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[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS
SENTONARIS
and

STAVROS SENTONARIS,

Applicant,

and

THE GREEK
COMMUNAL
CHAMBER,
THROUGH

THE GREEK COMMUNAL CHAMBER, THROUGH
THE DIRECTOR OF GREEK EDUCATION,

THE DIRECTOR
OF GREEK
EDUCATION

Respondent.

(Case No. 113/64)

Administrative Law—Transfer of teachers of Greek Communal Elementary schools—Section 21 of the Teachers of Communal Elementary Schools Law, 1963 (Law of the Greek Communal Chamber No. 7 of 1963)—Judicial review of such transfers—Principles applicable—Excepting adverse or punitive transfers, the court will not go into, and evaluate, the reasons of substance of the transfer—Provided there have been neither an improper or arbitrary use by the organ concerned of its discretion nor a misconception of facts or taking into account immaterial factors.

Transfer of the applicant—Procedure followed—Transfer decided by the Appointments Committee functioning as part of the services of the Greek Communal Chamber and set up under sections 3 and 4 of the School-masters, School-teachers and Officers of Communal Schools (Exercise of Administrative Powers) Law, 1963 (Law of the Greek Communal Chamber No. 8 of 1963)—Original decision approved by the Review Committee set up under sections 3 and 5 of the aforesaid Law No. 8 of 1963—Subject matter of this recourse is in substance and effect the original decision as confirmed by the Review Committee, the latter's decision being also part of the subject matter or being, in view of its nature, also executory.

Section 21 of the Communal Elementary Schools Law, 1963 (Law of the Greek Communal Chamber No. 7 of 1963) provides that every teacher is liable to a transfer at any time depending on the exigencies of the service. It provides, further, that after a five-year service at a certain place, a teacher is transferred in the ordinary course, unless there exist serious educational reasons. As reasons for the transfer of a teacher are specified in section 21 (in addition to

educational and disciplinary reasons) reasons of health, family reasons and the recommendation of the head-master of the particular school, based on proper grounds.

The applicant by this recourse, made under Article 146 of the Constitution, seeks the annulment of the decision to transfer him to Flamoudhi village from Lapathos village, as from the 1st September, 1964.

This transfer, along with many other transfers of teachers, was decided upon at a meeting of the 8th August, 1964, of the Appointments Committee functioning as part of the services of the Greek Communal Chamber. Such Committee has been set up under sections 3 and 4 of the Schoolmasters, School-teachers and Officers of Communal Schools (Exercise of Administrative Powers) Law, 1963, (Greek Communal Law 8/63).

The transfer was published on the 19th August, 1964 ; that was the first time when applicant came to know of this transfer. He was subsequently notified on the 24th August, 1964, by means of a letter.

In the motion for relief it is stated in general that it is sought to annul the " decision or act of respondent to transfer applicant to Flamoudhi village ". The decision has been taken, as stated above, on the 8th August, 1964.

In the facts relied upon in support of the application there is set out a further decision in the matter. That is the decision of the Review Committee set up under sections 3 and 5 of Law 8/63 (*supra*). On the 19th August, 1964, by a letter applicant complained against his transfer. His case came up before this Committee on the 31st August, 1964. The applicant presented his complaint in person. Then the Committee decided that though it is evident that there will be some difficulty caused to applicant by his transfer, nevertheless, it was not such as to justify setting it aside : it also expressed the wish that in future postings of applicant it should be borne in mind that Flamoudhi is not ideally suited to him.

Thus, the issue could arise as to whether the subject-matter of this recourse ought to be the original decision of transfer, by the Appointments Committee, or the subsequent decision of the Review Committee, or both.

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Held, (1) :

(a) I have decided not to go at length into the above issue and to treat the decision of the Appointments Committee, as confirmed by the Review Committee, as being in substance and effect the subject-matter of this recourse.

(b) In my opinion the decision of the Review Committee is also part of such subject-matter, as being, in view of its nature, also executory.

(2) I am not entitled to evaluate the reasons of substance on which the transfer of the applicant was based. It is, moreover, clear that it is not a punitive transfer, neither an arbitrary one.

(3) (a) The discretionary power, either at the level of the Appointments Committee or of the Review Committee, has not been exercised improperly.

(b) The decision to transfer the applicant has not been taken under such a misconception concerning the factual situation as would have rendered it a proper subject for annulment.

(c) There is nothing to show that any immaterial or improper factor has been taken into account leading to the transfer of applicant.

(d) There is no ground for this court to interfere with such transfer and this recourse is dismissed.

Recourse fails and is dismissed. No order as to costs.

Cases referred to :

Decision 174 of 1937 of the Greek Council of State (vol. 1937A p. 426).

Recourse.

Recourse against the decision of the respondent to transfer applicant, a primary school-teacher, from Lapathos village to Flamoudhi village, as from the 1st September, 1964.

K. Saveriades, for the applicant.

G. Tornaritis, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of :

TRIANΤAFYLLIDES, J.: In this case the applicant seeks the annulment, by recourse under Article 146, of the decision to transfer him to Flamoudhi village from Lapathos village, as from the 1st September, 1964.

This transfer, along with many other transfers of teachers, was decided upon at a meeting of the 8th August, 1964, of the Appointments Committee functioning as part of the services of the Greek Communal Chamber. Such Committee has been set up under sections 3 and 4 of the Schoolmasters, School-teachers and Officers of Communal Schools (Exercise of Administrative Powers) Law, 1963, (Greek Communal Law 8/63).

The transfer was published on the 19th August, 1964 ; that was the first time when applicant came to know of this transfer. He was subsequently notified on the 24th August, 1964, by means of a letter, *exhibit 3*.

It is not disputed that applicant's transfer was not an ordinary transfer. In case of transfers in the ordinary course the teachers liable to transfer for the ensuing school-year are notified, in accordance with established practice, well before the end of the current school-year. They are also furnished with a list of forthcoming vacant posts so as to indicate their preference for posting. Such preferences are taken into account as much as possible, though not necessarily always.

Actually in the spring of this year, 1964, a list of forthcoming vacancies, for the ensuing school-year 1964-1965, was circulated in accordance with the established practice described hereinbefore. This list is *exhibit 5* and it appears that concerning the Lapathos village-school a post was being anticipated to fall vacant—but not the one held by applicant. Lapathos village has a two-teachers school and the vacancy anticipated concerned the other of the two teachers, Athanassiou. He had been there for about five years and was liable to be transferred. He was junior to applicant, who due to seniority in service, not in post, was in charge of the school.

In the end the said Athanassiou was not transferred at all, and applicant, who had only three years' service at Lapathos village, was transferred.

Mr. Andreas Kouros, the Head of the Department of Elementary Education in the Greek Education Office, has given evidence in this case. I accept that his evidence was given with all due regard to the truth as he knew it or could recollect it.

He told the court that in the case of applicant there was originally no intention to transfer him at all. He said that, due to the unexpected call-up for military service of

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about 120 teachers, new transfers had to be made, without complying with the existing practice involving notification of teachers liable to transfer and circulation of forthcoming vacancies. Such practice had already been adhered to in March and the need for further transfers arose in the summer.

Also in other years transfers had to be made sometime belatedly, without the established practice of notification, etc. being followed, but it appears that this year, due to exceptional circumstances, a much larger number of belated transfers had to be made.

He said, further, that both schools at Flamoudhi and Lapathos were of the same grade ; that in transferring applicant to Flamoudhi account was taken of the fact that it is very close to his home village, Akanthou.

According to Mr. Kouros the call-up of teachers in the summer, the fact that retired teachers, who were to be used to fill the gaps, were ready to serve only in their home towns, and other relevant circumstances connected with the present anomalous situation, made it necessary for Athanassiou not to be transferred from Lapathos, though he insisted, and for applicant to be transferred to Flamoudhi. Such a course was necessitated by the special reasons arising out of this year's anomalous situation.

He insisted that no disciplinary reasons were involved in the transfer of applicant ; only reasons of the exigencies of the service.

Mr. Kouros admitted the existence of a circular, dated 13th May, 1964, to the effect that due to the existing anomalous situation transfers this year should be limited to the minimum (see *exhibit 6*).

Accepting, as I do, as true the evidence of Mr. Kouros, I have reached the conclusion that applicant's transfer, though made after the issue of the circular, *exhibit 6*, and in spite of the original intention not to transfer him this year, was made due to exigencies of the service, which arose in view of the subsequent call-up, from June onwards, of over a hundred teachers, and in view of the effects of the current anomalies.

The question now before me is whether there are grounds justifying annulment of such transfer of applicant.

The principle applicable in judicially reviewing transfers is, in my opinion, properly expounded in "The Law of Civil Administrative Officers" by Kyriakopoulos 1954

p. 298 «Ἐκτὸς τῆς δυσμενοῦς μεταθέσεως, ἥτις, . . . ἀποτελεῖ ποινήν, πᾶσα ἄλλη μετάθεσις—περὶ ἧς καὶ μόνον πρόκειται ἐνταῦθα—ἀποτελεῖ ἀπλοῦν διοικητικὸν μέτρον, τὸ ὁποῖον τεκμαίρεται, ὅτι λαμβάνεται πρὸς τὸ συμφέρον καὶ τὰς ἀνάγκας τῆς ὑπηρεσίας. Διὰ τοῦτο, κατὰ τῆς σχετικῆς ἀποφάσεως τοῦ ὑπηρεσιακοῦ συμβουλίου δὲν χωρεῖ προσφυγὴ τῆς οὐσίας ἐνώπιον τοῦ Συμβουλίου τῆς Ἐπικρατείας». (“Except for an adverse transfer, which . . . amounts to a punishment, every other transfer—with which only we are concerned here—amounts to a simple administrative step, which is presumed to have been taken for the benefit and exigencies of the service. For this reason, against the relevant decision of the Service Board there does not lie a recourse on the substance before the Council of State”). And in a footnote it is added «Ἡ κρίσις τῆς διοικήσεως ἐπὶ τῶν λόγων, οἵτινες ὑπαγορεύουσι τὴν μετάθεσιν δὲν ὑπόκειται εἰς τὸν ἔλεγχον τοῦ ἀκυρωτικοῦ δικαστοῦ ἐκτὸς ἂν συντρέχη κακὴ χρῆσις τῆς διακριτικῆς ἐξουσίας ἢ πλάνη περὶ τὰ πράγματα». (“The judgment of the administration concerning the reasons, which dictate the transfer, is not subject to the control of an annulling court except if there exists an improper use of the discretionary power or a misconception concerning the factual situation”).

Actually the same, concerning the judicial review, is stated in the “Conclusions from the Jurisprudence of the Council of State” (an official publication in Greece) at p. 340, with the addition of “non-taking into consideration of material factors”, as a ground for annulment. One of the authorities cited in support is Decision 174/1937 of the Greek Council of State (vol. 1937A, p. 426). That was, as a matter of fact, a case of a transfer of a school-teacher. Among the grounds alleged by her in the recourse was that her transfer was based on untrue allegations of fact; this having been determined not to be so the Council stated «ἡ δὲ ὑπὸ τῆς Διοικήσεως γενομένη τοιαύτη ἢ τοιαύτη ἐκτίμησις τῶν στοιχείων τούτων ὡς καὶ τῶν λοιπῶν ἐν τῷ φακέλλῳ εὐρισκομένων, ἐφ’ ὧν αὕτη ἐστήριξε τὴν ἀπόφασίν της εἶναι ἀνέλεγκτος ὑπὸ τοῦ Συμβουλίου τούτου κρίνοντος ὡς ἀκυρωτικοῦ». (“and the evaluation one way or the other by the Administration of these factors or any others that are stated in the file, on which it has based its decision, is not subject to control by this Council when adjudicating as a court of annulment”).

Before applying the above principles to this case it is necessary to refer to an issue concerning the exact nature of the decision, relating to the transfer of applicant, which is the subject-matter of this recourse.

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In the motion for relief it is stated in general that it is sought to annul the "decision or act of respondent to transfer applicant to Flamoudhi village". The decision has been taken, as we have seen, on the 8th August, 1964.

In the facts relied upon in support of the Application there is set out a further decision in the matter. That is the decision of the Review Committee set up under s.s. 3 & 5 of the abovementioned Law 8/63. On the 19th August, 1964, by *exhibit* 4, applicant complained against his transfer. His case came up before this Committee on the 31st August, 1964. The applicant presented his complaint in person. Mr. Kouros stated the official view. Then the Committee decided that though it is evident that there will be some difficulty caused to applicant by his transfer, nevertheless, it was not such as to justify setting it aside; it also expressed the wish that in future postings of applicant it should be borne in mind that Flamoudhi is not ideally suited to him (see *exhibit* 1).

Thus, the issue could arise as to whether the subject-matter of this recourse ought to be the original decision of transfer, by the Appointments Committee, or the subsequent decision of the Review Committee, or both.

No question of the recourse being out of time under Article 146.3 arises in relation to the first decision. It was filed on the 15th September, 1964, within seventy-five days from the 19th August, 1964, when applicant came to know of the transfer. For this reason, I have decided not to go at length into the above issue and to treat the decision of the Appointments Committee, as confirmed by the Review Committee, as being in substance and effect the subject-matter of this recourse. In my opinion the decision of the Review Committee is also part of such subject-matter, as being, in view of its nature, also executory (see Stasinopoulos, on "Law of Administrative Acts", (1951) pp. 125-126).

In the light of the above-discussed principles of Administrative Law I reached the conclusion that I am not entitled to evaluate the reasons of substance on which the transfer of applicant was based. It is, moreover, clear that it is not a punitive transfer, neither an arbitrary one. As a matter of fact before the Review Committee the applicant tried to present it as being punitive, in part, but after a statement by Mr. Kouros that it was not at all of a disciplinary nature applicant did not appear to press this point further, nor was anything of this nature alleged before this Court.

There remains only to see if there is a wrong use of the discretionary power of transfer or a misconception concerning the factual position or if any material factors have not been taken into account.

The first complaint of applicant is that for his transfer the established practice of prior notification, etc., has not been followed. In my view the existence of such practice does not preclude the making of transfers proved necessary at a time when compliance with such a practice is no longer possible. According to the evidence of Mr. Kouros such belated transfers may be always necessary. This year the number of such transfers was extraordinarily high due to the extraordinary situation ; actually, according to the witness, all transfers, even the ordinary ones, had to be delayed until August, from June when they would have been made in the regular course. Also the applicant was not liable ordinarily to a transfer this year—this is common ground. So the established practice which is set in motion in the spring of each year could not had been applied to his case, as applied in regular transfers.

The second complaint of applicant is that he had been serving at Lapathos village for three years only and that he was not liable to be transferred before the expiration of five years. He relied in this respect on section 21 of the Teachers of Communal Elementary Schools Law, 1963 (Greek Communal Law 7/63). The said section provides that every teacher is liable to a transfer at any time depending on the exigencies of the service. It provides, further, that after a five-year service at a certain place, a teacher is transferred in the ordinary course, unless there exist serious educational reasons. As reasons for the transfer of a teacher are specified in section 21, (in addition to educational and disciplinary reasons) reasons of health, family reasons and the recommendation of the headmaster of the particular school, based on proper grounds. It is provided, further, that transfers are made either on the initiative of the transferring authority or on application of the interested teacher and that, whenever possible, notice of a transfer to be made is given to the teacher affected.

Mr. Kouros in his evidence has stated that a teacher is usually deemed to be transferable after a five-year stay at a certain place and not before, unless there are serious reasons to the contrary. Such view is in accordance with the provisions of section 21. But I find myself unable to agree with the contention of counsel for applicant, based on section 21, that nobody should be transferred unless he has

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completed five years at a certain place. There is nothing in such section which may be deemed to be open to such an interpretation. On the contrary, the opening sentence of that section says expressly «Πᾶς διδάσκαλος ὑπόκειται εἰς μετάθεσιν ὅπουδήποτε ἀναλόγως τῶν ἀναγκῶν τῆς ὑπηρεσίας». (“Every teacher is liable to a transfer at any time depending on the exigencies of the service”). Then follows the sentence relied upon by counsel for Applicant «Μετὰ 5ετῆ ὑπηρεσίαν εἰς ἓνα τόπον ὁ διδάσκαλος μετατίθεται κανονικῶς πλὴν ἐὰν συντρέχουν σοβαροὶ ἐκπαιδευτικοὶ λόγοι» (“After a 5-year service at a certain place a teacher is transferred in the ordinary course, unless there exist serious educational reasons”). In my opinion, this provision does not bear out the contention that it is not proper to transfer a teacher before the completion of a five-year stay at a certain place.

While on the point of the provisions of section 21, it may be observed that, as stated above, notice of a proposed transfer is to be given to a teacher whenever this is possible, and this clearly allows room for a transfer to be made without notice in advance (under an established practice or otherwise) whenever, in the circumstances, such transfer ought to be made to meet an unforeseen situation, as it has been the case with the present transfer of applicant, or for other pressing reasons.

Counsel for applicant has also relied on a circular of the Office of Greek Education, dated the 27th March, 1962, which is exhibit 2. Such circular deals with matters applicable to transfers of school-teachers. It states, *inter alia*, that teachers are liable to transfer after a five-year stay in the same town or village.

In my opinion, such circular cannot be taken to be strictly applicable to a case of an extraordinary transfer, such as the transfer of applicant *sub judice*. Furthermore, such circular must be deemed to have been rendered inoperative to the extent to which it conflicts with the afterwards enacted section 21 of the aforesaid Law 7/63 and, particularly, its provision that every teacher is liable to transfer at any time depending on the exigencies of the service. ;

The next submission of applicant is that respondent must be presumed to have acted in excess or abuse of powers because in the decision of the Review Committee, *exhibit 1*, no educational grounds have been put forward and it was too late at the hearing of this case to allege such grounds. In addition, applicant's rights were prejudiced in that the ordinary procedure has not been followed in his case and he

has been put into grave family difficulties. Counsel stressed the family reasons of applicant, in view of the fact that they are specifically to be taken into account under section 21 of Law 7/63.

I have already dealt with the allegation that applicant has not been notified under the established practice. He also did not have advance notice of his impending transfer. Though this may have caused him some distress and inconvenience, I can only repeat what I have stated earlier in this judgment, that it was not reasonably possible in my opinion to comply with the established practice in his case ; also, in the circumstances in which his transfer was decided upon, it was not reasonably possible to give him advance notice thereof. He saw his transfer, together with a great number of other transfers, in the press on the 19th August, 1964—before he received a personal notification a few days later—and he was due to take up duty on the 1st of September ; the time limit allowed to him was admittedly short but, in all the circumstances, I do not think that the respondent has acted in such manner as to amount to excess or abuse of powers. The powers of transfer were duly exercised, in accordance with the relevant legislation, and the respondent has acted as best as possible in the face of extraordinary difficulties in the service, due to the call-up in the summer months of over a hundred teachers and cognate factors.

As regards the allegation that it is too late to put forward now any educational grounds in support of the transfer of applicant, when no such grounds are specifically stated in the decision of the Review Committee, *exhibit 1*, it must not be lost sight of that the subject-matter of this recourse is the original decision to transfer applicant, as confirmed by the Review Committee, and not the decision of the Review Committee only ; therefore, the latter decision need not have set out the reasons for the transfer.

In accordance with the passage cited from the textbook by Kyriakopoulos, a transfer is presumed to have been made in the interests of the service. I see no reason to treat this transfer differently. It must be presumed to have been made in the exigencies of the service as envisaged under section 21. When respondent was challenged to substantiate this presumption, evidence was adduced for the purpose in the form of the sworn testimony of Mr. Kouros. I have accepted his evidence and, therefore, I find that the presumption remains un rebutted.

Counsel for applicant has, furthermore, submitted that the

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Review Committee proceeded upon the wrong principle that it was up to the applicant to satisfy them that the transfer was not justified, whereas it was up to the respondent to satisfy them that it was justified in the circumstances.

The Review Committee, under section 5 (4) of Law 8/63, has as its function to examine complaints against, *inter alia*, decisions of the Committee of Appointments. Such function, by its very nature, entails that the decision complained of has been properly taken, unless the Review Committee comes to the conclusion that it should be rescinded or varied. It is, therefore, up to the person complaining to satisfy the Review Committee that any such course of action is indicated. The Review Committee is not a primary organ of administration but a means of administrative review of decisions taken by such a primary organ as the Appointments Committee. It was, therefore, up to the applicant in this case to satisfy the Review Committee that the decision to transfer him should have been set aside or varied and the Review Committee has not misdirected itself in any way concerning the manner of approach to the subject under its consideration.

For all the above considerations, I have reached the conclusion that the discretionary power, either at the level of the Appointments Committee or of the Review Committee, has not been exercised improperly.

I am also of the opinion that the decision to transfer applicant has not been taken under such a misconception concerning the factual situation as would have rendered it a proper subject for annulment. It is true that Mr. Kouros in his evidence has stated that, in deciding to post applicant at Flamoudhi, he took into account that it is the nearest to his home village Akanthou and, therefore, he must have thought that it was the more convenient for applicant to be transferred to at short notice ; but Mr. Kouros stated that, even if such transfer was inconvenient for applicant, he would still have to make it in the exigencies of the service. I, therefore, accept that the paramount consideration was the need to post applicant at Flamoudhi village to fill the vacancy existing there and the proximity of Flamoudhi to his home village Akanthou was treated as an additional secondary reason. So even if Flamoudhi is not a convenient post the validity of the transfer is not impaired.

It may well be that at the time when the Appointments Committee decided to post applicant at Flamoudhi, they may not have had in mind all that was stated by applicant in his

protest against his transfer, which is *exhibit* 4. There he stated, *inter alia*, in addition to the fact that he was not liable normally to be transferred and that the established procedure concerning transfers had not been complied with, that he had worked for six consecutive years already at small schools and that Flamoudhi was not a suitable place for him for family reasons, in that his youngest child needed frequent medical supervision. He also added that the road from Akanthou to Flamoudhi is bad and impassable during winter months. All these considerations were before the Review Committee and so its decision not to interfere with the transfer already made cannot be said to have been taken under a misconception of facts, or without taking into account all material facts either.

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The provision of such a means of administrative review as the Review Committee is intended obviously to guard against any possibility of a decision being taken concerning a teacher, in a manner overlooking any of his personal circumstances, among other things, and in this respect the Review Committee has discharged fully its said function, concerning the transfer of applicant. This Court should not interfere with the result of such administrative review in so far as what was decided by the Review Committee was reasonably open to it in the circumstances ; such result was in my opinion, reasonably open to the said Committee.

Lastly, there is nothing to show that any immaterial or improper factor has been taken into account leading to the transfer of applicant.

In the light of all the relevant principles of administrative law there is no ground for this Court to interfere with such transfer and this recourse is dismissed.

I would, however, like to add the following observation : It must not be overlooked that in the decision of the Review Committee, *exhibit* 1, it is recognized that the posting of the applicant at Flamoudhi is a matter involving some difficulty for him and that this is not an ideal post for the applicant. These considerations were in the circumstances not found sufficient to reverse the decision to transfer applicant but they are very material as regards any future action concerning his posting at Flamoudhi. In my opinion, in view of such considerations, applicant is entitled to be treated as a person who need not await the five-year period, envisaged under section 21, to lapse, before he may be deemed to be

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transferable in the ordinary course, and as a person who has reasons, envisaged by sub-section (2) of section 21, to be transferred from Flamoudhi.

If, at the end of the current school year applicant were to apply for a transfer, and such transfer were to be refused without adequate and strong grounds, then possibly the burden cast upon him to establish that such refusal was taken in an improper exercise of the relevant discretion, on the basis of section 21, might not be a very difficult one to discharge. By saying this, I do not intend in any way to prejudge the issue of a possible transfer of applicant. On the other hand, I would not like the authorities concerned, nor the applicant, to think that, in the circumstances of this case, his transfer is a matter where no future redress is available to him or where the authorities have no particular duty to see that the position is looked into as early as permissible in prevailing circumstances. For the same reason, that is the difficulties involved for applicant in being transferred to Flamoudhi, I have decided that he was justified in making this recourse and I am making no order as to costs, so as not to add any further difficulty on those arising out of his transfer in question.

Recourse fails and is dismissed accordingly. No order as to costs.