

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MARIA SOPHOCLEOUS,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER AND/OR
2. THE REPUBLIC THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

Respondents.

(Case No. 141/63).

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Administrative Law—Greek Communal Kindergarten Teachers—Refusal of Respondent to appoint Applicant as a Kindergarten teacher on the ground that she was not qualified under the relevant legislation—Regulations 1/61, published on 5th January, 1961, Regulations 4 and 7—Refusal not decided in accordance with the relevant regulations, as Applicant's request was not examined in the light of Regulation 7, which was treated as not being applicable—Application for appointment to be reconsidered in the light of Regulation 7.

This recourse is against the refusal of Respondent to appoint Applicant as Kindergarten teacher.

Applicant is a graduate of a five-form secondary school and she has also followed a special course for kindergarten teachers at the Paedagogical Academy. She has been employed in kindergarten work since 1955, first at the kindergarten of the American Academy, then for three years at the kindergarten run by the Village Commission of Kythrea, and since 1959 at the "Mana" kindergarten in Nicosia; she was working at the "Mana" kindergarten when it became a communal institution under Respondent and she received an appointment by Respondent as a substitute teacher of such kindergarten for the school-year 1960-1961.

In September, 1961, her appointment at the said kindergarten was not renewed for the ensuing school-year 1961-1962.

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Held, I. The refusal to appoint Applicant has not been decided upon in accordance with the relevant Regulations, in that her application was not examined in the light of regulation 7, which was treated as not being applicable, and that, therefore, the decision in question has to be annulled and the application of Applicant for appointment has to be reconsidered, in the light of regulation 7, *inter alia*, and a new decision should be reached.

II. As regards costs, Applicant should receive only part of her costs which I fix at £12.

Decision complained of declared null and void.

Recourse.

Recourse against the refusal of the Respondents to appoint applicant as a Kindergarten teacher.

A. Triantafyllides for the applicant.

G. Tornaritis for the respondents.

Cur. adv. vult.

The following direction was given by:

TRIANTAFYLLIDES, J.: As this Case has been heard, and judgment was reserved, before the enactment of Law 12/65, it is hereby directed in view of the enactment of such Law, and in view of sections 14 and 15 thereof in particular, that the title of this Case be amended at this stage by adding a 2nd Respondent, as follows: "And/or 2. The Republic, through the Attorney-General as successor to the Greek Communal Chamber". Such amendment does not relate at all to the substantive issues of this Case, but it is necessary in the interests of justice in order to bring the title of this Case in conformity with the realities of the situation as it has shaped itself since judgment was reserved.

The title, therefore, of these proceedings, which should be deemed to have been amended accordingly, reads now as follows:

"Between:

Maria Sophocleous,

Applicant,

and

1. The Greek Communal Chamber
and/or

2. The Republic through the Attorney-General, as
successor to the Greek Communal Chamber,

Respondents".

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The facts of the case sufficiently appear in the judgment delivered by:-

TRIANAFYLLIDES, J.: In this Case Applicant applies for a declaration annulling the refusal of Respondent to appoint her as a kindergarten teacher.

The main facts of this Case are found to be as follows:—

The Applicant is a graduate of a five-form secondary school and she has also followed a special course for kindergarten teachers at the Paedagogical Academy. She has been employed in kindergarten work since 1955, first at the kindergarten of the American Academy, then for three years at the kindergarten run by the Village Commission of Kythrea, and since 1959 at the "Mana" kindergarten in Nicosia; she was working at the "Mana" kindergarten when it became a communal institution under Respondent and she received an appointment by Respondent as a substitute teacher of such kindergarten for the school-year 1960-1961.

In September, 1961, her appointment at the said kindergarten was not renewed for the ensuing school-year 1961-1962.

Applicant was not re-appointed because she did not possess the qualification of being a graduate of a six-form secondary school (being only a graduate of a five-form secondary school)

She and her brother had contacts with the President of the Greek Communal Chamber and the Director of the Greek Education, who secured eventually for Applicant a scholarship for a special course for kindergarten teachers in Israel, where Applicant went in September, 1962, and returned in March, 1963. She obtained there a certificate that she had participated in an intensive course for nursery and kindergarten teachers at the International Training Centre for

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Community Services and that she had passed also successfully the final examinations of the course in question, with subjects such as psychology of early childhood, theory of kindergarten and philosophy of education, observation of practical work in kindergartens, eurythmics etc.

Though both Applicant and her brother were under the definite impression that the President of the Greek Communal Chamber had undertaken to appoint Applicant as a kindergarten teacher after her return from Israel, both such President and the Director of Greek Education appeared again to find difficulties in appointing Applicant as a kindergarten teacher straightaway and she was asked to apply formally in writing for appointment. Applicant did so.

On the 9th of April, 1963, the Director of Greek Education forwarded Applicant's application to the Administrative Officer of the Greek Communal Chamber stating that in accordance with the Regulations in force she could not be appointed as a kindergarten teacher, but she could be considered as being a qualified assistant kindergarten teacher; there was, however, no provision for such a post. The Director requested that the matter should be examined by the Committee of Administration of the Chamber so that he could be enabled to give a definite reply to Applicant.

It seems that the matter was referred first to the Education Committee of the Chamber which decided on the 10th May, 1963, that it could not recommend the appointment of Applicant as a kindergarten teacher because she did not have the qualifications laid down by law and there was no provision for assistant kindergarten teachers.

On the 28th May, 1963, the Committee of Administration decided that Applicant should be told that she could not be appointed as she was not qualified under the relevant legislation. This refusal to appoint her was communicated to Applicant on the 6th June, 1963.

Applicant wrote back asking in what way she was lacking in qualifications and she received a letter dated the 29th June, 1963, stating that only graduates of a six-form secondary school possessing a diploma of a Kindergarten Teachers' School or of a Paedagogical Academy could be considered as being qualified.

Regarding the legislation on the basis of which Applicant was refused appointment there appeared to be some doubt, during the interlocutory proceedings, as to whether it was Regulations 1/61, published on the 5th January, 1961, or Regulations 5/61, published on the 28th January, 1961, but at the hearing counsel for Respondent definitely chose to rely only on Regulations 1/61, stating that Regulations 5/61 concerned really only private kindergartens. I am, indeed, inclined to agree with his submission on this point and we can, therefore, for the purposes of this Case limit ourselves to Regulations 1/61.

Regulation 4 thereof lays down the qualifications for appointment as a kindergarten teacher; some of them are not relevant in this Case as it does not appear to be disputed that Applicant possesses them. The material part of regulation 4 is that which lays down the academic qualifications; they are "ἀπολυτήριον ἑξατάξιου σχολῆς Μέσης Ἐκπαίδευσως καὶ πτυχίον Σχολῆς Νηπιαγωγῶν ἢ Παιδαγωγικῆς Ἀκαδημίας" (a graduation certificate of a six-form secondary school and a diploma of a Kindergarten Teachers' School or a Paedagogical Academy). Under such regulation 4 it would appear that Applicant, who only has a graduation certificate of a five-form secondary school, does not possess the academic qualifications required.

Regulation 7 provides, however, that "those who are now (vūv) serving with the approval (τῆ ἐγκρίσει) of the Greek Education Office as..... kindergarten teachers may, irrespective of the above laid down qualifications, be accepted as being qualified, by decision of the Director to be approved by the Committee. In case of any disagreement the Committee of Selection and Administration shall decide". The "Director" referred to here is the Director of Greek Education and the "Committee" is the Committee of Education of the Greek Communal Chamber.

It has been submitted by counsel for Respondent that this regulation 7 could not apply to the case of Applicant because at the time when Applicant applied for appointment she was not "serving", as her appointment, for the school-year 1960-61, as substitute teacher at the "Mana" kindergarten had expired long ago. He submitted, also, that, in any case, regulation 7 applies to persons in permanent service, at the

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material time, and not to persons on temporary appointment.

On the other hand counsel for Applicant submitted that regulation 7 was properly applicable to the case of Applicant.

I am of the opinion that the expression “now” (νῦν) in regulation 7 means “at the time when these Regulations 1/61 are published” i.e. on the 5th January, 1961, and that the expression “serving with the approval (τῆ ἐγκρίσει) of the Greek Education Office” is wide enough to include service as a substitute teacher on an appointment for a whole school-year. In reaching such conclusion I have borne in mind the obvious intention of regulation 7 to safeguard the interests of those educationalists who were already in service.

It is clear from the whole line of argument of counsel for Respondent in this Case that Respondent never considered Applicant’s case in the light of regulation 7, as it was thought that it was not applicable.

It follows that the Director of Greek Education never addressed his mind to the possibility of deciding to treat Applicant as being qualified, by virtue of regulation 7, even though she has not graduated from a six-form secondary school. He never had the opportunity of deciding whether to exercise his relevant discretion in her favour. This is also shown by his reference of Applicant’s case, on the 9th April, 1963, to the Committee of Administration of the Communal Chamber and not to the Committee of Education, to which he would have referred it had he been acting under regulation 7.

His relevant minute of the 9th April, 1963, cannot be regarded as a decision taken by him under regulation 7 or otherwise. The Director merely raised the problem and asked for instructions. On the assumption that regulation 7 was not applicable he may have acted quite properly. But this assumption, as I have already indicated, is erroneous. Applicant on the 5th January, 1961, when Regulations 1/61 (including regulation 7) were published was serving as a substitute kindergarten teacher—for a regular educational year under an express appointment of the Greek Education Office—and, therefore, she was entitled to have the relevant discretion of the Director, under regulation 7, exercised in relation to her case, though not necessarily in her favour.

As such discretion was never exercised at all, in that regulation 7 was wrongly treated by Respondent as inapplicable, it follows, necessarily, that her application has not been dealt with in accordance with the legislation properly applicable to it.

The mere fact that the letter in question of the Director was eventually submitted, though not by him, to the Committee of Education before being placed before the Committee of Administration, is not sufficient to cure the defect which exists, as found in dealing with the case of Applicant, because regulation 7 presupposes the exercise of the discretion of the Director in the matter and the reaching of a decision by him, which is then submitted for approval to the Committee of Education. In this case, due to the view that Applicant was not entitled to the benefit of any latitude under regulation 7, the Director did not address his mind at all thereunder to the issue of whether or not Applicant ought to be treated as a qualified kindergarten teacher and, therefore, the consideration of the matter by the Committee of Education did not take place on the basis of a decision reached under regulation 7 by the Director of Education, as envisaged thereunder.

Further, the Committee of Administration did not deal with the case of Applicant under regulation 7, as if it was a case of disagreement of the Committee of Education and the Director of Greek Education, but the Committee of Administration, as an administrative organ, decided directly the matter after it had been referred to it by the Director of Greek Education who did not decide it himself.

Nor is this a Case in which it might be said that not dealing with the matter at all in the light of regulation 7 is not a fatal defect because Applicant did not have any merits entitling her possibly to a favourable decision under regulation 7. On the contrary, the Director might quite possibly had been inclined to exercise his discretion in favour of Applicant, especially in view of the fact that it was the President of the Greek Communal Chamber and he himself who did their best to help Applicant secure a scholarship in order to supplement her relevant qualifications.

In the circumstances I have no difficulty at all in holding that the refusal to appoint Applicant has not been decided upon in accordance with the relevant Regulations, in that her application was not examined in the light of regulation 7,

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which was treated as not being applicable, and that, therefore, the decision in question has to be annulled and the application of Applicant for appointment has to be reconsidered, in the light of regulation 7, *inter alia*, and a new decision should be reached.

In view of this it is not necessary to deal in the Case with any other issue raised herein.

As regards costs I am of the opinion that, as no doubt the erroneous view of the effect of regulation 7 was taken *bona fide*, Applicant should receive only part of her costs which I fix at £12. I had also to take into account in fixing the costs the benefit of the scholarship which was secured by Respondent for Applicant.

Decision complained of declared null and void. Order as to costs as aforesaid.