

1986 December 16

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MAROULLA GEORGIADOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTRY OF EDUCATION,

Respondents.

(Case No. 619/86).

*Provisional Order—The two prerequisites for granting the order
—Flagrant illegality—In examining this issue the Court must
avoid going into the merits of the case—Irreparable da-
mage—Transfer of educational officer—Inconvenience due
to such transfer—Does not amount to “irreparable da- 5
mage”.*

The applicant prays for a provisional order suspending
the implementation of her transfer from the Solea Gymna-
sium to the Gymnasium of Pedhoulas till the final deter-
mination of the recourse challenging such a transfer. 10

Counsel for the applicant submitted that the sub judge
transfer, which was decided on 2.10.86, is flagrantly ille-
gal in view of the combined effect of regs. 18 and 25 of
the Educational Officers (Teaching Staff) (Appointments,
Postings, Transfers, Promotions and Related Matters) 15
(Amendment) Regulations, 1985, whereas counsel for the
respondent submitted that, notwithstanding that the trans-
fer was made during the year the Commission did not
rely on regs. 18 and 25, but on the fact that after review
of her units and years of service the applicant was found 20

to have a priority on the relevant list of officers subject to transfer

5 *Held dismissing the application* (1) The prerequisites for granting a provisional order are (a) The act sought to be stayed must be flagrantly illegal and (b) Irreparable damage will be caused to the applicant if the order is not granted. In deciding whether there is a flagrant illegality the Court must avoid going into the merits of the case.

10 (2) In the light of the complexity of the issues raised in this case, it is impossible to examine the issue of flagrant illegality without going into the merits of the case.

15 (3) Moreover the applicant failed to substantiate her allegation with regard to irreparable damage. The inconvenience she will suffer by her transfer does not amount to irreparable damage.

Application dismissed
Costs against applicant

Application for a provisional order

20 Application for a provisional order staying the implementation of respondents' decision to transfer applicant from Solea Gymnasium to Pedhoulas Gymnasium.

A S Angelides for the applicant

A Vlachinou for the respondents

Cur adv vult

25 DIMITRIADES J read the following ruling: By means of her recourse the applicant challenges, amongst others, the validity of the decision of the respondent Commission which was taken on the 2nd October 1986 and by which she was transferred from the Solea Gymnasium to the
30 Gymnasium of Pedhoulas.

The applicant, together with her recourse, filed an application by which she prays for a provisional order staying the implementation of the respondents' decision till the final determination of her recourse. In her affidavit which
35 accompanies her said application, the applicant alleges that

the decision of the respondent Commission for her transfer is flagrantly illegal and that if the order applied for is not granted she may suffer irreparable damage.

The applicant, a Secondary Education School teacher, was, until the 5th October, 1986, posted at the Gymnasium of Solea. As a result of a decision taken by the respondent Commission on the 2nd October, 1986, she was transferred to the Gymnasium of Pedhoulas as from the 6th October, 1986.

It is well established that in order to grant a provisional order an applicant has to satisfy the Court that the act or decision sought to be stayed is flagrantly illegal and that irreparable damage will be caused to the applicant if the order applied for is not granted. However, in deciding whether flagrant illegality was committed, the Court must avoid going into the merits of the case, especially where the granting of the order will dispose of the case on its merits.

Counsel for the applicant submitted that the respondent Commission could not, in October, 1986, take the sub judice decision in view of the combined effect of regulations 18 and 25 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations, 1985 (see Notification 71 in the Third Supplement, Part I, to the Official Gazette, dated the 22nd February, 1985), by which transfers of educationalists are regulated; that under regulation 18 all educational officers are subject to transfer in order to serve educational needs as these are certified by a reasoned submission of the appropriate authority; that under regulation 25 transfers of educational officers during a current school year can only be effected if it is absolutely necessary for educational needs and that in such a case the respondent Commission had to give a reasoned decision for doing so.

Counsel for the applicant further submitted that the decision taken by the respondent Commission is not reasoned, as provided in regulation 25(1), and that it was taken during the running of the current school year without the appropriate authority having certified that the transfer of

the applicant was required in order to serve educational needs. On the contrary, he said, the decision of the respondent was based on other consideration. He had further alleged that the consideration which the Commission invoked as the reason for reaching its decision was based on regulations which are ultra vires.

Counsel for the respondents submitted that although the transfer of the applicant took place during the school year, the respondent Commission's decision could not be considered as flagrantly illegal in view of the fact that the Commission has the power to transfer educational officers whenever the interest of service so requires.

From the facts that are before me, it appears that the respondent Commission decided the transfer of the applicant basing itself not on the provisions of regulations 18 and 25, but on the fact that, as it is stated in its relevant decision (see *Appendix C* to the Opposition), after a review of the units and the years of service of the applicant she should have priority on the list of those educational officers who were subject to transfer to places other than the place of their residence.

Thereafter, the Commission, having reached the conclusion that under regulation 20(a) of the relevant Regulations the applicant could be transferred to a place other than the place of her residence, decided to transfer her from the So'ea Gymnasium to the Gymnasium of Pedhoulas.

Counsel for the respondent Commission argued that when the list of those to be transferred was prepared, the Commission was labouring under a misconception as regards the units of the applicant, which units, having been reviewed at a later stage, afforded to the Commission the justification to transfer her at this time of the school year. He applied for leave to adduce evidence as to the circumstances under which such review was made so as to support his contention that the sub judice decision was lawfully reached by the Commission.

In view of the complexity of the issues raised in the present case, I feel that it is impossible to be decided, at this stage, at least prima facie, that the sub judice decision

is flagrantly illegal without going into the merits of the case and have a full hearing of all the issues on their whole.

Moreover, although in her aforesaid affidavit the applicant had alleged that she will suffer irreparable damage if the provisional order applied for is not granted, she failed to substantiate her said allegation during the hearing of the present application. In any event, if by her allegation that she will suffer irreparable damage the applicant means the inconvenience she will suffer by her transfer, I must here say that in my view her allegation cannot stand as it is the duty, under the terms of service of each civil servant or teacher, to serve at such place as the needs of the service require. Personal inconvenience does not constitute irreparable damage in the context of the law. 5 10

Therefore, on the basis of the aforesaid, I have decided not to grant the application for a provisional order. 15

Costs of this application to be paid by the applicant.

Application refused. Costs to be paid by the applicant.