

(1987)

1987 December 12

[A LOIZOU J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS CONSTANTINOU

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondent*

*(Case No 466/86)*

*Administrative act — Validity of — Should be determined on basis of the records which were before the administration and were brought before the Court and nothing else*

The respondent Commission rejected applicant's application for appointment in the Public Educational Service on the ground that the applicant did not possess the qualifications required for the post of teacher (Para 3(i) of the relevant scheme of service) Hence this recourse 5

One of the complaints of the applicant is that the Commission failed to consider his eligibility under para 3(ii) of the scheme of service for the post of teacher special training 10

It must be noted that the applicant himself, in completing the form, specified the post he was interested as «teacher», whilst in earlier applications he specified the post he was then interested as «teacher special training»

Held, dismissing the recourse (1) For the purposes of deciding the validity of the sub judge decision this Court can only rely on the relevant records which were before the respondent Commission and have been placed before the Court and nothing else 15

(2) In the circumstances it was reasonably open to the respondent Commission to treat the application of the applicant as one for appointment to the post of Elementary School Teacher as provided by the said paragraph 3(i) 20

(3) It is undisputed that the applicant was not qualified under paragraph 3(i)

*Recourse dismissed*

*No order as to costs.*

### **Recourse.**

5 Recourse against the refusal of the respondents to appoint applicant in the public educational service of the Republic.

*A. S. Angelides*, for the applicant.

*R. Vrahimi — Petridou (Mrs)*, for the respondent.

*Cur. adv. vult.*

10 A LOIZOU J. read the following judgment. The applicant graduated from the Paedagogic Academy of Lamia (Greece) in 1972. In 1982-1984 he attended the Maraslio School for Teachers of Elementary Education and was awarded a post-graduate Diploma in Special Training. Whilst being employed in Greece as  
15 an Elementary School-Teacher, he sought, by means of an application to the respondent Commission, to be appointed in Cyprus. This application was rejected and he was informed accordingly by means of a letter dated the 17th April 1986. Hence the present recourse, whereby he prays for:

20 «A Declaration that the decision of the respondent Commission not to entertain the applicant's application for appointment in the Public Educational Service is illegal unconstitutional null and void and with no legal effect.»

The sub judge decision was taken on the 15th April 1986. It  
25 reads:

«The Commission continues (see minutes of 5.3.86) with the consideration of applications which have been submitted for appointment in the Public Educational Service.

30 The Commission having taken into consideration all the material and documents which were placed before it as well as the relevant provisions of the Law and of the Scheme of Service decides that the applications of the following persons cannot be entertained for the reasons mentioned in respect of each one of them.

35 .....

(e) *Constantinou Savvas* (42/D/7213).

Submits application for appointment to the post of Teacher. His application cannot be accepted as he does not possess the qualifications required by the Schemes of Service for this post and in particular a Teacher’s diploma of the Paedagogic Academy of Cyprus or other equivalent Paedagogic Academy/or Teacher’s School of a three years attendance or a diploma of Paedagogic Academy/Teacher’s School of two years attendance and a Certificate of additional attendance of at least one academic year at the Paedagogic Academy of Cyprus.»

Under the relevant Scheme of Service the qualifications required for the post of Teacher are:

- «1. ....
- 2. ....

3. (i) In respect of Elementary Schools Teacher’s Diploma of the Paedagogic Academy of Cyprus or of another equivalent Paedagogic Academy/Teacher’s School of at least three years attendance.

(ii) In respect of Special Schools

Teacher’s Diploma of the Paedagogic Academy of Cyprus or of another equivalent Paedagogic Academy/Teacher’s School of at least three years attendance or a diploma of a Special School of at least three years attendance in subjects of special training or a diploma of a Paedagogic Academy/Teacher’s School of at least two years attendance and a certificate of at least one year’s specialization in subjects of special training.»

Learned counsel for the applicant in his written address contended

(a) That the applicant possessed the qualifications required under the Schemes of Service because he possesses qualifications, under 1, 2, and 3(ii).

(b) That the respondent Commission never considered paragraph 3(ii) of the qualifications required. It considered only paragraph 3(i) and decided that it could rejected the applicant’s claim.

(c) That the respondent Commission did not inquire into and did not apply in the case of the applicant the qualifications provided by the Scheme of Service.

Further learned counsel submitted that the applicant's application was rejected because as he gathers the respondent Commission had in mind that the applicant has since 1985 been included in the list of those to be appointed to the post of Teacher for Special Training.

It should be noted that the applicant's application is dated 23rd January 1986, and he used the prescribed for the purpose application form, (E.E.Y. 1). Paragraph 1, of the application reads:

«1. Post for which this application is submitted.

(The specialization should be mentioned )

(Να αναφέρεται η ειδικότητα.)

Teacher (Δάσκαλος).»

It should also be noted that in an application on the same application form which the applicant submitted on the 10th July 1984, the said paragraph 1, thereof was completed by him as follows:

«Teacher-Special Training. (Δάσκαλος Ειδικής Αγωγής).»

It is clear from the relevant minutes of the respondent Commission, and the other documents, and for the purposes of deciding the validity of the sub judice decision I can only go by the relevant records which were before the respondent Commission and have been placed before me and nothing else, that the applicant's application was rightly treated as an application for appointment to the post of Teacher (Δάσκαλος), as provided in paragraph 3(i) of the Scheme of Service. It is also clear that in the relevant Scheme of Service this post is named «Teacher (Δάσκαλος)» and by virtue of paragraph 3(i) of the Scheme of Service we have the post of Teacher of «Elementary Schools» and by virtue of paragraph 3(ii) we have the post of Teacher for the Special Schools, needless to say that the applicant does not possess the qualifications provided by paragraph 3(i), and that the application Form — paragraph 1 — requires an applicant for a particular post to mention the specialization (ειδικότητα), for which he applies.

These points came obviously to the attention of the applicant as in compliance with the said requirements in his application of the 10th July 1984 he applied for appointment to the post of «Teacher Special Subjects» and in his application of the 23rd January 1986, he applied for appointment to the post of «Teacher» 5

The question therefore arises whether the respondent Commission was entitled on the material before it to reach the conclusion that it did namely to treat the application of the applicant as an application for appointment to the post of Teacher as provided in paragraph 3(i) of the Scheme for Elementary Schools 10

Having regard to the totality of the circumstances and in particular to the relevant Scheme of Service and the application of the applicant, particularly paragraph 1 thereof, duly filled in his own hand-writing together with his previous application, I have come to the conclusion that it was reasonably open to the respondent Commission to treat the application of the applicant as one for appointment to the post of Elementary School Teacher as provided by the said paragraph 3(i) 15 20

In view of this conclusion the respondent Commission was under no duty to consider whether the applicant was qualified by virtue of paragraph 3(ii), since he himself applied for appointment to the post provided by paragraph 3(i), and it is undisputed that the applicant was not qualified under paragraph 3(i) Consequently the sub judice decision cannot be annulled on any of the grounds relied upon and the applicant's recourse must therefore fail, and is hereby dismissed, but in the circumstances there will be no order as to costs 25

*Recourse dismissed* 30  
*No order as to costs*