L R 1096,	20
<i>Kampouris v The Educational Service Commission</i> (1985) 3 C L R 1165,	
<i>Xinan v The Republic</i> (1984) 3 C L R 598,	
<i>Der Parthogh v The Cyprus Broadcasting Corporation</i> (1984) 3 C L R 635	
<i>Frangoullides and Another v The Public Service Commission</i> (1985) 3 C L R 1680,	25
<i>Constantinou v Greek Communal Chamber</i> (1965) 3 C L R 96	
<i>Kypranides v The Republic</i> (1968) 3 C L R 653	
<i>Ioannides and Another v The Republic</i> (1979) 3 C L R 628	

*Protopapas v The Republic* (1981) 3 C L R 456

*Chrstofides v The Republic* (1985) 3 C L R 1127.

*Chrstou v The Republic*, 4 R S C C 1.

*Georghiades v The Republic* (1970) 3 C L R 257

5 *Georghiou v The Republic* (1976) 3 C L R 74.

*Petndes v The Republic* (1984) 3 C L R 341.

*Constantinou v The Republic* (1984) 3 C L R 498.

*Ethymiou v The Republic* (1984) 3 C L R 1171.

*Pipens v The Republic* (1984) 3 C L R 1306.

10 *Papadopoulos v The Public Service Commission* (1985) 3 C L R 405

*The Republic v Zachanades* (1986) 3 C L R 852

### Appeal.

15 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetrades, J ) given in the 26th November, 1983 (Revisional Jurisdiction Case No 258/82)\* whereby appellant's promotion to the post of General Inspector of Elementary Education was annulled

*A S Angelides*, for the appellant

*G Trantafyllides*, for respondent 1

20 *R Petndou (Mrs)*, for respondent 2

*Cur adv vult*

TRANTAFYLLIDES, P The judgment of the Court will be delivered by Mr Justice Stylianides

25 STYLIANIDES J This appeal is directed against the judgment of a Judge of this Court exercising original revisional jurisdiction whereby the promotion of the appellant by the Educational Service Commission, respondent No 2, to the post of General Inspector of Elementary Education was annulled

30 Respondent No 1, applicant in the first instance proceedings, by cross-appeal seeks the adjudication that the appellant was not eligible for promotion to the said post.

\* Reported as *Karagheorghis v Republic* (1983) 3 C L R 1211

The history of this case goes back to 1980. The appellant and respondent No 1 are Inspectors of Elementary Education. Request was sent to the Educational Service Commission, respondent No 2, on 31 5 80 for the filling of a post of General Inspector Elementary Education and a further request for the filling of a second same post was made on 9 9 80. 5

On 22 10 80 they promoted Georghios Papaleontiou the appellant, and A Papadopoulos with effect 1 11 80.

The promotion of Papaleontiou was annulled by a Judge of this Court, Hadjianastassiou, J on 5th May, 1982, in Cases No 371/80 and 483/80 - (*See Karageorghis v The Republic*, (1982) 3 C L R 435). 10

The same Judge in Recourse No 1/81 filed by Ioannis K Tomaris again declared null and void the already annulled promotion of Papaleontiou and the promotion of Papadopoulos - (*Tomaris v The Republic*) (1982) 3 C L R 1165). 15

Shortly after the annulment of the said promotions - on 11th May, 1982 - respondent No 2 promoted again the aforesaid two Inspectors to the post in question retrospectively from 1 11 80.

Karageorghis by Recourse No 258/82 challenged the validity of the decision of the promotion of Papaleontiou in preference to him. Demetriades, J , on 26 11 83 annulled the said promotion - (*Karageorghis v The Republic*, (1983) 3 C L R 1211). The interested party, Papaleontiou, being aggrieved, raised this appeal. Respondent No 1, Karageorghis - applicant in the recourse - cross-appealed, as above. 20 25

On 22 12 83, five days before the filing of this appeal, respondent No 2 reconsidered the matter of the filling of the two posts of General Inspector of Elementary Education and promoted neither Papaleontiou nor Karageorghis but Papadopoulos and Tomaris. 30

At the commencement of the hearing of this appeal counsel appearing for respondent No 1 raised a preliminary objection that the appeal could not be proceeded with by the appellant since, according to his contention, the decision of respondent No 2, which is the subject-matter of the present proceedings, has ceased to be of an executory nature. We overruled the objection as, inter 35

alia, if the appeal of the appellant is successful and the first instance judgment which has annulled his promotion is set aside, the decision to promote him, which was taken by respondent No.2, as aforesaid, on the 11th May. 1982, would preserve its executory nature - See *Georghios Papaleontiou v. A. Karageorghis*, (1986) 3 C.L.R. 1233).

In the course of the hearing counsel for the appellant objected that respondent No.1, who was the successful applicant in the recourse (No. 258/82) against the outcome of which the present appeal was made, cannot cross-appeal against the judgment which was given in his favour in such recourse.

It was decided by this Court on 11.6.86 - (*Papaleontiou v. Karageorghis and Another*, (1986) 3 C.L.R. 1238) - that since the appellant had challenged by means of this appeal the first instance judgment, which was given in favour of respondent No.1, as the applicant in a recourse, respondent No.1 is entitled to cross-appeal; and, of course, counsel for the appellant may, in view of the nature of the present proceedings, raise, too, the issue of eligibility of respondent No.1 for promotion to the post of General Inspector of Elementary Education.

We consider expedient to deal firstly with the cross-appeal, as, if it is found that the appellant was not eligible for promotion, then the appeal fails and the decision of his promotion is null and void for this sole reason.

It is the contention of respondent No.1 that the appellant lacked at the material time a qualification prescribed by the scheme of service, i.e. satisfactory service of at least two years in the post of Inspector, General Subjects, Elementary Education.

The learned trial Judge said that the possession of the qualification required by the second paragraph of the scheme of service, i.e. satisfactory service for at least two years, was, though not expressly, decided by Hadjianastassiou, J., in *Karageorghis v. Educational Service Commission*, (1982) 3 C.L.R. 435. In the judgment we read:-

«The learned trial Judge was of the view that the interested party was eligible to be considered by the respondents as a candidate for the post, in that he possessed the qualification of 'satisfactory service', or else he (Hadjianastassiou, J.) would not have proceeded to decide the issues on which he ruled». And proceeded:-

«Having reached the conclusion that the issue of the eligibility of the interested party as a candidate to the said post was in fact decided in his favour in Recourses No. 371/80 and 483/80, and since no appeal was filed by the applicant, the present applicant, against the judgment delivered in those Recourses on this issue, I find that this issue is, with regard to the present parties, a *res judicata*».

Though Judge Hadjianastassiou in his judgment made extensive reference to the argument of the parties, he did not resolve the issue of the qualifications; he did neither decide the issue nor express any opinion. We need not delve into the issue of *res judicata* in administrative law as there is no judicial decision on whether the appellant at the material time possessed the qualification of satisfactory service for at least two years.

In the sub-judice decision of respondent No.2 it is recorded that all six candidates possessed the qualifications required by the scheme of service for the post of General Inspector.

Papaleontiou was promoted to the post of Inspector, General Subjects, Elementary Education, on 1.2.77. On 17.8.77 he left on scholarship to U.S.A. From 18.8.77-22.12.78 he took his Master's Degree in Education. From 23.12.78 he was on scholarship in the United States for a Ph. D. Degree. He remained in the United States pursuing this post-graduate degree until 21.5.80 when he returned to Cyprus and actually resumed his duties as Inspector. The Ph.D. Degree is not a necessary qualification under the scheme of service.

Learned counsel for respondent No. 1 submitted that the appellant did not possess the two years' satisfactory service in the previous post and in support he argued that «ευδόκιμος υπηρεσία» (satisfactory service) means actual service that entails actual performance of the duties of Inspector. According to the decision of the Council of Ministers No. 12.655 of 13.9.73 for the purpose of scheme of service of a post in which certain service or experience is required, a post-graduate diploma or degree acquired by a public officer after studies abroad and not constituting a required qualification for the post, should be reckoned, on the basis of the required time for its attainment, as service or experience upto two years maximum. Counsel submitted that this decision is not applicable in the present case as



an Inspector, General Subjects, Elementary Education, whose post is provided by the Public Educational Service Law, 1969 (No. 10 of 1969), is not a «public officer», as defined in the Public Service Law, 1967 (No. 33 of 1967), and that the Ph.D. Degree  
5 was awarded to the appellant after the material time he should have possessed the prescribed qualifications.

Learned counsel for the appellant contended that the interpretation of the scheme of service and its application is within the exclusive domain of the Educational Service Commission, and  
10 if the interpretation and application is reasonable, then this Court does not intervene, that if we exclude the period from 17.8.77 - 22.12.78, when the appellant was doing his Master's Degree, the period from 1.2.77 - 17.8.77 and from 23.12.78 until either  
15 - he had service for over two years; that «satisfactory service» need not be service with actual performance of duties and that the period that the appellant has been on scholarship for his Ph.D. should be reckoned for the purpose of the qualifications required  
20 by the scheme of service. He invoked the Decision No. 12.655 of 13.9.73 above and the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Relevant Matters) Regulations, 1972, as amended by Regulation No. 250/74, published in the Official Gazette of the Republic, Supplement No.3, under Notification No. 205/72, p.607.

25 Regulation No. 39(1) of the above Regulations provides that the period of post-graduate studies or other post-graduate education («μετεκπαίδευσις») abroad upto two years in a subject relevant to the duties of educational officer is reckoned as service or experience in a subject for the purpose of the scheme of service of  
30 any post for which a certain period of service or experience is required.

On the invitation of the Court counsel for the respondent Commission addressed the Court regarding the interpretation and application of the relevant scheme of service. She submitted that  
35 the appellant possessed all the required qualifications; that only the period from 18.8.77 - 23.12.78 was not service. She invoked the circular for the public servants and the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers,

Promotions and Relevant Matters) Regulations, 1972. She referred particularly to Regulation 39 above and to regulation 34 which was renumbered to 38 under which, as service or educational service for purposes of promotion, according to the approved scheme of service of a promotion post, is taken into consideration the period which, by virtue of the relevant regulations, is recognized for the purpose of increments unless otherwise is provided in the scheme of service or in the regulations. The appellant during the whole period of his post-graduate studies in the United States from 17.8.77 - 21.5.80, he was receiving regularly his increments. Neither the post of Inspector, General Subjects, Elementary Education, nor the post of General Inspector, Elementary Education, are within the ambit of «public service» or «public officer», as defined in the Public Service Law, 1967 (No.33 of 1967). «Inspector» is not «teaching staff» or «educational officer», as these two expressions are defined in the regulations aforesaid. We hold the view that the post of Inspector is not covered by either the decisions of the Council of Ministers or by the Educational Officers Regulations.

Nevertheless, though the aforesaid Regulations were not directly applicable to the post of Inspector, the Educational Service Commission could rely on them by way of guidance in order to perform its duties under the Law and to decide the issue of qualifications in order to exercise its discretionary power of the interpretation and application of the scheme of service. The Educational Service (Teaching Staff) Regulations regulate posts which have close affinity to the Inspectors, though not covering the latter. It was open to the Commission, in the exercise of their function, to follow the rules contained therein, though not bound by them. «Service» and «satisfactory service» in this scheme of service could not be limited to actual service and exclude a person who is on scholarship abroad to enhance his knowledge in order to render better services to the education of the country.

The cross-appeal fails as it was reasonably open to the Commission to interpret and apply the relevant scheme of service in the manner in which it has done with the result that the appellant possessed the required qualifications, including the two years' satisfactory service at the lower post of Inspector. This Court does not interfere in a case in which the interpretation and application

of the scheme of service by an appointing authority was reasonably open to it in the particular circumstances - (*Papapetrou v. The Republic*, 2 R.S.C.C. 61, 69; *Josephides v. The Republic*, 2 R.S.C.C. 72, 75, 77; *Petsas v. The Republic*, 3 R.S.C.C. 60, 63; 5 *Neophytou v. The Republic*, 1964 C.L.R. 280, 299; *Georghiades v. The Republic*, (1966) 3 C.L.R. 827, 848; *Georghiades v. The Republic*, (1967) 3 C.L.R. 653, 668; *Tryfon v. The Republic*, (1968) 3 C.L.R. 28, 40; *The Republic v. Aivaliottis*, (1971) 3 C.L.R. 89, 93; *Paraskevopoullou v. The Republic*, (1971) 3 C.L.R. 426, 10 432; *Pierides v. The Cyprus Broadcasting Corporation*, (1972) 3 C.L.R. 149, 156; *Lambrakis v. The Republic*, (1973) 3 C.L.R. 29, 33; *Ktorides v. the Republic*, (1973) 3 C.L.R. 171, 173; *Kyriacou v. The Republic*, (1975) 3 C.L.R. 37, 44; *Skarparis v. The Republic*, (1978) 3 C.L.R. 106, 113; *Andreou v. The Republic*, 15 (1979) 3 C.L.R. 379, 386; *Stylianou v. The Public Service Commission*, (1980) 3 C.L.R. 11, 17, *Soteriou v. The Republic*, (1980) 3 C.L.R. 237, 242; *Kolokotronis v. The Republic*, (1980) 3 C.L.R. 418, 427; *Larkos v. The Republic*, (1982) 3 C.L.R. 513, 519; *Soteriadou v. The Republic*, (1983) 3 C.L.R. 921, 940 20 (which was reversed on appeal but on other points); *Makrides v. The Republic*, (1983) 3 C.L.R. 622, 630; *Mytides v. The Republic*, (1983) 3 C.L.R. 1096, 1107; *Kampouris v. The Educational Service Committee*, (1983) 3 C.L.R. 1165, 1169; *Xinari v. The Republic*, (1984) 3 C.L.R. 598, 600; *Der Parthogh v. The Cyprus Broadcasting Corporation*, (1984) 3 C.L.R. 635, 638; 25 *Frangoullides and Another v. The Public Service Commission*, (1985) 3 C.L.R. 1680).

The first instance Judge annulled the sub-judice decision on the ground that the respondent Commission reached its new decision 30 to promote the interested party on insufficient reasoning and on grounds of reassessment of the interested party (the appellant) which were inexistent as the material which they had before them was the same on which they reached their decision of 22nd October, 1980, which was annulled by Hadjianastassiou, J.

35 The decision of 22.10.80 was annulled by Hadjianastassiou, J., on the grounds of lack of due inquiry, lack of reasoning and failure to take into consideration all relevant factors.

40 After annulment of a promotion the Administration has to proceed to make afresh a new inquiry, to make a duly reasoned comparison of the candidates concerned and reach a new

decision on the basis of the factual and legal situation existing at the time the annulled decision was taken, though it is not bound to base its new decision exclusively on the facts and circumstances on which the original decision was based - (*Constantinou v Greek Communal Chamber*, (1965) 3 C L R 96, 105, *Kyprianides v The Republic*, (1968) 3 C L R 653, 660, *Ioannides and Another v The Republic*, (1979) 3 C L R 628, *Protopapas v The Republic*, (1981) 3 C L R 456, *Christofides v The Republic*, (1985) 3 C L R 1127) 5

We have considered the sub-judice decision and the material that was before the Commission, including the report of Anastassiades and the statement of the Director of Elementary Education, Mr Papaxenophontos, before the Commission in the light of the arguments advanced during the hearing of this appeal 10

The respondent Commission, after making a thorough investigation, taking into consideration all relevant factors and making an assessment of the candidates, issued the sub-judice decision which, in our view, is duly reasoned 15

The trial Judge wrongly found that the respondent Commission was precluded from selecting the appellant among the candidates for promotion after a thorough investigation of the material before it 20

The decision to select the appellant for promotion to the post of General Inspector, Elementary Education, was reasonably open to the Commission 25

It is well settled by the case-law of this Court that an administrative Court does not interfere with a decision which, in accordance with the law applicable to, and the facts of a particular case, was reasonably open to the appointing authority, and this Court does not substitute its own discretion as regards the choice of the most suitable candidate for promotion or appointment in the place of the discretion of the competent organ - (*Christou v The Republic*, 4 R S C C 1, 6; *Georghiades v The Republic*, (1970) 3 C L R 257, 268, *Georghiou v The Republic*, (1976) 3 C L R 74, 82, *Petrides v The Republic*, (1984) 3 C L R 341, 350, *Constantinou v The Republic*, (1984) 3 C L R 498, 502, *Efthymiou v The Republic*, (1984) 3 C L R 1171, 1174, *Pipen v The Republic*, (1984) 3 C L R 1306, 1311, *Papadopoulos v The* 30 35

*Public Service Commission*, (1985) 3 C.L.R. 405, 413; *The Republic v. Zachariades*, (1986) 3 C.L.R. 852).

For all the «foregoing» reasons the appeal is allowed and the cross-appeal is dismissed. The sub-judice decision of the  
5 respondent Commission is confirmed under Article 146.4 of the Constitution.

In the circumstances we decided to make no order as to costs.

*Appeal allowed.*

*Cross-appeal dismissed.*

*No order as to costs.*

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