

1988 February 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELIAS ELIADES AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Cases Nos. 586/84, 587/84).*

*Public Officers—Appointments/Promotions—First entry and promotion post—Purpose of creating such a post—Most suitable candidate should be selected—This principle cannot be overridden by preference for those already in the service.*

*Public Officers—Appointments/Promotions—Interviews, performance at—* 5  
*Weight.*

*Public Officers—Appointments/Promotions—Written examinations required by scheme of service—Significance of, in evaluating merit.*

*Public Officers—Appointments/Promotions—Striking superiority.*

*Public Officers—Appointments/Promotions—High office in hierarchy—* 10  
*Discretion of administration—Breadth of.*

Applicants impugned the decision, whereby the interested parties were appointed and/or promoted to the post of Administrative Officer, General Administrative Staff, a first entry and promotion post.

It is significant to note that sub-paragraph (4) of paragraph 3 (required qualifications) of the aforesaid advertisement provides that: 15

"(4) Candidates must be successful in a special examination in writing, for this post".

The main complaint of the applicants in the above intitled recourses is to the effect that the respondent P.S.C. attributed undue weight to the impressions created by the candidates at the interviews.

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Held, dismissing the recourse: (1) The object of our law in creating the category of first entry and promotion posts is to attract candidates from outside the service and at the same time give the opportunity for promotion to suitable persons already in the service. The principle that the the most suitable candidate has to be selected cannot be overridden by preference for those already in the service.

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(2) It is well settled that impressions created by candidates at the interviews should not be given undue and disproportionate weight. In this case the Commission did not attribute undue weight to the impressions created by the candidates at the interviews.

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(3) The principle that the Commission should also take into account the impression created by the performance of the candidates at the interview applies a fortiori in cases like the present one, where there is no other material or almost no other material to rely on, for evaluating the merit of the candidate in question; and one must not lose sight of the fact that most of the interested parties were "outsiders" and their merit had mostly to be deduced from their performance at the interview, and partly from the result of the examination in writing envisaged by the scheme of service.

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(4) The applicants failed to establish a case of striking superiority.

*Recourse dismissed.  
No order as to costs.*

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*Cases referred to:*

*The Republic and Another v. Aristotelous* (1982) 3 C.L.R. 497;

*Smyrnios v. The Republic* (1983) 3 C.L.R. 124;

*Andreou v. The Republic* (1979) 3 C.L.R. 379;

*Theodossiou v. The Republic*, 2 R.S.C.C. 44;

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*Georgiades and Another v. The Republic* (1970) 3 C.L.R. 257; /

*Pattichis and Another v. The Republic* (1968) 3 C.L.R. 374;

*HjiSavva and Another v. The Republic* (1967) 3 C.L.R. 155;

*Petrou v. The Republic* (1967) 3 C.L.R. 40;

*Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653;

*HjiConstantinou and Others v. The Republic* (1973) 3 C.L.R. 65;

*Triantafyllides v. The Republic* (1970) 3 C.L.R. 235;

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*Savva v. The Republic* (1980) 3 C.L.R. 675;

*Livadas v. The Republic* (1985) 3 C.L.R. 506;

*Lakatamitis v. Public Service Commission* (1985) 3 C.L.R. 2269;

*Republic v. Petrides* (1984) 3 C.L.R. 378;

*HjiIoannou v. The Republic* (1983) 3 C.L.R. 1041;

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*Vonditsianos v. Republic* (1969) 3 C.L.R. 83 and on appeal (1969) 3 C.L.R. 445;

*Frangos v. Republic* (1970) 3 C.L.R. 312;

*Ierides v. Republic* (1980) 3 C.L.R. 168.

### **Recourses.**

Recourses against the decision of the respondent to appoint and/or promote the interested parties to the post of Administrative Officer in preference and instead of the applicants.

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*A. S. Angelides*, for applicants.

*A. Vassiliades*, for respondents.

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X. *Xenopoulos*, for interested parties 1, 2, 5, 8 and 10 in both cases and interested party 12 in Case No. 586/84.

A. *Tryphonos (Mrs.)*, for interested party 3 in both cases.

K. *Talarides*, for interested party 4 in both cases.

5 M. *Papapetrou*, for interested party 9 in both cases.

N. *Panayiotou*, for interested parties 6 and 11 in both cases.

M. *Vassiliou*, for interested party 13 in case No. 586/84 and interested party 12 in case No. 587/84.

*Cur. adv. vult.*

10 LORIS J. read the following judgment. Applicants in the  
above intituled recourses, which were heard together on the appli-  
cation of all concerned as presenting common legal and factual is-  
sues, impugn the decision of the respondent P.S.C. published in  
the Official Gazette of the Republic on 19.10.84, whereby the 13  
15 interested parties in case No. 586/84 (12 interested parties in case  
No. 587/84) were appointed and/or promoted to the post of Ad-  
ministrative Officer, General Administrative Staff, in preference  
to and instead of the Applicants.

20 In examining the above intituled recourses, it must always be  
borne in mind, that the post of Administrative Officer, General  
Administrative Staff, is a first entry and promotion post.

25 The object of our law in creating the category of first entry and  
promotion posts is to attract candidates from outside the service  
and at the same time give the opportunity for promotion to suita-  
ble persons already in the service. (Vide *The Republic and Ano-  
ther v. Aristotelous* (1982) 3 C.L.R. 497 - *Smyrnios v. The Re-  
public* (1983) 3 C.L.R. 124 at p. 130).

"Preference for those already in the service can never override the fundamental principle that the most suitable candidate has to be selected for appointment or promotion to a vacant post in the public service. A person in the service may, for the above reason, be bypassed in order to appoint an outsider to the service - (*Andreou v. The Republic*, (1979) 3 C.L.R. 379; *Theodossiou v. The Republic*, 2 R.S.C.C. 44, 48; *Georghiadis and Another v. The Republic*, (1970) 3 C.L.R. 257, 262, 263; *Pattichis and Another v. The Republic*, (1968) 3 C.L.R. 374, 381; *HjiSavva and Another v. The Republic*, (1967) 3 C.L.R. 155, 179; *Petrou v. The Republic*, (1967) 3 C.L.R. 40, 48; *Georghiadis and Others v. The Republic*, (1967) 3 C.L.R. 653, 666; *Hadjiconstantiou and Others v. The Republic*, (1973) 3 C.L.R. 65, 71)."

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Applicant in recourse No. 586/84 entered the public service as early as 1974 and was at the material time holding the post of Clerk 2nd Grade (P.) having been promoted to the aforesaid post on 1.7.1983.

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Applicant No. 1 in case No. 587/84 entered the public service as early as 1973 and was holding the post of Examiner 1st Grade in the Department of the Official Receiver and Registrar as from 15.8.1981; applicant No. 2 in the same recourse, was holding at the material time the permanent post of Accounting Officer 3rd Grade, in which he was appointed as early as 1976.

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Now with regard to the interested parties: Eleftheria HadjiPavlou, (interested party No. 13 in recourse 586/84 and interested party No. 12 in recourse 587/84) entered the public service in 1981 and was appointed to the permanent post of Clerk 2nd Grade on 1.7.1983.

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The remaining interested parties have no confidential reports, as four of them, notably interested parties 1, 2, 6 and 11 were serving at the material time on casual basis, whilst all the remaining were "outsiders".

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The posts in question were advertised in the Official Gazette of the Republic of 20.5.83 (vide Appendix 3 attached to the opposition).

5 It is significant to note that sub-paragraph (4) of paragraph 3 (required qualifications) of the aforesaid advertisement provides that:

"(4) Candidates must be successful in a special examination in writing, for this post."

10 Pursuant to the advertisement aforesaid, inviting applications for the aforesaid 13 posts, 447 candidates including all applicants and the interested parties, applied for appointment to the posts in question.

15 The Departmental Board set up under section 36 of the Public Service Law (Law No. 33/67) for the purpose of advising the respondent P.S.C. after examining the material before it and after interviewing the candidates, recommended 52 for the posts in question including all the applicants and all interested parties as well.

20 The respondent P.S.C. having in mind the recommendations of the Board and the material before them, invited all 52 candidates recommended by the Board for an interview; the Acting Director of the Department of Public Administration and Personnel was also invited to attend the interview in question.

25 At the interview held, both the Acting Director of the Department of Public Administration and Personnel as well as the chairman and members of the P.S.C., put questions to the candidates; after the conclusion of the interviews as aforesaid, the Ag. Director expressed his own views as to the performance of the candidates at the interviews and left; the views of the Director as aforesaid are recorded in appendix 28 attached to the opposition.

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The respondent P.S.C. after examining the material before

them, including the personal files and the confidential reports of the candidates already in the service and the results of the special examination in writing envisaged by sub-para (4) of para. 3 of the required qualifications (Vide Appendix 3), and after considering the recommendations of the Departmental Board and the performance of the candidates at the interviews held by the P.S.C., in the light of the views of the Acting Director of Personnel selected as the most suitable candidates for the aforesaid 13 posts the 13 interested parties i.e. the 12 interested parties appearing with the other interested parties in recourse 587/84, plus I.P. Elissavet N. Filippidou appearing with the other interested parties in recourse 586/84.

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The main complaint of the applicants in the above intitled recourses is to the effect that the respondent P.S.C. attributed undue weight to the impressions created by the candidates at the interviews; it was submitted that such impressions became a decisive factor which brought about the decision to promote the 13 interested parties in preference to and instead of the applicants.

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It is well settled that impressions created by candidates at the interviews should not be given undue and disproportionate weight (see inter alia: *Triantafyllides v. The Republic*, (1970) 3 C.L.R. 235, 245 *Savva v. The Republic*, (1980) 3 C.L.R. 675, 691-695, *Smyrnios v. The Republic*, (1983) 3 C.L.R. 124, 135, *Livadas v. The Republic*, (1985) 3 C.L.R. 506, 511, 512, *Lakatamitis v. P.S.C.* (1985) 3 C.L.R. 2269 at p. 2272).

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Having carefully gone through the material before me, I hold the view that the respondent P.S.C. did not attribute undue weight to the impressions created by the candidates at the interviews; on the contrary the relevant record indicates that the respondent paid due regard to the evaluation of the candidates made through the interviews as they were legitimately entitled to do.

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"No doubt the Commission in considering the merits, qualifications and experience and, generally, the suitability of a candidate to a given post, should also take into account the im-

pression created by such candidate at the relevant interview..."

(*Republic v. Petrides* (1984) 3 C.L.R. 378 at p. 386).

5 And this is a fortiori so in cases, like the one under consideration, where there is no other material or almost no other material to rely on, for evaluating the merit of the candidate in question; and we must not loose sight of the fact that in the present cases most of the interested parties were "outsiders" and their merit had mostly to be deduced from their performance at the interview, and partly from the result of the examination in writing envisaged by sub-para (4) of para. 3 of the qualifications, envisaged by the relevant scheme of service (Appendix 3).  
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15 As I have stated at the beginning of this judgment relying on authority "a person in the service may - for the purpose of selecting the most suitable candidate - be bypassed in order to appoint an outsider to the service". In this connection I feel that I should add here, that the respondent P.S.C. in adopting this course gave adequate reasoning for so acting and this is quite apparent from pages 8 and 9 of Appendix 28 (attached to the Opposition).

20 It is apparent that the present recourses are directed against the exercise by the respondent P.S.C. of its discretionary powers. It is apparent from the perusal of the recourses that their challenge is vague and uncertain. I have dealt with at length with their main complaint, as I was able to comprehend it, notably to the allegation that P.S.C. attributed undue weight to the impressions created by the candidates at the interviews. Turning now, to the sub-  
25 justice decision as a whole, I hold the view that the applicants failed to establish striking superiority over the interested parties. The views of the Departmental Board, the results of the examination in writing for the post, the views of the Director of Personnel, both as to his impressions created at the interviews as well as  
30 to his impressions for those who were casually employed, and finally the views formed by the respondent P.S.C. themselves (vide comparative table - Appendix 32 attached to the opposition) cannot by any stretch of imagination support the view that appli-



cants were strikingly superior to the interested parties.

And it is well settled that an Administrative Court will not interfere unless it is established that an applicant is strikingly superior to the candidate selected (*HjiIoannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1045).

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Concluding I feel that I should repeat here what was stated by Triantafyllides J., as he then was, in *Charalambos Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257 at p. 268:

"The Court has laid down more than once that where a person appointed to a post is duly qualified under the relevant scheme of service this Court will not, on the issue of suitability, substitute its own discretion for that of the Commission provided that the Commission's discretion has been properly exercised; in other words, the mere fact that the Court, had it been in the position of the Commission, might possibly not have selected for appointment the same candidates as the Commission, is not in itself sufficient ground for the Court to interfere with the decision of the Commission" (and see, too, the case of *Vonditsianos and The Republic* (1969) 3 C.L.R. 83; on appeal (1969) 3 C.L.R. 445).

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And furthermore, I should remind the quite wide discretionary powers of the appointing authority in selecting the most suitable candidates for appointment to high office in the administrative structure:

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"In selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with quite wide discretionary powers" (vide *Frangos v. Republic* (1970) 3 C.L.R. 312 at p. 343 - *Ierides v. Republic* (1980) 3 C.L.R. 168 at p. 183.

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For all the above reasons present recourses are doomed to failure and they are accordingly dismissed.

In the circumstances I shall not make any order as to costs.

*Recourses dismissed.  
No order as to costs.*

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