

1987 November 12

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL MICHAELIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondents.*

*(Case No. 341/84).*

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PHANOS PHANOPOULOS,

*Applicant,*

v.

THE EDUCATIONAL SERVICE COMMISSION,

*Respondents.*

*(Case No. 376/84).*

*Educational Officers — Promotions — Head of Department — Recommendations — Head of Department recommending a candidate, who, later, ceased to be interested in being promoted to the post in question — No further recommendations made or sought — Neither a violation of law nor an error in the procedure.*

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*Educational Officers — Promotions — Qualifications — Additional qualifications not envisaged as an advantage in the scheme of service — Though not sufficient to establish striking superiority, they should be taken into consideration — Striking superiority is a different notion from the notion of «the best suitable candidates».*

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*Educational Officers — Promotions — Merits — Service reports — Comparison in respect of items, relevant to qualities suitable for the performance of the duties of sub judice post — Whether such course permissible — In the circumstances, question answered in the affirmative.*

*Educational Officers — Promotions — High post in the hierarchy — Width of discretion of appointing organ.*

*Educational Officers — Promotions — Interviews, performance at — Weight to be attached thereto.*

- 5 *Educational Officers — Promotions — The three statutory criteria, merit, qualifications and seniority — An appointing organ, when weighing together the said criteria, may attribute, provided it exercises correctly, in doing so, its discretionary powers, such significance to them as it would appear proper.*

- 10 *Educational Officers — Promotions — Qualifications — Requirement of minimum period of service in the immediately lower post — Longer than the minimum required service — Should not be given special importance.*

*Natural Justice — Bias — Principles applicable — Burden of proof — Recourses by applicant against past promotions of reporting officer — Not by itself sufficient to discharge such burden.*

- 15 *Educational Officers — Promotions — Judicial control — Principles applicable.*

The applicants by these recourses challenge the validity of the promotion of Andreas Phylachtou - interested party - to the post of General Inspector Secondary Education.

- 20 On 23.5.84 the Director of Secondary Education, apparently conveying the views of the department, recommended as the best suitable candidate for promotion to the said post Mr. P. Persianis.

On 28.5.84 the same Director clarified that all candidates were suitable for promotion, but he considered Persianis as the most suitable.

- 25 Persianis, however, was not interested. Notwithstanding such development, the Commission did not call the Director to make any further recommendations, but proceeded to complete the procedure and finally selected the interested party as the most suitable candidate.

- 30 In reaching the sub judice decision the Commission noted that the other candidates were senior to the interested party, but it stressed the fact that the interested party was superior in merit to the other candidates, especially in respect of items in the service reports relating to abilities, which a General Inspector, in accordance with the relevant scheme of service must possess. Moreover, the Commission found that with the exception of two of the candidates, who are not parties to the proceedings, the interested party  
35 possessed better qualifications than the other candidates.

Applicant in recourse 341/84 contended that the service reports for him were prepared by Mr. Philipides, who was either biased or was probably biased, as the present applicant had filed in the past recourses against the promotion of Philipides.

Held, dismissing the recourses: (1) The appointing authority has a very wide discretion when making a selection for a post so high in the service.

2. Interviews are a mode of assessing a candidate's suitability. They help in the evaluation of candidates, mainly from the point of view of merit and also to a certain extent of qualifications as well. Undue weight should not be given to the performance at the interviews and such performance cannot be taken as a separate factor by itself. There is nothing wrong, however in law to attach the necessary importance to them as such interviews reveal a candidate's personality and abilities which in instances as the present one are important qualities. In order to ascertain whether such candidates should be suitable in the post in question

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(3) An appointing authority when weighing together the three criteria, laid by Law (merit, qualifications, seniority) in order to find the most suitable candidate, may attribute such significance to them as it may deem proper provided that it exercises correctly in the course of doing so its relevant discretionary powers.

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(4) The scheme of service for the sub judge post provided for a minimum term of years of service in the immediately lower post. It was contended by the applicants that special weight should have been attached to the fact of their longer service to such lower post. This contention is unmerited.

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(5) In the sub judge decision the respondents stated that they took into consideration the recommendations of the department. This part of the sub judge decision cannot be interpreted as indicating that the Commission laboured under the impression or misconception that the interested party was recommended. There is nothing in the sub judge decision indicating that the respondents laboured under a misconception

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(6) It is not mandatory for the department or the Head thereof to make recommendations. The fact that Mr. Koullis was not called to make a comparison of the other candidates after the withdrawal of Persianis is neither a violation of the law, nor an error in the procedure

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(7) Additional qualifications to those provided in the scheme of service, which are not made an advantage under the scheme cannot be disregarded by the appointing authority as they are an element for assessing the ability of the candidate in the better performance of the duties of the post. They are not a factor by themselves. They may not constitute striking superiority, but they are a consideration to which regard must be given in selecting the most suitable candidate for promotion. «Striking superiority» is a completely different notion from the notion of the «best suitable candidate» for promotion. The selection must be made on the totality of all the circumstances before the Commission. It was open to the respondents to take into consideration, without giving undue weight, the qualifications of the applicant.

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5 (8) With regard to merit the respondents went carefully into the service reports of the candidates and they made a comparable table of the more recent service reports, i.e. the two last years and then they singled out those items which made the candidate, having regard to the duties and responsibilities of this high post, as the most suitable.

10 It was judicially said that one mark lower one mark higher does not render one candidate more suitable than the other. In *Republic v. Rousos* (1987) 3 C.L.R. 1217 at p. 1224 it was said «it must not be lost sight of that it is dangerous to embark on these numerical comparisons independently of the nature of the items in respect of which and officer is rated as 'excellent' or 'very good' since such items do differ in significance depending on the qualities to which they related».

15 Having regard to the duties and responsibilities and the requirements of the sub judge post, the respondents singled out those items which depict the qualities that make a candidate more suitable for the performance of the duties of the post. This was permissible in view of the aforesaid quotation from Rousos case.

20 (9) Bias of one or more of those participating in the decision taking process or affecting the material on which the decision is based renders the decision vulnerable on the ground of unfairness. The organs participating in a particular administrative process must appear to act with impartiality and this cannot be so when there exist any specialties or relationship which admittedly relate to the persons involved in such process.

25 The lack of impartiality by public officer A against public officer B must be established with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts.

30 The single fact that applicant Michaelides filed recourses against the promotion of Philippides is not by itself proof of bias. The applicant failed to discharge the burden of proof that is cast on him.

(10) Seniority was duly taken into consideration. The respondents have recorded in detail the seniority of the candidates. They have given due weight to them but in view of the superiority of the interested party in other respects the seniority could not tip the scales in favour of the applicants or any of them.

35 (11) On the material before them, in the exercise of their wide discretionary power, it was reasonably open to the respondent Commission to take the sub judge decision for the promotion of the interested party as the most suitable candidate to the post in question.

40 *Recourses dismissed.*  
*No order as to costs.*

*Cases referred to*

<i>Frangos v The Republic</i> (1970) 3 C L R 312,	
<i>Iendes v The Republic</i> (1980) 3 C L R 165,	
<i>Simillis v The Republic</i> (1986) 3 C L R 608,	
<i>Republic v Panayiotides</i> (1987) 3 C L R 1081,	5
<i>Andronikou and Others v The Republic</i> (1987) 3 C L R 1237,	
<i>Georghiou v The Republic</i> (1976) 3 C L R 74,	
<i>Republic v Zachanades</i> (1986) 3 C L R 852,	
<i>Papaleontou v The Republic</i> (1987) 3 C L R 211,	
<i>Andreou v The Republic</i> (1979) 3 C L R 379,	10
<i>Papadopoulos v The Republic</i> (1985) 3 C L R 405,	
<i>Michaeloudis v The Republic</i> (1982) 3 C L R 963,	
<i>Soteriadou and Others v The Republic</i> (1983) 3 C L R 921,	
<i>Ioannides v The Republic</i> (1986) 3 C L R 1089,	
<i>The Republic v Roussos</i> (1987) 3 C L R 1217,	15
<i>Chnstou v The Republic</i> (1980) 3 C L R 437,	
<i>Georghiou v The Republic</i> (1976) 3 C L R 74	
<i>Hjiloannou v The Republic</i> (1983) 3 C L R 1041,	
<i>Kyzas and Another v The Public Service Commission</i> (1986) 3 C L R 1096,	20
<i>HjiSavva v The Republic</i> (1982) 3 C L R 76	

**Recourses.**

Recourses against the decision of the respondents to promote the interested party to the post of General Inspector Secondary Education in preference and instead of the applicants. 25

A. *Panayiotou*, for applicant in Case No. 341/84

N *Papaefstathiou for T Papadopoulos*, for applicant in Case No. 376/84.

*G. Erotocritou (Mrs.), Senior Counsel of the Republic, for the respondent.*

*A. S. Angelides, for interested party.*

*Cur. adv. vult.*

5 STYLIANIDES J. read the following judgment. The applicants by these recourses challenge the validity of the promotion of *Andreas Phylachtou - interested party - to the post of General Inspector Secondary Education.*

10 The Director-General of the Ministry of Education, after the appropriate approval, proposed the filling of the vacant post of General Inspector of Secondary Education. This is a promotion post. The respondent Educational Service Commission invited the eligible candidates to an interview in the presence of the *Director of Secondary Education.* At the interviews questions  
15 were put to the candidates on educational matters of the inspectors and other relevant matters.

The Commission after taking into consideration certain criteria which are set out in their minutes made the evaluation of the performance of the candidates.

20 On 23/5/84 the Director of Secondary Education, apparently conveying the views of the department, recommended as the best suitable candidate for promotion to the said post Mr. P. Persianis.

On 28/5/84 the same Director clarified that all candidates were  
25 suitable for promotion, but he considered Persianis as more suitable.

At the meeting of 4/6/84 the Chairman of the respondents informed the Commission that Persianis was not interested in the post, as in the meantime he had been appointed Director of the Paedagogical Institute.

30 The respondent Commission went into a meticulous examination of the service reports of each one of the candidates. They made a comparison of them and concluded that the interested party was strikingly superior to the others in respect of the said reports, for the following reasons:-

35 «Η υπεροχή αυτή παρουσιάζεται πιο ουσιαστική στα σημεία των εκθέσεων που αφορούν τις ιδιαίτερες ικανότητες που ο Γενικός Επιθεωρητής, σύμφωνα με τα

Σχέδια Υπηρεσίας, πρέπει να έχει: Υπευθυνότητα, Συνεργασία/Σχέσεις, Διευθυντική και Εποπτική Ικανότητα, Ικανότητα Επιλύσεως Προβλημάτων και Ηγετική Ικανότητα.»

(«This superiority appears more substantial in the items, which concern the special abilities, which an Inspector General should have in accordance with the Schemes of Service, i.e. responsibility, cooperation/relations, managerial and supervisory ability, ability to solve problems and leadership»).

Then follows a comparison on these items of the candidates who were rated generally excellent.

Having examined the qualifications of the applicants they found that Costas Michaelides, Efstathios Christodoulides - who were not parties in these recourses - and the interested party, who had one year's post-graduate study at Oxford and M. Ed. from the University of Birmingham, were superior to the other candidates.

They dealt in depth with the seniority of the candidates and they recorded in their minutes the date each candidate was promoted to the post of Inspector A - the immediate lower post.

They ultimately reached the sub judge decision, whereby they promoted the interested party to the post of General Inspector Secondary Education with effect from 15/6/84.

The material part of the aforesaid decision reads as follows:-

«Η θέση του Γενικού Επιθεωρητή που είναι η ψηλότερη στην ιεραρχία της δημόσιας εκπαιδευτικής υπηρεσίας είναι θέση με ευρείες διοικητικές ευθύνες όπως προκύπτει από τα Σχέδια Υπηρεσίας και ο κάτοχος της έχει την εποπτεία, το συντονισμό και συστήματισμό της εργασίας των Επιθεωρητών και τη διοργάνωση και διεξαγωγή συνεδρίων, σεμιναρίων, επιμορφωτικών μαθημάτων κλπ.

Η Επιτροπή Εκπαιδευτικής Υπηρεσίας αφού έλαβε υπόψη την αξία, τα προσόντα και την αρχαιότητα των υποψηφίων, τις υπηρεσιακές εκθέσεις, τις συστάσεις του οικείου τμήματος και την εντύπωση που αποκόμισε από την προσωπική συνέντευξη (θλ. πρακτ. 22/5/84), καταλήγει στο συμπέρασμα ότι ο κ. Α. Φυλακτού παρουσιάζεται ο πιο κατάλληλος για τη

θέση λαμβανομένων υπόψη και των καθηκόντων, εκθέσεων και προσόντων όπως καθορίζονται στα Σχέδια Υπηρεσίας.

5 Είναι γεγονός ότι οι άλλοι υπαψήφιοι είναι οι αρχαιότεροι του κ. Φυλακτού, αλλά ο κ. Φυλακτού υπερέχει από όλους τους υποψηφίους στην αξία. Ο κ. Φυλακτού υπερέχει και ως προς τα προσόντα από όλους τους υποψηφίους εκτός από τους κ.κ. Κώστα Μιχαηλίδη και Ευστάθιο Χριστοδουλίδη που 10 παρουσιάζουν κάποια υπεροχή στα προσόντα. Αλλά έναντι αυτών των δύο ο κ. Φυλακτού υπερέχει εμφανώς ως προς την αξία.

15 Με βάση τα πιο πάνω η Επιτροπή Εκπαιδευτικής Υπηρεσίας αποφασίζει ομόφωνα να προσφέρει προαγωγή στον κ. Ανδρέα Φυλακτού, στη θέση του Γενικού Επιθεωρητή Μέσης Εκπαίδευσης από 15/6/84.»

20 («The post of General Inspector which is the highest of the hierarchy of the public educational service is, as it emanates from the scheme of Service, a post with extensive administrative responsibilities and its holder has the supervision, the coordination and the systematisation of the work of the Inspectors and the organisation and operation of congresses, seminars, further educational lessons etc.

25 The Educational Service Committee having taken into consideration the merit, qualifications and seniority of candidates, the service reports, the recommendations of the respective department and the impression from the personal interviews (See Minutes 22.5.84) concluded that Mr. A. Phylaktou appears to be the most suitable candidate, in the 30 light of the duties, reports and qualifications as provided by the scheme of service.

35 It is a fact that the other candidates are senior to Mr. A. Phylaktou but Mr. Phylaktou is superior as regards qualifications to all other candidates except Mr. Costas Michaelides and Mr. Efstathios Christodoulides, who are somewhat superior as regards qualifications. But in relation to both of them Mr. Phylaktou is clearly superior in merit.

In the light of the above the Educational Service Committee unanimously resolves to offer a promotion to Mr. Andreas



Phylaktou to the post of General Inspector Secondary Education, as from 15.6.84.»

The applicants, being aggrieved as they were not preferred, filed these recourses. They challenge the validity of the sub judge decision on the following grounds:-

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That the scheme of service was erroneously and unreasonably interpreted and applied.

That they followed wrong procedure by infringing the provisions of s. 35 of Law 10/69 and thus acted under a misconception of law.

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That the sub judge decision is tainted with misconception of fact. They took into consideration academic qualifications which were not required by the scheme of service.

That the inquiry was defective.

That the reasoning was defective.

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That they failed to take into consideration the long seniority of the applicants.

That they failed to select the most suitable candidate for the post. Each applicant contends that he was the most suitable.

Applicant in Case No. 341/84 contends further that the service reports for him were prepared by Mr. Philippides, who was either biassed, or was probably biassed, as the present applicant had filed in the past recourses against the promotion of Philippides; that his reports were not prepared by the appropriate officer; that the respondents attributed more weight to the interviews.

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The post of General Inspector Secondary Education is the highest post in secondary education within the competence of the respondent Commission. As it emerges from the duties and responsibilities of the post set out in the scheme of service it is a post with wide administrative responsibilities. They include supervision and coordination of the work of the Inspectors A and B, the organization of conferences, seminars etc. The holder of the post is in substance and effect the leader of Secondary Education, subject, however, to the Director.

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The appointing authority has a very wide discretion when making a selection for a post so high in the service. (*Frangos v. The*

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*Republic* (1970) 3 C.L.R. 312; *Ierides v. The Republic* (1980) 3 C.L.R. 165; *Simillis v. The Republic* (1986) 3 C.L.R. 608).

Promotions of educationalists are governed by the provision of s. 35 of the Public Educational Law, 1969 (10/69), as amended by  
5 Law 53/79.

The claim of the educationalists for promotion shall be considered on the basis of merit, qualifications and seniority (s. 35(2)). This corresponds to s. 44(2) of the Civil Service Law, 1967, (33/67).

10 The appointing authority, such as the respondent Commission, has to weigh together the aforesaid considerations, bearing in mind too the performance of the candidates when interviewed, which is a process helping in the evaluation of the candidates.

Without doubt undue importance should not be given to the  
15 interviews.

The practice of interview of the candidates for the purpose of evaluating their suitability has received repeatedly express recognition in the case-law of this Court as a course which is open to the Commission, but which is not bound to adopt in all cases. It  
20 is a mode of assessing the suitability of candidates.

The process of performance of candidates when interviewed is a process helping in the evaluation of candidates, mainly from the point of view of merit and, also, to a certain extent, of qualifications as well. (*Republic v. Michael Panayiotides*, Revisional Jurisdiction  
25 Appeal No. 589, p. 5, judgment delivered on 24/7/87 not yet reported.)\*

Undue weight should not be given to the performance at the interviews and such performance cannot be taken as a separate factor by itself. There is nothing wrong, however, in law to attach  
30 the necessary importance to them as such interviews reveal a candidate's personality and abilities which in instances as the present one are important qualities, in order to ascertain whether such candidates should be suitable in the post in question. (See per A. Loizou, J. in *Andronikou and Others v. The Republic*, Cases  
35 Nos 579/85, 622/85, 693/85 judgment delivered on 5/8/87 not yet reported.)\*\*

\* Reported in (1987) 3 C.L.R. 1081

\*\* Reported in (1987) 3 C.L.R. 1237

An appointing authority when weighing together the said three criteria, laid by Law, in order to find the most suitable candidate, may attribute such significance to them as it may deem proper, provided that it exercises correctly, in the course of doing so, its relevant discretionary powers (*Georgiou v. The Republic* (1976) 3 C.L.R. 74; *Republic v. Zachariades* (1986) 3 C.L.R. 852). 5

The first complaint is that the scheme of service was wrongly interpreted and applied, in the sense that the period of service in the post of Inspector A should have increased weight, as the scheme provides amongst its qualifications at least two year's service in the post of Inspector A. 10

The 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. (See *Papaleontiou v. The Republic* (1987) 3 C.L.R. 211, at p. 220, where the case-law of this Court on the subject is cited.) 15

It is usual in promotion posts for the scheme of service to require the qualification of service or satisfactory service for a term of years to the immediate lower post. This does not render any special weight to the length of the period of service other than the one attributed by Law and the jurisprudence of this Court. Had it been otherwise, then it would be contrary to the Law and unreasonable. I find no merit in this complaint. 20

Section 35(3) of Law 10/69, as amended by Law 53/79 provides that, in making a promotion, the appointing authority shall have due regard to the service reports of the candidates and to the recommendations of the appropriate department of Education. 25

The Director of Secondary Education Mr. Koullis attended two meetings as spokesman of the department of Secondary Education. 30

The Head of the department, as representing the department, has the duty to make an assessment of the suitability of a candidate, on consideration of all factors relevant to his merits, qualifications and seniority, and then after comparing the candidates arrive at a conclusion and this would be the respective recommendation. 35

Mr. Koullis on 23/5/84 stated that he considered as the best suitable candidate for promotion to the post in question Mr. Persianis and gave his reasons for this.

5 On 28/5/84 he clarified that he considered all the candidates suitable for promotion, but Persianis was the most suitable for the reasons he gave on 23/5/84.

In the meantime Persianis informed, through the Chairman, the respondents that he was not interested in this post.

10 It was submitted by counsel for the applicants that the Commission, after the withdrawal of Persianis, should apply for new recommendations and, as they failed to do so, this is a contravention of Law and an error in the procedure.

15 In the sub judice decision the respondents stated that they took into consideration the recommendations of the department. This part of the sub judice decision cannot be interpreted as indicating that the Commission laboured under the impression or misconception that the interested party was recommended. There is nothing in the sub judice decision indicating that the respondents laboured under a misconception. The statement of  
20 Mr. Koullis of 28/5/84 does not amount to a preference of any of the remaining candidates. The description of the candidates as suitable for the particular post is not equated to recommendation of an officer for appointment, or promotion to a post in preference to others. The respondent had the statement of Mr. Koullis before  
25 them. The sub judice decision was taken on 4/6/84 and the statement of Mr. Koullis was made on 28/5/84, only a few days earlier.

30 It is not mandatory for the department or the Head thereof to make recommendations. The fact that Mr. Koullis was not called to make a comparison of the other candidates, after the withdrawal of Persianis, is neither a violation of the Law, nor an error in the procedure and, therefore, this ground fails. It cannot be validly said that the respondents laboured under a misconception, and there is no probability that they might have laboured under a  
35 misconception, that the interested party was recommended by the Department.

### QUALIFICATIONS

The scheme of service does not provide specifically for academic qualifications. The relevant part reads:-

## «Απαιτούμενα Προσόντα:

1. Διετής τουλάχιστον υπηρεσία στη θέση Επιθεωρητή Α΄ (μέση εκπαίδευση)
2. Ενημερότητα πάνω στα εκπαιδευτικά προβλήματα και τάσεις στη μέση εκπαίδευση στην Κύπρο και σ' άλλες χώρες. 5
3. Ακεραιότητα του χαρακτήρα, οργανωτική και διοικητική ικανότητα, πρωτοβουλία, υπευθυνότητα και ευθυκρισία.
4. Πολύ καλή γνώση μιας τουλάχιστο από τις επικρατέστερες ευρωπαϊκές γλώσσες.» 10

## «Required qualifications:

1. At least two years service in the post of Inspector A (Secondary Education)
2. Acquaintance with educational problems and trends in secondary education in Cyprus and other countries. 15
3. Integrity, organisational and administrative ability, initiative, responsibility.
4. Very good knowledge of at least one of the main European Languages.» 20

The scheme of service for the post of Inspector A requires post-graduate education in paedagogics, or in a subject relevant with the duties of the post, of at least one academic year's duration.

Triantafyllides P. in *Andreou v. The Republic* (1979) 3 C.L.R. 379 said at p. 388:- 25

«... a scheme of service prescribes only the basic requirements for appointment or promotion to a particular post. It is open, therefore, to an appointing authority to take into account any other qualification of a candidate which is of such a nature as to render him the most suitable candidate for appointment or promotion; and there cannot be excluded from the notion of 'the most suitable' the essential consideration of how best will be served the interests of the specific branch of the public service in which a vacant post is to be filled.» 30 35

Triantafyllides P. in *Papadopoulos v. The Republic* (1985) 3 C.L.R. 405 at p. 441 said:-

5 «As regards their qualifications there existed a manifest difference between the appellant and the two interested parties in question, in the sense that the qualifications of the appellant were by far superior to those of interested parties Loizou and Ioannou and when such qualifications, which appear to be very relevant to the duties to be performed by somebody holding the post of 'Counsellor or Consul - 10 General B', are weighed together with the more or less equal merit of the appellant and the said two interested parties, and without losing sight of the slight seniority of such interested parties, the conclusion is inevitable, in my opinion, that the appellant was strikingly superior to them.»

15 The passage from *Andreou* case above was adopted by Savvides J. in *Michaeloudis v. The Republic* (1982) 3 C.L.R. 963.

In *Soteriadou and Others v. The Republic* (1983) 3 C.L.R. 921, at pp. 943 944 it was said:

20 «... in promotions qualifications beyond those required by the scheme of service, which are akin to the duties of the officer and which make him more suitable in the carrying out of such duties, should be taken into consideration.»

In *Ioannides v. The Republic* (1986) 3 C.L.R. 1089 at p. 1095 it was said:-

25 «Additional academic qualifications to those provided in the scheme of service, though they have to be taken into consideration with all other elements, do not by themselves indicate a striking superiority.»

30 Additional qualifications to those provided in the scheme of service, which are not made an advantage under the scheme, cannot be disregarded by the appointing authority, as they are an element for assessing the ability of the candidate in the better performance of the duties of the post. They are not a factor by themselves. They may not constitute striking superiority, but they 35 are a consideration to which regard must be given in selecting the most suitable candidate for promotion.

«Striking superiority» is a completely different notion from the notion of «the best suitable candidate» for promotion.

The respondents properly evaluated the qualifications and the diverse complaints of the applicants are not supported by the material in the file and the sub judice decision. 5

The interested party had one year post-graduate in Oxford and further he is the holder of M. Ed. from the University of Birmingham.

The selection must be made on the totality of all the circumstances before the Commission. 10

It was open to the respondents to take into consideration, without giving undue weight, the qualifications of the applicant.

The qualifications is one of the criteria on which promotion is based. If the Law intended that qualifications except those required by the scheme of service should not be taken at all into consideration, then the factor of «qualifications» would be meaningless. 15

With regard to merit, the respondents went carefully into the service reports of the candidates and they made a comparable table of the more recent service reports, i.e. the two last years and then they singled out those items which made the candidates, having regard to the duties and responsibilities of this high post, as the most suitable. 20

Both applicants and the interested party were rated generally excellent. (Applicant in Case No. 341 8-4-0, 8-4-0, applicant in Case No. 376 8-4-0, 9-3-0 and the interested party 10-2-0, 11-1-0.) 25

It was judicially said that one mark lower one mark higher does not render one candidate more suitable than the other. 30

In *The Republic v. Roussos* (1987) 3 C.L.R. 1217 at p. 1224 it was said:

«... we should stress that what really matters is the general picture presented by the overall grade in the report, on the basis of the aggregate effect of the evaluations of a public officer regarding particular rateable items, and not the arithmetical formula of how many times as regards such items 35

a candidate had been rated as 'excellent' or 'very good', or 'good' etc.»

And further down:-

5 «... it must not be lost sight of that it is dangerous to embark on these numerical comparisons independently of the nature of the items in respect of which an officer is rated as 'excellent' or 'very good' since such items do differ in significance depending on the qualities to which they relate.»

10 In this case the respondents, having regard to the duties and responsibilities and the requirements of the post, they singled out those items which depict the qualities that make a candidate more suitable for the performance of the duties of the post. This was permissible in view of the last lines of the aforesaid quotation from *Roussos* case.

15 The interested party, both generally in all the items and particularly in those items which make the candidates more suitable, was better rated than the applicants. It was within the discretionary power of the Commission in the performance of its duty to select the best suitable candidate for the interest of the public service and the public educational service in particular to act as they did. The items to which significance was attributed give the picture of the merits of the candidates required in the circumstances of this case.

25 Applicant in Case No. 341/84 contends that the service reports for him were prepared by Mr. Philippides, who, either was biased or there was a probability of him being biased, as the present applicant had filed a number of recourses against promotions of Philippides in the past.

30 Bias of one or more of those participating in the decision taking process or affecting the material on which the decision is based renders the decision vulnerable on the ground of unfairness. The service reports of educationalists reflect to a considerable degree the merit of educationalist. The Commission is bound to have due regard to them. Therefore, if it is proved that the reporting officer  
35 had personal animosity or was motivated by extraneous factors, then, depending on its nature and circumstances giving rise to it, it is taken into consideration whether a case of bias is established. It is a basic principle of administrative law that the organs participating in a particular administrative process must appear to  
40 act with impartiality and this cannot be so when there exist any



special ties or relationship which admittedly related to the persons involved in such process. (*Soteriadou and Others v. The Republic* (supra) at pp. 944, 945).

The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts.

In *Christou v. The Republic* (1980) 3 C.L.R. 437, at p. 449 it was said:-

«... it is not, for example, sufficient, by itself, in order to prove lack of impartiality of A towards B, the fact that A has made, in the past, in the course of the proper exercise of his official duties, adverse confidential reports in respect of B, or that A has otherwise expressed officially an adverse view regarding B with the result that B has instituted legal proceedings in this connection against A ...»

The single fact that applicant Michaelides filed recourses against the promotion of Philippides is not by itself proof of bias. The applicant failed to discharge the burden of proof that is cast on him.

Seniority was duly taken into consideration. The respondents have recorded in detail the seniority of the candidates. They have given due weight to them, but in view of the superiority of the interested party in other respects the seniority could not tip the scales in favour of the applicants or any of them.

The first duty of this Court is to see whether the Authority exercised its discretionary power in conformity with the statutory provisions and the rules and requirements of administrative law generally, including good faith. So long as the Authority acted within those limits, the Court cannot interfere. It cannot substitute its own opinion as to the merits of the candidates for that of the Authority. An administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its power; also, in

such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning. The onus of establishing striking superiority lies always on the  
5 applicant in a recourse. (*Odysseas Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83; *Hjiloannou v. Republic* (1983) 3 C.L.R. 1041; *Kyzas and Another v. The Public Service Commission* (1986) 3 C.L.R. 1096.

This recourse has to be determined in accordance with the two  
10 basic principles set out in *Republic v. Zachariades* (supra). First that an administrative Court does not annul a decision of an appointing authority, which, in accordance with the law applicable to, and the facts of, a particular case, was reasonably open to such authority; and secondly, that an administrative Court  
15 does not, in a case of this nature, 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.

The applicants failed to satisfy the Court that there was any misconception of fact or law. The respondents took into  
20 consideration what they were entitled to take and they did not fail to take into consideration anything they ought to have taken.

The applicants failed to satisfy the Court that they are strikingly superior to the interested party, in the sense analyzed by the Full Bench in *Hjiloannou v. Republic* (1983) 3 C.L.R. 1041, adopting  
25 a passage from *Hjisavva v. The Republic* (1982) 3 C.L.R. 76.

On the totality of the material before me the applicants failed to establish that the sub judge decision was taken in excess or abuse of power.

The sub judge decision was taken after due inquiry and it is duly  
30 reasoned.

On the material before them, in the exercise of their wide discretionary power, it was reasonably open to the respondent Commission to take the sub judge decision for the promotion of the interested party as the most suitable candidate to the post in  
35 question. . .

For all the foregoing reasons these recourses fail. The sub judice decision is confirmed under Article 146.4(a) of the Constitution.

Let there be no order as to costs.

*Recourses dismissed.*

*No order as to costs.*