

1985 February 22

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS ECONOMIDES.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE.

Respondent.

(Case No. 393/81).

*Educational Officers—Transfers—Postings—Educational needs—
Need for verification of, applies with equal force both in
the case of a posting and in the case of a transfer—Imma-
terial whether applicant in fact appointed or promoted in
the Secondary Education and whether he should have
been posted or transferred—Regulation 14(1) of the Edu-
cational Officers (Teaching Staff) (Appointments, Postings,
Transfers, Promotions and Related Matters) Regulations,
1972.*

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The applicant, who had been serving in the elementary
education since 1961, was in 1980 posted on secondment to
the 4th Gymnasium of Paphos for teaching the subject of
Practical Knowledge during the academic year 1980/81. In
September, 1981, he was transferred to the elementary
school of Larnaca.

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On the 29th September, 1981, following a decision of
the Council of Ministers (No. 20363) approving the appo-
intment of 53 teachers of the Elementary Education to
the Secondary Education and the approval of the Mini-
stry of Finance, the Educational Service Committee deci-
ded * to appoint applicant together with 52 other teachers

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* The decision is quoted at p. 131 post.

to the Secondary Education for the purpose of teaching the subject of Practical Knowledge. By the same decision the respondents posted the applicant to the Dianellios Technical School of Larnaca.

5 As against the latter decision posting him to Dianellios Technical School the applicant filed the above recourse in which his main contention was that the sub judge posting was contrary to regulation 14(1)* of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972
10 in that according to this regulation applicant could not have been posted or transferred without verification of the specific educational needs by the appropriate authority, the Minister of Education acting through the Director-General of his Ministry, in this case.
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Held, that the wording of regulation 14(1) is clear as to the need for verification of the educational needs before a posting or transfer is made and this applies with equal force both in the case of a posting and
20 in the case of a transfer; that it is, therefore, immaterial whether applicant was, in fact appointed or promoted in the Secondary Education and whether he should have been posted or transferred to the Dianellios Technical School of Larnaca; that what
25 matters is whether the provisions of regulation 14(1) regarding the verification of the educational needs have been complied with; that since there is no evidence of the existence of any verification of the educational needs by the appropriate authority the
30 sub judge decision must be annulled.

Sub judge decision annulled.

Recourse.

35 Recourse against the decision of the respondent to transfer applicant from the 4th Gymnasium of Paphos to the Dianellios Technical School of Larnaca.

* Regulation 14(1) is quoted at p 133 post

A. S. Angelides, for the applicant.

E. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant
by this recourse prays for a declaration that— 10

1. The decision and/or act of the respondents to transfer the applicant from the 4th Gymnasium of Paphos to the Dianellios Technical School of Larnaca as well as any preceding, intermediate or subsequent act of the respondents is void, unlawful and of no legal effect whatsoever. 15

2. The decision to appoint and/or post the applicant to the Dianellios Technical School of Larnaca as well as any preceding, intermediate or subsequent act of the respondents is void, unlawful and of no legal effect whatsoever.

3. The omission of the respondents to keep and/or post the applicant at the 4th Gymnasium of Paphos where he was posted by their own decision as from 6th October, 1980, is unlawful and everything omitted should have been performed. 20

The facts of the case are almost the same as in Case No. 385/81 and may be briefly summarised as follows: 25

The applicant had been serving in the elementary education since 1961. In 1980 he was posted to the 4th Gymnasium of Paphos for teaching the subject of Practical Knowledge during the academic year 1980/81. In September, 1981, he was transferred to the elementary school of Larnaca. 30

On the 29th September, 1981, following a decision of

the Council of Ministers (No. 20363) approving the appointment of 53 teachers of the Elementary Education to the Secondary Education and the approval of the Ministry of Finance, the Educational Service Committee decided to
 5 appoint applicant together with 52 other teachers to the Secondary Education for the purpose of teaching the subject of Practical Knowledge. By the same decision the respondents posted the applicant to the Dianellios Technical School of Larnaca. The official offer of appointment
 10 was communicated to the applicant by letter dated the 7th November, 1981, which he accepted by a letter dated the 18th November, 1981, with reservation of his rights regarding his posting.

The above decision of the Educational Service Committee
 15 which in effect is the one challenged by this recourse reads as follows:

*“Secondary Education
 Permanent appointment*

A letter of the Acting Director-General of the Ministry of Education No. ME 359/68/3 dated 29/9/81
 20 is produced by which approval is given for the filling of 53 posts of masters of Practical Knowledge.

The Educational Service Committee having in mind the decision of the Council of Ministers under No. 20363 dated 14/5/81 decides to offer permanent
 25 appointment to the post of master of Practical Knowledge retrospectively, as from the 1st January, 1979 to the following teachers
 Andreas Economides 3312 Dianellios Technical
 30 School”

It is to be observed that paragraph 1 of the prayer for relief in fact challenges a non-existent act or decision i.e. the transfer of applicant from the 4th Gymnasium of Paphos to the Dianellios Technical School of Larnaca which
 35 is not part of the decision challenged by this recourse but

of a decision taken on 8th September, 1981, by which the applicant was transferred from the 4th Gymnasium of Paphos to an Elementary School at Larnaca which was challenged by recourse No. 385/81. Applicant was posted to the Dianellios Technical School of Larnaca upon his appointment or promotion to the Secondary Education by virtue of the decision quoted above which is the only existing decision in so far as this recourse is concerned. 5

It is also evident from the arguments advanced by counsel for applicant that what he challenges is, in effect, only the decision of the 29th September, 1981. which is the subject of paragraph 2 of the prayer for relief in this recourse. I have, therefore, to reject this paragraph of the prayer and proceed to consider paragraph 2. 10

Counsel for applicant by his written address has raised the following grounds of law: 15

(a) The sub judice decision is contrary to regulation 15(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972. 20

(b) It is contrary to regulation 14(1) of the above regulations.

(c) It was taken without due inquiry and is in excess or abuse of powers.

(d) It is the result of an extraneous purpose and not of educational needs and violates vested rights of the applicant. 25

(e) It is not duly reasoned.

(f) It is defective on the ground of misconception of law and fact.

I propose to deal first with the second ground raised and argued by counsel which is that the decision is contrary to regulation 14(1). Counsel for applicant has argued that according to this regulation applicant could not have been posted or transferred without verification of the specific educational needs by the appropriate authority, the Minister of Education acting through the Director-General 30 35

of his Ministry, in this case. It was, on the other hand, maintained by counsel for the respondents that the posting was made in order to serve educational needs.

Regulation 14(1) reads as follows:

5 “14(1). The postings and transfers of educational
officers are made by the appropriate organ on the
basis of educational needs as these are verified by the
appropriate authority, and in this respect the pre-
10 ferences of educational officers are taken also into
consideration to the extent that this is possible”.

The wording of the above regulation is clear as to the
need for verification of the educational needs before a
posting or transfer is made and this applies with equal
force both in the case of a posting and in the case of a
15 transfer. It is, therefore, immaterial for the purposes of
this ground whether applicant was, in fact appointed or
promoted in the Secondary Education and whether he
should have been posted or transferred to the Dianellios
Technical School of Larnaca. What matters is whether the
20 provisions of regulation 14(1) regarding the verification of
the educational needs have been complied with.

Having perused all the documents both in the file of
the recourse and in applicant's personal file and especially
the decision of the respondents of the 29th September, 1981,
25 by which the applicant was posted to the Dianellios Tech-
nical School of Larnaca I have found no evidence of the
existence of any verification of the educational needs by
the appropriate authority.

The offer of appointment is in the usual form of offers
30 made to all public officers and contains the salary scale,
the salary of the particular officer, his incremental date
and the post where he is posted to serve.

One might conceivably argue that in view of the pre-
sumption of regularity it may be assumed that the respond-
35 ents would not have posted the applicant at Larnaca if
there was no such educational need. The fact is, however,
that there is no verification by the appropriate authority
for the existence of such need. And once counsel for appli-

cant has put its existence in issue it was incumbent upon the respondents to produce it if in fact it existed. Bearing in mind also the fact stated in the Opposition in Case No. 385/81 that the reason for applicant's transfer to the Elementary School of Larnaca was made as a result of a request by his wife for serious reasons of a family nature and the fear of a scandal if he remained at Paphos, which is repeated at paragraph 2 of the present recourse, the suspicion also arises that applicant's posting at the Dianellios Technical School of Larnaca too may have been made for the same reason and this, in my view, makes the necessity for strict compliance with the provisions of regulation 14(1) even stronger.

In the light of the above I have come to the conclusion that the sub judice decision must be annulled on this ground. In view of my decision I find it unnecessary to deal with the other grounds raised by counsel which in any case are closely connected with and incidental to this.

In the result the decision to appoint and/or post the applicant to the Dianellios Technical School of Larnaca is hereby annulled. There will be no order as to costs.

*Sub judice decision
annulled. No order as
to costs.*