

1988 March 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION,

ODYSSEAS KALOGIROU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Cases Nos. 337/85, 394/85, 418/85, 496/85).

5 *Public Officers—Promotions—Head of Department, recommendations of—
Seniority—Applicant senior to interested parties by 1-4 years approximate-
ly, but he was not recommended for promotion, whereas the interested par-
ties were so recommended—Failure to establish striking superiority—
Recourse dismissed.*

10 *Public Officers—Promotions—Seniority—Equality in merit—All concerned
recommended for promotion—Seniority prevails when other factors are
more or less equal—Absence of cogent reasons why seniority was ig-
nored—Conclusion that discretionary power was exercised in a defective
manner.*

The facts of this case appear sufficiently in the judgment of the Court.

15 *Recourses 337/85 and 394/85 dismissed. Sub
judice promotions in recourse 418/85 an-
nulled. Sub judice promotions of three of the
interested parties in recourse 496/85 annulled.
No order as to costs.*

*Cases referred to:**Karagiorgis v. C.B.C.* (1985) 3 C.L.R. 378;*Theodossiou v. The Republic*, 2 R.S.C.C. 44;*Hadjiantoni v. The Republic* (1983) 3 C.L.R. 1145;*Trapellides v. The Republic* (1986) 3 C.L.R. 1861;

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Duncan v. The Republic (1977) 3 C.L.R. 153.**Recourses.**

Recourses against the decision of the respondent to promote the interested parties to the post of Assistant Headmaster in the Elementary Education in preference and instead of the applicants.

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M. Christofides, for applicant in Case No. 337/85.*A. S. Angelides*, for applicants in Cases Nos. 394/85, 418/85 and 496/85.*R. Petridou (Mrs.)*, for respondent.*A. Pandelides*, for interested party I. Pittaka in all cases.

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E. Efstathiou, for interested parties G. Zevedheou, G. Vassiliades, A. Vlami, Ch. Rossidou, Korniliou, N. Kyprianou, Z. Koumoundhiou, F. Michaelides, S. Stavridou - Kyriakidou, M. Kei.*A. Haviaras*, for interested party F. Christodoulides in all cases.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. These recourses

were heard together as they involve common questions of law and fact. They are all directed against the decision of the respondent Educational Service Commission, to promote the interested parties to the post of Assistant Headmaster in the Elementary Education in preference and instead of the applicants.

The Supreme Court - Pikis, J. - by means of its decision in recourses Nos. 359/82, 394/82, and 395/82, reported as Ioannides and Others v. The Republic (1984) 3 C.L.R. 1283), annulled the promotions of twenty-three teachers to the post of Assistant headmaster in the elementary education which had been decided by the respondent Educational Service Commission on the 14th July 1982. The applicants in recourse 394/84, were the applicants in one of the present recourses - 337/85 - Odysseas Kalogirou and his wife Erini Kalogirou. The Supreme Court upheld the recourse of Mrs. Kalogirou and dismissed the recourse of Mr. Kalogirou. As against the dismissal of his recourse the latter filed Revisional Jurisdiction Appeal No. 431. The respondent Educational Service Commission reconsidered the question of the filling of the twenty-three posts of Assistant headmaster on the 21st December 1984, and took the sub judice decision. The relevant minute of the Commission reads as follows:

"The Commission having considered the personal files and the confidential reports of the candidates and having taken into consideration the provisions of the Law and of the Schemes of Service as well as the findings of the Supreme Court, the recommendations of the appropriate department which were transmitted by means of the letter of the Director of Elementary Education No. 265/68/2 dated 5th July 1982, finds that the following teachers, on the basis of merit, qualifications and seniority, the service reports and the recommendations of the appropriate Department, are the most suitable for promotion to the said vacant posts. The Commission does not take into consideration the impression created at the interview but relies on the material in the file and on the general picture of the candidates emanating therefrom.

All the candidates who have been selected possess excellent marks and have been recommended by the appropriate Department of Education. In addition Messrs Andreas Vlamis, Klitos Symeonides, Michael Ttofis, Maro Kei, Sonia Stavridou-Kyriakidou, Andreas Mytilineos, and Demetrios Petrakis, have a postgraduate education abroad and/or a university title." 5

It is pertinent to refer to paragraphs 2 and 3 of the relevant Scheme of Service which provide:

"2. At least two years satisfactory service under the last two confidential reports. 10

3. Postgraduate education abroad or an additional education title on educational subjects or a certificate of successful attendance of special series of educational lessons organized by the Ministry of Education will be considered as an additional advantage." 15

I shall examine now the facts pertaining to each one of the applicants and the interested parties.

The applicant in recourse No. 337/85 - Odysseas Kalogirou - has twenty-one years service. In the last two recent reports he was rated with 36 marks in each report. He was not recommended by the appropriate Department. He attended successfully the educational lessons of the Ministry of Education. 20

Applicant No. 1, in recourse No. 394/85 - Antonis Papadopoulos, had twenty-one years of service. In the last two recent reports he was rated with 35 and 36 marks, respectively. He was not recommended by the appropriate Department. He is the holder of an A.C.P. diploma in Methods of Teaching (Associate of the College of Preceptors). 25

Applicant No. 2, in recourse No. 394/85 - Georghios Loucaides - has twenty years of service. In the two past recent reports he was rated with 32 and 36 marks, respectively. He too was not 30

recommended by the appropriate Department. He is the holder of a University Degree.

5 The applicant in recourse No. 418/85 - Maria Papageorghiou Photiou has twenty-five years of service. In the two past recent reports she was rated with 36 marks in each report. She was recommended by the appropriate Department.

10 Applicant in recourse No. 496/85, - Michael Ioannides - had 18 11/12 years' service. In the two past recent reports he was rated with 36 marks in each report. He was recommended by the appropriate Department. He is the holder of a degree in Music from the Greek Oratorium of Athens.

15 Coming now to the Interested Parties their years of service ranged from 16 11/12 to 20. They were all rated with 36 marks in each of the two past recent reports with the exception of interested parties Saveriades, Christodoulides and HadjiThemistou, who were rated with 35 marks in one of the reports. Further they were all recommended by the appropriate Department. Also they have all attended successfully the educational lessons of the Ministry of Education. In addition interested parties Andreas Vlamis, Klitos
20 Symeonides, Michael Ttofis, Maro Kei, Sonia Stavridou - Kyriakidou and Andreas Mitilineos possess postgraduate education abroad and/or university title.

Recourse No. 337/85.

25 The applicant in this recourse was the most senior of the candidates. As regards merit, his marks are slightly better - albeit by one mark - to three of the interested parties but are the same to the rest. However, all candidates have the recommendation of the Head of Department whereas this applicant does not have such recommendations. As the recommendations of the Head of Department are "an additional merit which cannot be lightly disregarded by an administrative body dealing with promotions. (See
30 *Karagiorgis v. C.B.C.* (1985) 3 C.L.R. 378 at 388; also *Theodossiou v. Republic*, 3 R.S.C.C. 44 at p. 48), this applicant's

seniority in my view cannot be a decisive factor in his favour, in view of the fact that he was not recommended by the appropriate Department. (See *Hadjiantoni v. The Republic* (1983) 3 C.L.R. 1145 at 1158; *Trapellides v. The Republic* (1986) 3 C.L.R. 1861 at 1866). He has failed thus to establish any striking superiority over the interested parties which is necessary in order to justify any interference by this Court with the sub judice decision which in the circumstances I find to be reasonably open and for these reasons this recourse should fail.

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Recourse No. 394/85.

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The reasoning behind my decision in recourse 337/85 applies to applicant No. 1, in recourse 394/85 because the facts are almost the same. Therefore his recourse fails also.

Regarding applicant No. 2 in recourse 394/85, I must say that his non-recommendation by the appropriate Department is not inconsistent with the material in the relevant administrative recourse for he was rated with 32 marks in one of the two past recent reports. Therefore on the material before it, including the recommendation of the appropriate Department, it was reasonably open to the respondent Educational Service Commission to arrive at the conclusion they did. The recourse of applicant No. 2, must therefore fail.

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Recourse No. 418/85.

The applicant in this recourse was ranking equal in merit with the interested parties and was recommended by the appropriate department. Further she has twenty-five years of service whereas the service of the interested parties ranged from 16 11/12 years to 20 years. And yet, she was not selected for promotion and no reasons at all for adopting such a course were given. It has been firmly established by the case law of this Court that seniority prevails when other factors are more or less equal (See *Duncan v. The Republic* (1977) 3 C.L.R. 153). And in this case such other factors were equal and yet the overwhelming seniority of appli-

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5 cant was ignored. I am, thus, bound to conclude that in arriving at the decision to promote the interested parties the respondent Educational Service Commission exercised its discretionary powers in a defective manner and contrary to the principles of administrative law. The sub judge decision must therefore be annulled in so far as applicant in recourse 418/85 is concerned. As against the remaining interested parties the recourse having been withdrawn is dismissed as against interested parties Demetrios Petraki and Irimi Kaloyirou.

10 Recourse No. 496/85.

15 Lastly coming to the applicant in this recourse we find that he is senior to four of the interested parties. He ranks equal in merit with all the interested parties and he is slightly superior - albeit by one mark - to three of them. He, like the interested parties was recommended by the appropriate Department, and yet, no cogent reasons are given why his seniority over interested parties, HjiThemistou, Michaelides and Koumoudhiou, was ignored. Therefore for the reasons appearing in recourse 418/85, his recourse must succeed in so far as the above four interested parties are concerned and must fail in so far as the remaining interested parties are concerned.

20 In the result and for the reasons stated above recourses numbers 337/85 and 394/85 fail and are hereby dismissed.

25 Recourse No. 418/85 succeeds and the sub judge promotions of the interested parties except interested parties Demetrios Petraki and Irimi Kaloyirou, as against whom the recourse was dismissed as withdrawn, must be annulled.

30 Recourse No. 496/85, succeeds so far as interested parties HadjiThemistou, Michaelides and Koumoudhiou are concerned whose promotions are annulled but fails and is hereby dismissed as regards the remaining of the interested parties.

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In the circumstances, however, there will be no order as to costs.

Recourses 337/85 and 394/85 dismissed. Recourses 418/85 and 496/85 succeed in part. No order as to costs. 5