

1968  
May 18

[TRIANTAFYLLOIDES, J.]

ANTONIOS  
KYRIAKOU  
AND OTHERS  
v.  
THE GREEK  
COMMUNAL  
CHAMBER AND  
ANOTHER

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANTONIOS KYRIACOU AND OTHERS,  
*Applicants,*

*and*

THE GREEK COMMUNAL CHAMBER AND  
ANOTHER,

*Respondents.*

(Cases Nos. 52/65, 57/65, 60/65).

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*Secondary Education—Officials of Secondary Education Schools—Classification—The Officials of Secondary Education Schools Law, 1964 (Greek Communal Law No. 8 of 1964), sections 3, 16(1)—Applicants' classification in Grade provided under section 3—Unequal treatment—There has been in two of the present cases unequal treatment contrary to Article 28.1 of the Constitution—Regarding the Applicant in the remaining case there has been a misconception on the part of the Respondent.*

*Constitutional Law—Principle of equality—Article 28.1 of the Constitution—See above.*

*Equality—Principle of—Article 28.1 of the Constitution—See above.*

*Discrimination—Unequal treatment—See above.*

*Unqual treatment—See above.*

The Applicants in these three cases complain, in effect, against their classification as officials of Secondary Education Schools at Famagusta; they have been classified in the Grade provided for under section 3 of the Officials of Secondary Education Schools Law, 1964 (Law of the Greek Communal Chamber No. 8 of 1964). The Applicants complain that they have not received equal treatment from the Review Committee (in the Greek Education Office of the Greek Communal Chamber) which finally decided on their classification; they have referred for the purpose to the treatment meted out to other officials of Secondary

Schools, in closely comparable circumstances, which treatment compared to theirs shows, as they allege, that they (Applicants) have been unduly discriminated against contrary to Article 28.1 of the Constitution.

Paragraph 1 of Article 28 of the Constitution reads:

"1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby".

In annulling the decisions complained of, the Court:-

*Held*,(1). On the material before me, I reached the conclusion that in cases Nos. 52/65 and 60/65 Article 28.1 of the Constitution has been contravened. Those are obvious cases of unequal treatment.

(2)(a) Regarding Applicant in case No. 57/65, it did not become necessary for me to go as far as to examine whether or not his complaint for unequal treatment is a justified one, because I formed the view that the Review Committee misconceived this Applicant's application as amounting only to a higher placing in the salary scale for Grade C, whereas in substance the Applicant was seeking a salary scale as high as the salary scale pertaining to Grade B, and not Grade C (see section 16(1), of the aforesaid Greek Communal Law No. 8 of 1964).

(b) It follows that this Applicant's case was not considered by the Committee on its true basis, but on a misconceived one, and, therefore, the *sub judice* decision regarding this Applicant (Case No. 57/65) has to be annulled on this ground.

*Applications granted.*

*No order as to costs.*

### **Recourse.**

Recourse against the classification of Applicants as officials of Secondary Education Schools at Famagusta, made under section 3 of the Officials of Secondary Education Schools Law, 1964 (Greek Communal Law 8/64).

*A. Triantafyllides*, for the Applicants.

*G. Tornaritis*, for the Respondent.

*Cur. adv. vult.*

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The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: The Applicants in these Cases complain, in effect, against their classification as officials of Secondary Education Schools at Famagusta; they have been classified in Grade provided for under section 3 of the Officials of Secondary Education Schools Law, 1964 (Greek Communal Law 8/64).

The history of relevant events was set out in an Interim Decision given in these proceedings on the 27th May, 1967, ((1967) 3 C.L.R. 350) and it need not be repeated herein all over again; the said Decision is to be read together with this judgment.

At the resumption of the hearing of these Cases, after the said Decision, the main issue which had to be gone into was whether or not the classification, in the respective Grades, of the Applicants, as made, entitled them to complain of unequal treatment, contrary to Article 28.1 of the Constitution.

In this respect, each Applicant has put in written particulars (see, in respect of Applicant in 52/65 *exhibit 7*, in respect of Applicant in 57/65 *exhibit 8*, and in respect of Applicant in 60/65 *exhibit 9*); the correctness of the essential details of such particulars did not appear to be disputed.

Applicants complain that they have not received equal treatment from the Review Committee (in the Greek Education Office of the Greek Communal Chamber) which finally decided on their classification; they have referred for the purpose to the treatment meted out to other officials of Secondary Schools, in closely comparable circumstances; in particular, the Applicant in 52/65 has relied, in this respect, on the classification of Mr. N. Lambrou (see *exhibit 8*), the Applicant in 57/65 on the classification of the said Mr. Lambrou and of Mr. P. Pozantzides (see *exhibit 8*), and the Applicant in 60/65 on the classification of Mr. N. Dometakis (see *exhibit 9*).

It has transpired, eventually, that the case of Mr. Pozantzides is not a comparable one at all because he is an official employed on contract.

Regarding Mr. Lambrou and Mr. Dometakis, it appears, from the material before the Court, that the Review Com-

mittee decided — at about the same time when it dealt with the cases of the Applicants — to classify the former in Grade B, instead of Grade C, and the latter in Grade A, instead of Grade B (see *exhibits 10 and 11* respectively).

It has been argued by counsel for Respondents that these two cases cannot be taken into account for the purpose of deciding whether or not the Applicants have received equal treatment, because the decisions of the Review Committee in favour of Mr. Lambrou and Mr. Dometakis were never implemented by the appropriate organs of the Greek Communal Chamber, in view of the fact that they were finally reached shortly before the dissolution of the Chamber in 1965.

The fact remains, however, that such decisions were taken, and that, later on, the Public Service Commission — which, after the dissolution of the Greek Communal Chamber, was given the competence of classifying, *inter alia*, officials such as the Applicants, Mr. Dometakis and Mr. Lambrou — did classify Mr. Dometakis in Grade A and Mr. Lambrou in Grade B, in the same way as the Review Committee had itself decided; and, in the absence of any proof to the contrary, I have to assume, in view of the presumption of regularity in administration, that the existing decisions of the Review Committee in the cases of Mr. Lambrou and Mr. Dometakis were material factors which did influence the Commission in classifying them as it had done; therefore, I have decided to treat their cases as instances which can be relied upon for the purposes of deciding whether or not the Applicants have received equal treatment.

In the case of Applicant in 52/65, the relevant decision of the Review Committee, as set out in a letter dated the 5th February, 1965, (see *exhibit 4 (b)*), states that though the Review Committee was satisfied that his performance was excellent, the Committee was not of the view that his years of service, his previous post, previous salary and his qualifications justified his classification in Grade B, instead of Grade C, as requested by this Applicant.

As it appears from the relevant application of this Applicant to the Review Committee (see *exhibit 4(a)*) and from the relevant particulars (see *exhibit 7*), in the school-year 1963/1964 he was receiving a salary of £426 p.a., at the top of the relevant salary scale, and he was offered for the school-

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year 1964/1965 a salary of £450 p.a., in the salary scale of £300-£594; he has passed the examinations of the Cyprus Certificate of Education, and he possesses the Lower and Intermediate qualifications in Accountancy of the London Chamber of Commerce; at the material time he had past service of eight years.

Mr. N. Lambrou was receiving in the school-year 1963/1964 a salary of £390 p.a., in the salary scale of £300-594 (see *exhibit 7*); apart from being a graduate of a Secondary Education school in Cyprus — like all the Applicants — he has studied, also, elements of Accountancy at a Cyprus school; he had, at the material time, an excellent record of service and he had past service of five years and seven months.

Comparing the cases of Applicant in 52/65 and of Mr. Lambrou, I can say, without any hesitation whatsoever, that the former, by being classified in Grade C, has not received equal treatment with the latter, who was classified in Grade B; this Applicant has better qualifications and greater length of service than Mr. Lambrou, and their, at the time, emoluments were more or less at the same level; no specific reason has been put forward in argument, or by evidence, before the Court, as to why this Applicant and Mr. Lambrou were treated differently. Of course, it is not always correct to say that because two officers, in comparable situations, have been treated differently, there does arise necessarily a case of unequal treatment; a lot depends on the particular circumstances of each occasion and the issue of equal treatment has to be decided on the basis of such circumstances, and bearing in mind that if it was reasonably open to the Administration to mete out different treatment this Court should not interfere by substituting its own views; but in the particular circumstances of the cases of this Applicant and Mr. Lambrou I have been satisfied that no such essential difference has been established to exist between them as could reasonably lead to classifying them differently; thus, I reached the view that Article 28.1 of the Constitution has been contravened.

It follows that the *sub judice* decision of the Review Committee, regarding Applicant in 52/65, has to be annulled on this ground; and it is hereby declared to be *null and void* and of no effect whatsoever.

Coming, next, to the case of Applicant in 60/65, it is to be

noticed, from the application of this Applicant to the Review Committee (see *exhibit 6(a)*) and from the relevant particulars (see *exhibit 9*), that he was receiving in the school-year 1963/1964 a salary of £690 p.a., in the salary scale of £570-720; he is a qualified teacher and he had a past service of nineteen years. The decision of the Review Committee, as communicated to him by letter of the 29th January, 1965 (see *exhibit 6(b)*), is to the effect that the Committee was of the view that, on all the material before it, the request of the Applicant to be classified in Grade A, instead of Grade B, was unfounded.

On the other hand, Mr. Dometakis, whom the Review Committee has classified in Grade A, from Grade B, was receiving in the school-year 1963/1964 a salary of £720 p.a., in the same salary scale as this Applicant; apart from having graduated from a school of Secondary Education, he had passed the Higher English examination of the Cyprus Certificate of Education and had received private tuition in Accountancy; his past service was twelve years.

I do think that, in the circumstances, there does exist an obvious case of unequal treatment; nothing has been shown as possibly reasonably justifying classifying Mr. Dometakis in Grade A, and this Applicant in Grade B, in spite of his much longer service and equal, to say the least, qualifications; their, at the time, emoluments being more or less the same; thus, there does exist, once again, a contravention of Article 28.1 of the Constitution.

It follows that the *sub judice* decision of the Review Committee, regarding Applicant in 60/65, has to be annulled; and it is hereby declared to be *null* and *void* and of no effect whatsoever.

Regarding the Applicant in Case 57/65, it did not become necessary for me to go as far as to examine whether or not his complaint for unequal treatment is a justified one; and this turned out to be so because from a perusal of his relevant application to the Review Committee (see *exhibit 5(a)*) and of the decision thereon of such Committee, as communicated to him by letter dated the 19th February, 1965, (see *exhibit 5(b)*), I formed the view that the Committee misconceived this Applicant's application as amounting only to a request for a higher placing in the salary scale for Grade C, whereas in substance the Applicant was seeking a salary scale as high

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as the salary scale of £426—£720 (see para. (c) of exhibit 5(c)), which pertained to Grade B, and not Grade C (see section 16(1) of Greek Communal Law 8/64).

In the circumstances I find that the case of this Applicant was not considered on its true basis, but on a misconceived one, and, therefore, the *sub judice* decision of the Review Committee, regarding this Applicant — in Case 57/65 — has to be annulled on this ground; and it is hereby declared to be *null* and *void* and of no effect whatsoever.

The classification of all three Applicants will now have to be reconsidered afresh by the appropriate organ.

Regarding costs, I have decided to make no order as to costs because had the Applicants themselves moved to put things right in time, in 1961, when originally they were temporarily classified in an admittedly rather hurried and haphazard manner (see the history of events in the Interim Decision in these proceedings) this litigation might not have been necessary at all; instead they chose then to do nothing and let events shape themselves in a manner which eventually led to these recourses.

*Order in terms. No order as to costs.*