IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STALO KANTOUNA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION,
2. THE MINISTER OF FINANCE,
3. THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

(*Case No.* 33/66)

Secondary Education—Schoolmaters—Recourse against decision regrading Applicant from grade B to grade C as a secondary education schoolmistress—The Masters of Communal Schools Law, 1963 (*Law of the Greek Communal Chamber No.* 10 *of* 1963), *sections* 5(*b*)(*i*) *and* 7(2)—Sub judice *decision, the product of a misconception of the essentials of the situation, and, therefore, the result of a defective exercise of the relevant discretion of Respondent* 3—*Consequently it has to be annulled as being contrary to law and taken in excess and abuse of powers.*

Administrative Law—Discretionary powers of the administration—Defective exercise thereof as a result of a misconception of the essentials of the situation—Decision being the result of such defective exercise of the relevant discretion has, therefore, to be annulled as being contrary to law and taken in excess and abuse of powers—Decisions of the administration—Should be duly reasoned.

Discretionary powers—Discretion of the administration—Defective exercise thereof—Decision being the product of a misconception as to the essentials of the situation—See above.

Abuse and excess of powers—Article 146.1 *of the Constitution—See above.*

Decision contrary to law—Article 146.1 *of the Constitution—See above.*

Excess and abuse of powers—See above.

Reasons—Decisions of the Administration must be duly reasoned —See above under Administrative Law.

Decisions of the administration—Must be duly reasoned—See above under Administrative Law.

By her recourse, under Article 146 of the Constitution, the Applicant complains against a decision of the Respondent 3 regrading her from grade B to grade C as a secondary education school-mistress.

It appears that the Applicant failed to comply with repeated requests on behalf of the Education Office to produce the required general education certificates in England (G.C.E.). As a result, on the 24th January, 1966, a letter was addressed to Applicant by Respondent 3 to the effect that it (*viz.* the Educational Service Committee) has decided, in the light of section 7(2) of the Masters of Communal Schools Law, 1963 (Law 10 of 1963 of the Greek Communal Chamber) and in view of the considerable time that had elapsed since her appointment to the service, that she (Applicant) was to be regarded as appointed and was to be classified, on the basis of her qualifications, in grade C instead of grade B in which she was until then classified.

The G.C.E. certificates were only relevant under section 5(b)(i) of the said Law No. 10 of 1963 to the question of appointment to the post of schoolmistress and not to the question of classification as such. On the other hand the said section 7(2) (*supra*) gives power to the Respondent 3 to revoke improper appointments.

In annulling the *sub judice* decision the Court:-

Held, (1). On the material before the Court as set out in the long history of events (see the judgment post), I have reached the conclusion that the *sub judice* decision is the product of a misconception of the essentials of the situation and, therefore, it has been taken through a defective exercise of the relevant discretion of Respondent 3; therefore it is necessary to annul such decision and let the matter be dealt with afresh by Respondent 3.

(2) I have reached this view because of, *inter alia*, the following reasons:

(a) The G.C.E. certificates (*supra*) were only relevant under section 5(b)(i) of Law No. 10 of 1963 (*supra*) to the question of her being qualified to be appointed at all as a schoolmistress, and not to the question of her classification as such.

(b) It could not be said that Applicant was classified previously in grade B because it was thought that she had passed the G.C.E. examinations in three subjects, as alleged by her.

(c) It appears that, when Applicant could not produce such certificates, Respondent 3 approached, at the beginning, the matter correctly, by deciding to consider whether, in the circumstances, and in the light of section 7(2) of the said Law No. 10 of 1963 (*supra*), it was proper to revoke the appointment of the Applicant; that section gives the right to Respondent 3 to revoke an appointment—together, naturally, with the consequent classification of the person concerned—but it does not give the right to Respondent 3 to regrade an educationalist on the ground that his or her appointment was not validly made.

(d) But, suddenly, on the 18th January, 1961, Respondent 3 took the view that, because of the time that had elapsed, it should not proceed to revoke the appointment of Applicant, but it should classify her in grade C in view of her qualifications. It is not stated in the *sub judice* decision—and to that extent such decision is defective, also, for lack of due reasoning—what were the qualifications the Applicant was lacking in this respect; if they were those required under the said section 5(b)(i) (*supra*) then it means that the *sub judice* decision was based on irrelevant considerations because, as already pointed out, the said qualifications were only relevant to the validity of the appointment, as such, of the Applicant; their absence could in no way lead merely to the regrading of the Applicant; nor could her classification be validly suspended on such a ground, either.

(3) At some stage during the course of events the possibility of disciplinary proceedings being instituted against the Applicant, for misleading the authorities in relation to her qualifications, had been mentioned. But the *sub judice* decision taken on the 18th January, 1966, cannot be treated as a valid exercise of disciplinary powers against the Applicant because, irrespective of any other consideration, it is quite clear that the relevant disciplinary procedure had not been set in motion and Applicant was not called upon to appear before Respondent 3 to defend herself.

(4) For all the above reasons the decision of Respondent 3 of the 18th January, 1966, and communicated to Applicant by the letter of the 24th January, 1966, (*exhibit* 2) has to be annulled as being contrary to law and in excess and abuse of

powers. Respondent 3 will have to revert to the matter as a whole, in the light of the relevant legislation and of this judgment.

Sub judice decision annulled.
No order as to costs.

Recourse.

Recourse against a decision regrading Applicant from grade B to grade C as a secondary education schoolmistress.

A. Triantafyllides, for the Applicant.

G. Tornaritis with *A. Korfiotis,* for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this Case the Applicant complains against a decision regrading her from grade B to grade C as a secondary education schoolmistress.

The Applicant complains, further, against a consequential decision to pay her, as from the 1st July, 1965, a salary on the basis of a classification in grade C, instead of on the basis of a classification in grade B, and she complains, also, against an alleged omission to establish her in the service after the conclusion of two years' service.

The two latter complaints of the Applicant are ancillary to her first one regarding her regrading.

The decision about the classification of the Applicant in grade C was communicated to her by a letter dated the 24th January, 1966, (see *exhibit* 2).

The history of events which led to *exhibit* 2 is as follows:-

The Applicant Stalo Kantouna (née Atteshli) obtained in 1960 a certificate from the London Northern Polytechnic to the effect that she had completed a course of study in Interior Design and Decoration and had passed the examinations held therein (see *exhibit* 15); she studied for the purpose at the said Polytechnic for a period of three years.

On the 3rd September, 1962, the Applicant applied to be registered as a secondary education schoolmistress, with a view to teaching Art and Domestic Science (see *exhibit* 9).

On the 12th February, 1963, she was offered an appointment as a schoolmistress to teach Art at a secondary education school in Famagusta. Such appointment was to be on a month to month basis for the period from the 14th February, 1963 to the 10th July, 1963; and the Applicant was classified for the purpose in grade C (see *exhibit* 10).

The Applicant wrote back on the 26th February, 1963, complaining that she ought to have been classified in grade B and pointing out that she had studied for three years at the Northern Polytechnic and that she had passed in respect of four subjects the examinations for the General Certificate of Education in England (G.C.E.) (see *exhibit* 10A).

On the 8th March, 1963, a new appointment, the same as the previous one, but classifying the Applicant in grade B was offered to her (see *exhibit* 1).

After the termination of such appointment, in July 1963, the Applicant was informed by letter dated the 24th August, 1963, and signed by the Director of the Education Office, that by a decision taken by the Appointments Committee in the Education Office and confirmed by the Administration Committee of the Greek Communal Chamber, she had been appointed on probation as a permanent schoolmistress, for service in communal secondary schools (see *exhibit* 11).

The relevant decision of the Appointments Committee is dated the 9th August, 1963. The minute-book in which it has been entered has been inspected by the Court, but, with the consent of the parties, it was not made an *exhibit*, as it is continuously needed, still, in the Ministry of Education for reference thereto in connection with current work. No mention is made therein about the grade in which the Applicant was classified on being permanently appointed.

But there can, really, be no doubt, on the basis of all the material before the Court, and especially in view of the fact that the Applicant was granted a salary based on a classification in grade B, that in fact she was classified, at the time, in grade B.

On the 14th January, 1964, the Appointments Committee reverted to its decision of the 9th August, 1963, regarding the Applicant. In the relevant minutes (see *exhibit* 12) it is clearly stated that on the 9th August, 1963, the Committee had classified the Applicant in grade B; thus, it appears that on the 9th August, 1963, it was decided, indeed, to classify the Applicant in grade

B, but this was not expressly recorded. It was decided on that day—the 14th January, 1964—by the Appointments Committee, that as the certificate issued to the Applicant by a Convent School, to the effect that she had studied there for three years, did not appear to be a certificate of graduation from such school, the classification of the Applicant should be suspended until she would produce a graduation certificate from the said school.

This decision was not communicated, as such, to the Applicant but on the 17th February, 1964, the Director of the Education Office wrote to her asking her to produce a copy of the graduation certificate from the Convent School or, in the absence of such a certificate, an equivalent certificate, so that the Education Office could classify the Applicant and send her the probationary appointment (see *exhibit* 4).

As the Applicant failed to respond she was warned on the 22nd October, 1964, that as from the 1st November, 1964, her appointment would be terminated (see *exhibit* 16).

The Applicant wrote back on the 30th October, 1964, (see *exhibit* 3). She stated in her letter that she had studied for four years at the Pancyprian Gymnasium for Girls, then for two and a half years at the St. Joseph School, (*i.e.* the aforementioned Convent School) and that, before entering the Northern Polytechnic, she had sat successfully for the G.C.E. examinations and the entrance examinations of the Polytechnic. She stated that her G.C.E. certificates were delivered, on admission, to the said Polytechnic.

On the 5th November, 1964, the Director of the Education Office wrote to the Applicant informing her that her other certificates were not sufficient, but that her G.C.E. certificates could be considered as equivalent to a graduation certificate from a Gymnasium; she was given a month's time in order to produce copies thereof (see *exhibit* 17).

On the 12th November, 1964, the Applicant wrote to the Northern Polytechnic for the return of her G.C.E. certificates—in Art, French and Greek; copy of this letter was sent to the Director of the Education Office for his information (see *exhibit* 18).

On the 3rd December, 1964, the Applicant wrote to the Education Office stating that the Northern Polytechnic informed her that her G.C.E. certificates had not been traced; she, further, protested that the Education Office knew very well that she

had not graduated from a Gymnasium (see *exhibit* 19)—(This letter is, actually, dated the "3rd November, 1964", but it is clear that the date is a mistake because it acknowledges receipt of the letter of the Education Office of the 5th November, 1964, —*exhibit* 17—and it is stamped as having been received by the Education Office on the 5th December, 1964).

On the 8th December, 1964, the Director of the Education Office wrote to the Applicant informing her that her appointment could be automatically revoked, once it was established that it had been made in contravention of a communal Law or Regulation; reference was made in this respect to section 7(2) of the Masters of Communal Schools Law 1963 (Communal Law 10/63). Applicant was informed, further, that, as until that date she had not produced the G.C.E. certificates, it was necessary to revoke her appointment. It was added, however, that, in order to facilitate the Applicant, the educational authorities were prepared to accept a statement from the Northern Polytechnic that she had been admitted thereto on the basis of G.C.E. certificates, (see *exhibit* 20).

On the 9th January, 1965, the Director of the Education Office sent a reminder in the matter to the Applicant (see *exhibit* 21); he asked to be furnished with a copy of the letter of the Northern Polytechnic stating that the relevant G.C.E. certificates could not be traced.

On the 21st January, 1965, the Applicant wrote to the Director stating that she could not make available a copy of the relevant reply from the Northern Polytechnic because she had lost it; she added that she had applied to the External Registrar of the University of London, asking for copies of her G.C.E. certificates, in Art, Greek and French (see *exhibit* 22).

On the 27th January, 1965, the Director of the Education Office wrote directly to the Northern Polytechnic, asking for confirmation of Applicant's allegation that she had been admitted on the strength of G.C.E. certificates (see *exhibit* 23).

On the 4th February, 1965, the Northern Polytechnic replied to the Director's letter, stating that it could not be traced that any G.C.E. certificates had been submitted to the school by the Applicant (see *exhibit* 24); and there was enclosed, too, a copy of a letter addressed to the Applicant on the 16th November, 1964, by which she was informed that no trace could be found that she had submitted G.C.E. certificates.

On the 25th February, 1965, the Director of the Education Office communicated the above position to the Applicant. As a result, she was asked to put forward an explanation, in view of the fact that she was to be taken before the Disciplinary Board and charged with the offence of having tried to preserve an appointment which had been made unlawfully due to untrue statements on her part (see *exhibit* 25).

On the 3rd March, 1965, the Applicant replied expressing her surprise at the charge made against her and insisting that she had passed the G.C.E. examinations in three subjects and that she was trying to trace the relevant certificates; she enclosed, also, a prospectus of the Northern Polytechnic which, according to her, established that students admitted thereto were persons who had graduated from secondary education schools or who possessed equivalent education (see *exhibit* 26).

On the 17th March, 1965, she was informed in writing by the Director of the Education Office that her reply was not satisfactory and she was asked for further explanations (see *exhibit* 27).

On the 16th April, 1965, a reminder was sent to the Applicant for the purpose (see *exhibit* 28).

On the 22nd April, 1965, the Applicant wrote back saying that she had been unable to trace the relevant G.C.E. certificates; she reiterated that she had passed the G.C.E. examinations concerned but that, unfortunately, she did not have any longer in her possession the necessary certificates, which she thought she had delivered to the Polytechnic, where she had studied (see *exhibit* 29).

On the 26th June, 1965, the Applicant's case was referred to Respondent 3, the Educational Service Committee—which had been set up in the meantime. The reference (see *exhibit* 30) was made by the Head of the Department of Higher and Secondary Education in the Ministry of Education—which had succeeded in the meantime the Greek Communal Chamber; in the relevant memorandum it was pointed out that under section 5(b) of Law 10/63 there was indispensably required for appointment a graduation certificate from a six-form secondary education school or possession of the G.C.E. qualification; and that it was, in this respect, necessary to examine whether the Applicant was guilty of a false declaration and whether she should be allowed to count on becoming a permanent schoolmistress or whether she was liable to be dismissed forthwith.

On the 29th June, 1965, Respondent 3 met and, after reviewing the case of the Applicant, reached the conclusion that the Applicant had failed to that date to show that she possessed the qualification which was required under section 5(b)(i) of Law 10/63 with a view to her "appointment" as a schoolmistress. It was decided that she should be informed that if by the 31st July, 1965, she did not produce proof satisfying on this point the Committee, then the Committee would examine whether Applicant's "appointment" should be revoked by virtue of section 7(2) of Law 10/63. It was, further, recorded that it had been ascertained that the Applicant continued to receive her salary as a schoolmistress grade B and that the matter was to be brought to the notice of the Ministry of Education, Respondent 1 (see *exhibit* 5).

It appears that after Respondent 1 was duly notified payment to the Applicant of a salary on the basis of a grade B classification was discontinued as from July, 1965.

The above decision of Respondent 3 was communicated to the Applicant by letter dated the 6th July, 1965, (see *exhibit* 6).

On the 18th August, 1965, advocates acting for the Applicant wrote back to Respondent 3 stating, *inter alia,* that it was too late in the day to revoke the appointment of the Applicant and that she did pass the G.C.E. examinations in Greek, Art and French; moreover, they raised the matter of the salary of the Applicant (see *exhibit* 7).

At its meetings of the 25th–27th July, 1965, Respondent 3 took notice of the letter of Applicant's advocates and decided to request them to produce the necessary material so as to settle the matter of the "appointment" of the Applicant (see *exhibit* 13).

A letter to that effect was addressed to the advocates of Applicant on the 31st August, 1965, (see *exhibit* 8); regarding the question of the salary of the Applicant her advocates were told to contact Respondent 1.

On the 18th January, 1965, Respondent 3 reverted to the matter and noted that the required certificates had not been made available; it decided, in the light of section 7(2) of Law 10/63 and in view of the time that had elapsed, that Applicant was to be regarded as appointed and was to be classified, on the basis of her qualifications, in grade C.

As a result, on the 24th January, 1966, a letter to that effect

was addressed to the Applicant (see *exhibit* 2) which has given rise to this recourse.

During the hearing of the Case before the Court it has transpired that the Applicant has passed the G.C.E. examinations in Modern Greek, only (see *exhibit* 31).

On the material before the Court, as set out in the above history of events, I have reached the conclusion that the *sub judice* decision is the product of a misconception of the essentials of the situation and, therefore, it has been taken through a defective exercise of the relevant discretion of Respondent 3; therefore, it is necessary to annul such decision and let the matter be dealt with afresh by Respondent 3. I have reached this view because of, *inter alia,* the following reasons:-

The G.C.E. certificates were only relevant—under section 5(b)(i) of Law 10/63—to the question of her being qualified *to be appointed at all* as a schoolmistress, and not to the question of her classification, as such.

It could not be said that the Applicant was classified in grade B because it was thought that she had passed the G.C.E. examinations in three subjects, as alleged by her.

It appears that, when the Applicant could not produce such certificates, Respondent 3 approached, at the beginning, the matter correctly, by deciding to consider whether, in the circumstances, and in the light of section 7(2) of Law 10/63, it was proper to revoke *the appointment* of the Applicant; that section gives the right to Respondent 3 to revoke an appointment—together naturally with the consequent classification of the person concerned—but it does not give the right to Respondent 3 to regrade an educationalist on the ground that his or her appointment was not validly made.

Then, suddenly, on the 18th January, 1966, Respondent 3 took the view that, because of the time that had elapsed, it should not proceed to revoke the appointment of the Applicant, but it should classify her in grade C, in view of her qualifications. It is not stated in the *sub judice* decision—and to that extent such decision is defective, also, for lack of due reasoning—what were the qualifications the Applicant was lacking in this respect; if they were those required under 5(b)(i), then it means that the *sub judice* decision was based on irrelevant considerations because, as already pointed out, the said qualifications were only relevant to the validity of the appointment, as such, of

the Applicant; their absence could in no way, lead to merely the regrading of the Applicant; nor could her classification be validly suspended on such a ground, either.

Counsel for Respondents has submitted at the hearing of this Case that what, really, happened on the 18th January, 1966, was not a regrading of the Applicant from grade B to grade C, but her classification, for the first time, in grade C, the matter having remained in abeyance till then. This submission is in direct conflict with the Opposition filed by the Respondents, in which it is stated that what took place was, in fact, a regrading. Counsel for Respondents has explained that his submission as above at the hearing was the result of further instructions which he received after the filing of the Opposition. Be that as it may, I am of the view that what has been stated on this point in the Opposition expresses correctly the true situation, and that the subsequent submission of the Respondents at the hearing is not well-founded, simply because it is not possible to appoint somebody without also classifying him; after all the salary to be received by him depends on his grade.

As, already stated, it clearly appears that the Applicant on being appointed on probation must have been classified in grade B. She was then subsequently regraded to grade C, on the 18th January, 1966, in an invalid manner; as found earlier, either without due reasoning being given or on the basis of irrelevant considerations and beyond the powers of Respondent 3 under section 7(2) of Law 10/63.

At some stage during the course of events the possibility of disciplinary proceedings being instituted against the Applicant, for misleading the authorities in relation to her qualifications, had been mentioned (see *exhibit* 25).

But the decision taken on the 18th January, 1966, cannot be treated as a valid exercise of disciplinary powers against the Applicant because, irrespective of whether or not it was or it is still necessary to proceed disciplinarily against the Applicant for her conduct in the matter—and I express no opinion on this point either way—it is quite clear that the relevant discipl nary procedure had not been set in motion and Applicant was no called upon to appear before Respondent 3 and defend herself.

For all the reasons given in this Judgment I do find that the *sub judice* decision contained in *exhibit* 14 and communicated

by *exhibit* 2 has to be annulled as being contrary to law and in excess and abuse of powers. As such decision is the product of a consideration by Respondent 3 of the whole case of the Applicant, I take the view that the whole of such decision has to be annulled; Respondent 3 will have to revert to the matter as a whole, in the light of the relevant legislation and of this Judgment.

Regarding the consequential reliefs claimed by the Applicant (in relation to her salary and establishment) no specific declarations need be made because the relevant matters will have to be regulated in accordance with the outcome of this Case and in the light of the new decision to be taken administratively, in relation to the Applicant's status in the service, by Respondent 3.

There shall be no order as to costs.

Sub judice decision annulled.
No order as to costs.