

1988 January 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS SAVVA AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH,  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

*(Consolidated Cases Nos. 88/86, 160/86,  
174/86, 184/86 and 230/86).*

*Public Officers—Promotions—Head of Department—Recommendations of—  
Noting that the qualifications of certain candidates are likely to prove  
helpful in the discharge of the duties of the sub judice post—Does not  
connote that such qualifications are an advantage under the scheme of  
service.*

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*Bias—Promotion of public officers—Confidential reports—Subjective bias—  
Absence of evidence—Effect.*

*Bias—It is a state of mind—It is inferred either from circumstantial evidence  
or from the existence of facts depriving a person from the attributes of  
impartiality—In the former case, a contention must, in the absence of  
evidence, be dismissed.*

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*Bias—Promotion of public officers—Confidential reports—Close relationship  
between reporting officer and the officer under evaluation—The class that  
leads to inference of bias includes relations of the first degree by  
consanguinity (Brothers and Sisters-in-law).*

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*Public Officers—Promotions—Confidential reports—Circular 491/79  
containing the Regulations of their preparation—Breach of Reg. 4(6) that  
Countersigning Officer should be an officer having in his supervision the*

*functioning of the service in charge of the reporting officer—Effect—Commission took into consideration such a report, but ignored the views of the countersigning officer—The Commission should have ignored it in its entirety.*

5           These recourses are directed against the decision to promote the interested parties to the post of Nurse, Psychiatric Services. The interested parties were recommended for promotion by the Head of the Department. In making his recommendations he noted in particular that two of the interested parties possessed qualifications, which were likely to prove of  
10 aid to the discharge of the duties of the sub judge post.

          The confidential reports for 1982 were prepared in a manner contrary to Circular 491/79, which contains the rules for their preparation. The irregularity was that, contrary to Reg. 4(c), the Countersigning Officer was not the Officer, who exercised supervision of the functioning of the service  
15 under the charge of the reporting officer. The respondent Commission decided to take the said reports into consideration, but not the views of the countersigning officer.

          The applicants further contended that the reports for the years 1979, 1980 and 1981 were tainted with bias by the countersigning officer. They, also, challenged the reports for 1983 and 1984 for interested party  
20 Yiannoulla Louca in that the reporting officer was a close relation.

          Having reached the conclusion that the applicants' contention for lack of due inquiry remained unsubstantiated, the Court,

*Held, annulling the sub judge decision:*

25           (1) The contention that the recommendations of the Head of the Department were misleading cannot be accepted. The reference to qualifications especially helpful for the performance of the duties, envisaged by the scheme of service, possessed by two candidates, in no way connoted that such qualifications were an advantage under the scheme  
30 of service or entitled the holders to preferential treatment.

          (2) Bias is a state of mind. It is difficult and often impossible to prove bias by direct evidence. It is usually inferred from circumstantial evidence or from the existence of facts that objectively deprive the person exercising power of the attributes of impartiality. Here, we are concerned with the former case. In the absence of evidence the contention must be dismissed.  
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(3) Confidential reports are sanctioned by law as material definitive of

the worth, capabilities and devotion to duty of public servants. It is difficult to overstate their importance for the career of civil servants and, more importantly, for the manning of the civil service in the interest of meritocracy. A confidential report is an integral document that cannot be segregated into component parts. The countersigning of the confidential reports by competent officer is not a mere formality but an essential attribute for the validity of the report. In the absence of valid countersigning of the reports they do not qualify as confidential reports under the rules governing their preparation. By taking the reports for 1982 in consideration the respondents allowed extraneous material to influence their decision and on that account their decision is liable to be set aside.

(4) The complaint as regards the reports for 1983 and 1984 for Yiannoulla Louca is not one of subjective, but of objective bias. The case law acknowledged that close relationship between the decision-making organ and the subject of the decision, may give rise to an inference of bias.

Without attempting to define the class of relationships that may give rise to the inference, certainly, a relationship of the first degree between two persons, such as parents and children, and brothers and sisters, falls in this class. And given Cyprus social realities, particularly the close bond that unites families, the class should also include relations of the first degree by consanguinity, that is, brothers and sisters-in-law.

*Sub judice decision annulled.  
No order as to costs.*

*Cases referred to:*

*Kontemeniotis v. Republic* (1982) 3 C.L.R. 1027;

*Soteriadou and Others v. Republic* (1985) 3 C.L.R. 300;

*Republic. v. Argyrides* (1987) 3 C.L.R. 1092;

*Hadjivassiliou v. Cyprus Organisation of Athletics* (1987) 3 C.L.R. 2142;

*Christou v. Republic* (1983) 3 C.L.R. 437.

**Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the post Nurse, Psychiatric Services in preference and instead of the applicant.

*L. Papaphilippou*, for applicant in Case No. 88/86.

*A. S. Angelides*, for applicant in Case No. 160/86.

*I. Typographos*, for applicant in Case No. 174/86.

*A. Erotokritou*, for applicant in Case No. 184/86.

5 *A. Markides*, for applicant in Case No. 230/86.

*A. Vassiliades*, Counsel of the Republic, for respondents.

*Chr. Triantafyllides*, for interested party Y. Louca.

*Cur. adv. vult.*

10 PIKIS, J. read the following judgment. This is an application for the judicial review of a decision of the respondents dated 20.12.85 (gazetted on 14.2.86), whereby the eleven interested parties were promoted to the position of Nurse, Psychiatric Services. The machinery for filling the posts had been set in motion on 31.8.85 by the Director-General of the Ministry of Health requesting the filling of a corresponding number of vacant positions. Shortly afterwards, a departmental committee was set up to screen the forty-nine applications, consider the eligibility of the candidates and evaluate their suitability for promotion. On 15 2.12.85 they submitted their report, recommending thirty-one of the candidates as qualified and suitable for promotion; the 20 remaining eighteen were turned down for lack of the required qualifications.

On 20.12.86 the Public Service Commission convened to consider the filling of the posts. Preliminarily, they heard at their request the views of Dr. Malikkides, the Director of the Department of Psychiatric Services, in order to be apprised of the views of the administrative side. 25

All the candidates were, in his opinion, both qualified and

suitable for the performance of the duties carried by the post due to be filled. He noted that the qualifications possessed by two of them, namely C. Olympios and Y. Louca, were likely to prove of help and an aid for the discharge of their new duties. On an overall assessment of the rival merits of the candidates, the interested parties were best suited for promotion and on that account he gave his recommendation for their selection. 5

The Public Service Commission made a lengthy inquiry into the merits, qualifications and seniority of the interested parties, as they emerged from the material before them, that is, confidential reports and personal files on the candidates. Suggestive of the breadth of their inquiry is the tabulation in the minutes of the respondents of the effect of the confidential reports on the candidates for the three years immediately preceding promotion; no doubt the most crucial years for an up-to-date indication of the capabilities and performance of the candidates at work. Subject to three exceptions, the overall rating of the candidates was the same, notably "Very Good". Noticeable differences existed in the case of interested party Efthymiades whose general rating for the last three years was uniformly "Excellent", and interested party Olympios who had an Excellent rating for the year 1983. On the other side of the divide was applicant Tsianis whose rating for the year 1982 was "Good". 10  
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Before making their selection, the Public Service Commission decided to disregard aspects of the confidential reports on the candidates for the year 1982 on account of an irregularity in their preparation. The irregularity consisted of failure to heed the provisions of Regulation 4(c) of the Circular governing the preparation of confidential reports, in particular, the requirement that the countersigning officer should be the officer who exercised supervision of the functioning of the service under the charge of the reporting officer. The reports were countersigned by Dr. Neophytou who did not at the time exercise such supervision. That being the case the respondents were right to treat the confidential reports for the year 1982 as irregular. What is at issue is the validity of their decision to accept them as proper 25  
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material for the evaluation of the candidates albeit stripped of the views of the countersigning officer.

5 Another set of confidential reports on the candidates that were doubted, but for a different reason, were the reports for the years 1979, 1980 and 1981. Their validity was disputed for lack of impartiality on the part of the countersigning officer, namely Mr. Matsas, the Director of the Department at the time. Lack of impartiality surfaced in the course of disciplinary proceedings raised against Mr. Matsas. Of these facts the Public Service  
10 Commission ought to have taken notice, as they had tried the case themselves and became aware of the circumstances giving rise to bias. The respondents refused to upset their decision in the absence of concrete information establishing bias; their request for particulars remained essentially unanswered.

15 In sum the grounds allegedly rendering the decision invalid are-

(A) Invalidity of confidential reports on the candidates for the years 1979-1981 for lack of impartiality on the part of the countersigning officer.

20 (B) Improper reliance on the confidential reports on the candidates for the year 1982, stemming from their countersigning by an incompetent officer.

25 (C) Improper reliance on the confidential reports on interested party Yiannoula Louca for the years 1983-84 deriving from the fact that the reporting officer, namely Mrs. Valentini Christou, was a close relation.

30 (D) Failure to scrutinize the recommendations of Mr. Malikkides and appreciate that they were fraught with error so far as reference was made to interested parties C. Olympios and Y. Louca. The submission is that his recommendations were misleading.

(E) Lack of an adequate inquiry into the facts relevant to the

merits and qualifications of the parties.

We may begin with answering the last ground affecting the range of the inquiry of the respondents into the subject for decision. As earlier indicated, the inquiry into the facts relevant to the candidates was, if anything, far reaching, a fact evidenced, inter alia, by the reproduction of salient facts in the minutes of the Commission. Examination of the record reveals that respondents had before them all the material throwing light on the performance of the candidates, their qualifications and length of service. I find no substance in this complaint of applicants. Equally untenable is the charge that the recommendations of Mr. Malikkides were in any sense misleading. Reference to qualifications especially helpful for the performance of the duties, envisaged by the scheme of service, possessed by two candidates, in no way connoted that such qualifications were an advantage under the scheme of service or entitled the holders to preferential treatment. It was a relevant fact that the Director was perfectly entitled to bring to the notice of those charged with decision-making. His recommendation, on the other hand, of the interested parties was founded on his personal appreciation of their worth and as such could be imparted to the Commission pursuant to the provisions of s.44(3) of the Public Service Law 33/67. This ground, too, remains unsubstantiated.

The existence of bias on the part of an administrative organ may render abortive the exercise of administrative power. The exclusion of the offspring of the biased exercise of power is a necessary incident of the provisions of article 28 of the Constitution safeguarding equality before the Administration, and an article of faith to the rules of natural justice requiring impartiality on the part of everyone exercising power in virtue of and in the name of the law. Bias is a state of mind. It is difficult and often impossible to prove bias by direct evidence. It is usually inferred from circumstantial evidence or from the existence of facts that objectively deprive the person exercising power of the attributes of impartiality. Here, we are concerned with the former case, that is, the prejudice that the then Director of the Department allegedly harboured against some of the

5 candidates. No evidence was adduced to substantiate the  
existence of such a state of mind on the part of Mr. Matsas. In the  
absence of such evidence we cannot entertain the complaint. This  
was affirmed in *Kontemeniotis v. Republic*\*; the mere existence  
of strained relations at work between superior and subordinates  
does not of itself ground a complaint of bias. The case of  
*Soteriadou and Others v. Republic*\*\* exemplifies the evidence  
necessary to make out a case of bias. In the absence of any  
evidence to substantiate allegations of bias we cannot but dismiss  
10 them as unfounded.

The remaining two grounds merit lengthier consideration.  
First, we shall deal with the confidential reports for the year  
1982.

15 Confidential reports are sanctioned by law (section 44(3)-Law  
33/67) as material definitive of the worth, capabilities and  
devotion to duty of public servants. It is difficult to overstate their  
importance for the career of civil servants and, more importantly,  
for the manning of the civil service in the interest of meritocracy.  
Rules have been evolved for the preparation of confidential  
20 reports designed to give an objective picture of the worth of  
individual civil servants. The rules are embodied in Circular No.  
491 of 26.3.79. They are based on a two-tier system of  
assessment: By the officer having direct knowledge of the work  
of the reportee and, by the countersigning officer, the officer  
25 higher in rank than the reporting officer exercising supervision  
over the branch or division of the service (Regulation 4(a), 4(b)  
and 4(c)).

30 Only reports prepared in accordance with the provisions of the  
Circular qualify as confidential reports within the meaning of the  
Regulations. This is made clear from the imperative words of  
Reg.3(1) predicating that confidential reports are prepared by re-

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\* (1982) 3 C.L.R. 1027.

\*\* (1989) 3 C.L.R. 300.



porting officers and countersigned by those having an overview of the service. A confidential report is an integral document that cannot be segregated into component parts. The countersigning of the confidential reports by the competent officer is not a mere formality but an essential attribute for the validity of the report. In the absence of valid countersigning of the reports they do not qualify as confidential reports under the rules governing their preparation.

The need to adhere strictly to the requirements of the Circular governing the preparation of the reports, was stressed in very certain terms by the Full Bench of the Supreme Court in the case of *Republic. v. Argyrides*.\* Compliance with the conditions of the Circular is a condition precedent to their admissibility as a matter of legality and constitutional duty. The provisions of the Circular are in pari materia with the statutory requirements and as such ought to be heeded without exception. More importantly, public officers are entitled to similar treatment in so far as their assessment is concerned, a right deriving from the provisions of article 28.1 of the Constitution. In a separate judgment in the above case, I also drew attention to the importance of confidential reports as a guide to the worth of public officers. However, I added a rider that, as in every act of the Administration, the effect of an impropriety must necessarily be examined by reference to its impact on the decision.

The unavoidable conclusion is that the reports on the candidates for the year 1982 were incomplete and as such did not qualify as confidential reports within the meaning of the Circular. It was in the power of the Public Service Commission to take steps for their completion by referring the reports back to the Administration with the request that they be countersigned by the officer who was exercising supervision at the time over the candidates. In the absence of this complement the respondents were duty-bound to disregard the reports. By taking them into consideration they allowed extraneous material to influence their decision and on that account their decision is liable to be set aside.

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\* (1987) 3 C.L.R. 1092.

5 Lastly, the suggestion that the confidential reports on interested party Yiannoula Louca for the years 1983-84 ought to have been disregarded for reasons of bias. Here the complaint is not one of subjective bias on the part of the reporting officer but one of objective bias arising from the relationship between the reporting officer and Yiannoula Louca. It would be difficult to discern any disposition of personal favour on the part of Mrs. Christou towards Yiannoula Louca considering that her assessment of the worth of her services was on the whole similar to that made by other reporting officers. However, bias may be inferred from the existence of such a relationship between the parties as would normally preclude an administrative organ from exercising powers assigned to it by law. The subject is discussed, inter alia, in a recent decision of this Court, in *A. Hadjivassiliou v. The Cyprus Organisation of Athletics\**.

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30 In *Christou v. Republic* \*\* it was acknowledged that close relationship between the decision-making organ and the subject of the decision, may give rise to an inference of bias. Several tests have been propounded for the definition of the circumstances that may give rise to bias. The common denominator is the need to ensure the impartiality of the Administration and the faith of the public in its deeds. How close the relationship should be to give rise objectively to an inference of bias, has not been the subject of any decision. For myself I shall not attempt to define the class of relationships that may give rise to the inference. Certainly, a relationship of the first degree between two persons, such as parents and children, and brothers and sisters, falls in this class. And given Cyprus social realities, particularly the close bond that unites families, the class should also include relations of the first degree by consanguinity, that is, brothers and sisters-in-law. That being my decision, the confidential reports on Yiannoula Louca for the years 1983-84 were tainted with bias and ought to have been disregarded. This is an additional reason for annulling her

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\* (1987) 3 C.L.R. 2142.

\*\* (1983) 3 C.L.R. 437 at 449.

appointment. On re-examination of the case, it is again up to the Public Service Commission to see how best to fill the gap in the confidential reports of Yiannoula Louca for the aforementioned years.

In the light of the above the sub-judice decision is set aside and declared to be wholly void pursuant to the provisions of article 146.4(b) of the Constitution. Let there be no order as to costs. 5

*Sub judice decision annulled.  
No order as to costs.*