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NIOVI I. FRANGOU
and
1. THE GREEK COMMUNAL CHAMBER,
2. THE OFFICE OF THE DIRECTOR OF GREEK EDUCATION AND/OR
3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIOVI I. FRANGOU,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER,
2. THE OFFICE OF THE DIRECTOR OF GREEK EDUCATION AND /OR
3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 19/64)

Secondary Education—Schoolteachers — Appointments — Applicant's recourse against her appointment as Assistant Headmistress instead of Headmistress Grade B—Masters of Communal Schools of Secondary Education Law, 1963 (Greek Communal Chamber's Law 10 of 1963), sections 13, 41 and 42 and Constitution of Cyprus, Articles 6, 26, 28 and 146.2—Failure of claim on the ground of the absence of any existing legitimate interest of Applicant adversely and directly affected by the decision complained of in the sense of Article 146.2 of the Constitution.

Constitutional Law—Constitution of Cyprus, Articles 6, 26 and 28—Discrimination and freedom of contract—Section 41 of Law 10 of 1963 (supra) of the Greek Communal Chamber not contrary to Articles 6 and 28 of the Constitution—Likewise, 2nd proviso to section 41 of the Law, not contrary to Article 26—Also section 41 not contrary to any provision of the Constitution relating to natural justice or proper administration.

Section 41, 2nd proviso and section 42 of Law 10/63 of the Greek Communal Chambers read:-

"41 .....

Νοείται περαιτέρω ὅτι ἐὰν ὁ κατὰ τὴν ψήφισιν τοῦ παρόντος Νόμου βασικὸς μισθὸς Διευθυντοῦ τινος, μετὰ τοῦ καταβαλλομένου ἐπιδόματος διευθύνσεως, εἶναι χαμηλότερος τοῦ κατωτάτου σημείου τῆς κλίμακος Διευθυντοῦ Β!

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βαθμοῦ, οὗτος διορίζεται εἰς θέσιν Βοηθοῦ Διευθυντοῦ καὶ τοποθετεῖται εἰς ἀνάλογον πρὸς τὰς ἀπολαβάς του σημεῖον τῆς κλίμακος τῆς θέσεως ταύτης, δύναται ὅμως νὰ τῷ ἀνατεθῇ διεύθυνσις σχολείου.»

«42. Παρὰ τὰς διατάξεις τοῦ παρόντος Νόμου, οἱ ὑπηρετοῦντες κατὰ τὴν ψήφισιν τοῦ παρόντος Νόμου καθηγηταί, πλὴν τῶν μονίμων Διευθυντῶν καὶ Βοηθῶν Διευθυντῶν, διατηροῦσι—

(α) τὴν τάξιν εἰς ἣν εἶναι κατατεταγμένοι βάσει τοῦ εἰς αὐτοὺς ὑπὸ τοῦ Γραφείου Παιδείας προσφερθέντος τελευταίου διορισμοῦ καὶ ἐὰν ἀκόμη ἡ τοιαύτη τάξις εἶναι ὑψηλοτέρα ἐκείνης εἰς ἣν θὰ ἠδύναντο νὰ καταταχθῶσιν ἐπὶ τῇ βάσει τοῦ παρόντος Νόμου, καὶ

(β) τὸν βασικὸν μισθὸν καὶ τὴν ἡμερομηνίαν προσαυξήσεών των καὶ ἐὰν ἀκόμη ὁ τοιοῦτος μισθὸς εἶναι ὑψηλότερος ἐκείνου, ὃν ἔδει νὰ λαμβάνωσιν ἐπὶ τῇ βάσει τοῦ παρόντος Νόμου».

The applicant in the instant recourse complained against her appointment by the Respondents to the post of Assistant Headmistress instead of Headmistress Grade "B". At the time of the offer to aplicant of the appointment in question she was holding the permanent appointment of a secondary education Schoolmistress, Grade B, but for the previous years 1961-1962 and 1962-1963, though only a schoolmistress, she had been assigned duties of a Headmistress of a Kyrenia Secondary School and she was thus receiving the relevant allowance payable to Headmasters or Headmistresses. The said School was a private school and had belonged in the past to applicant. She sold it to the Greek Communal Chamber on the 25.8.61 by virtue of a contract, clause 5 of which provided that the Chamber undertook to secure to applicant the post of Headmistress of such school. The decision to offer applicant the appointment complained of was based on the 2nd proviso to section 41 of Law 10/63 *(supra)*. Applicant's allegation was that the 2nd proviso to s. 41 *(supra)* on which her appointment was admittedly based, could not be validly applied to her case because, *inter alia*, this involved a breach of clause 5 of her contract with the Greek Communal Chamber and such proviso was also, in the circumstances, contrary to Articles 6, 26 and 28 of the Constitution.

Held, (1) it is quite clear from the material before me, and particularly *exhibit* 8, that Applicant was occupying at the time, on a permanent basis, only the organic post of schoolmistress, grade B; therefore, the proper transitional provision of Law 10/63, applicable to her, was not section 41 at all, but section 42 of such Law which provides that schoolmasters (or scholmistresses), serving at the time of the enactment of the said Law, "except the permanent Headmasters and Assistant Headmasters", remain in the same grade in which they are to be found and retain their then basic salary, notwithstanding any provision of Law 10/63 to the contrary.

In view of the above I am of the opinion that Applicant, not being entitled under section 41 of Law 10/63 to appointment as Headmistress, grade B, or even as Assistant schoolmistress, grade B, under section 42, cannot be said to have had any existing legitimate interest of hers adversely and directly affected, in the sense of Article 146(2) of the Constitution, by her appointment as Assistant Headmistress which was something more than what she was legally entitled to, in the circumstances; her appointment as Assistant Headmistress, far from involving a detriment for her, entails on the contrary advancement for Applicant, both from the point of view of organic post and emoluments, beyond the post of schoolmistress, grade B.

Thus, in my opinion, Applicant's claim in this recourse fails, first, on the ground of absence of the prerequisite laid down by Article 146(2) of the Constitution.

(2) I am, therefore, of the opinion that, in the circumstances of this Case, no question of breach of clause 5 of *exhibit 1* arises, through the application to Applicant of the 2nd proviso to section 41 of Law 10/63, because it is clear that Applicant, though given only the new organic post of Assistant Headmistress, under Law 10/63, is still entrusted with the duties of Headmistress of the school to which *exhibit* 1 relates, *(vide exhibit 3).*

Even if, however, the said clause 5 were to be given different interpretation, than above, and to be found to provide for an organic appointment of Applicant as Headmistress, and even if it were also to be found that the 2nd proviso to section 41 was calculated to break clause 5 of *exhibit 1*, then again I could not hold that the said proviso

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is unconstitutional as being contrary to Article 26 of the Constitution. Such Article, which safeguards the freedom to contract, by laying down that—"Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract", cannot be construed as also providing against a breach of contract; it only safeguards the right to enter into a contract.

(3) And I am not satisfied, even if the meaning of clause 5 were to be as alleged by Applicant, that section 41 could be held to be contrary to any *provision of the Constitution* relating to natural justice or proper administration.

Application dismissed.
No order as to costs.

Recourse.

Recourse against the decision of the Respondents concerning the appointment of Applicant as Assistant Headmistress instead of Headmistress grade B.

G. Ladas, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: By the motion for relief in this Case the Applicant, in effect, attacks the validity of her appointment as Assistant Headmistress—instead of Headmistress grade B—as effected by the, at the time, appropriate authorities of the Greek Communal Chamber.

Her said appointment was first communicated to Applicant by a letter dated the 27th August, 1963, *(exhibit 3)*. As stated therein, Applicant was appointed as Assistant Headmistress, with duties of Headmistress, of a Kyrenia secondary school.

Applicant, subsequently, by letter of the 3rd September, 1963 *(exhibit 4)* complained to the Review Committee of the Greek Education Office about her said appointment as Assistant Headmistress; the matter was determined against

her by the said Review Committee.

The decision of the Review Committee was communicated to Applicant by letter of the 16th December, 1963, *(exhibit 6)*, and a copy of the decision of the Review Committee was sent to counsel for Applicant on the 21st January, 1964, *(exhibit 5)*.

Subsequently, on the 20th February, 1964, a formal appointment, to the permanent organic post of Assistant Headmistress was offered to Applicant, retrospectively, as from the 1st September, 1963, *(exhibit 7)*.

On the 27th February, 1964, Applicant filed this recourse.

Though in the motion for relief she appears to complain only against the first instance decision to appoint her as Assistant Headmistress, it is only proper, in the circumstances of this Case, to treat her complaint as directed against the whole administrative action taken in the matter, including the above decision of the Review Committee; it is to be noted in this respect that this recourse was filed after the said administrative action had been completed right down to the offer on the 20th February, 1964, of a formal appointment to Applicant, *(vide exhibit 7)*.

At the time of the offer to Applicant of the appointment against which she complains, she was holding the permanent appointment of a secondary education schoolmistress, grade B, as per document of appointment dated the 17th January, 1962, *(exhibit 8)*.

For the previous school-years 1961-1962 and 1962-1963 Applicant, though only a schoolmistress, had been assigned duties of headmistress of the same school in Kyrenia, *(vide exhibit 2* and relevant evidence of Mr. Cleanthis Georghiades). Thus, she was also in receipt of the relevant allowance which is payable to Headmasters or Headmistresses.

The said school had belonged in the past to Applicant, being a private school. She sold it to the Greek Communal Chamber on the 25th August, 1961, by virtue of a contract for the purpose, *(exhibit 1)*. Clause 5 of that agreement provided that the Chamber undertook to secure to Applicant the post of Headmistress of such school.

Shortly before the writing to Applicant of *exhibit 3*, on the 27th August, 1963, by which she was first informed of her

appointment as Assistant Headmistress, the Masters of Communal Schools of Secondary Education Law, 1963 (Law 10/63) was published in the official Gazette on the 8th August, 1963, having been enacted by the Greek Communal Chamber.

From the material before the Court it appears that the decision to offer Applicant appointment as Assistant Headmistress was based on the 2nd proviso to section 41 of Law 10/63, which provides that when, on the date of the enactment of the said Law, the basic salary of a Headmaster, together with the Headmaster's allowance, is lower than the starting point of the salary scale of Headmaster, grade B, then such Headmaster is appointed to the post of Assistant Headmaster, but may be assigned duties of Headmaster. Section 41 is a transitional provision providing for the emplacement of existing Headmasters and Assistant Headmasters to the new posts of Headmasters, grade A and grade B, and Assistant Headmasters. As Applicant's emoluments at the time were below the starting point of the salary scale provided for, under Law 10/63, for Headmasters, grade B, she was appointed as Assistant Headmistress, only.

Applicant does not allege that section 41 was not applied correctly to her case, from the factual point of view i.e. from the point of view of the height of her emoluments at the material time.

But she alleges that the 2nd proviso to section 41, on which her appointment has been admittedly based, could not be validly applied to her case because, *inter alia*, this involves a breach of clause 5 of her contract with the Greek Communal Chamber *(exhibit 1)* and such proviso is also, in the circumstances, contrary to Articles 6, 26 and 28 of the Constitution.

I have examined, first, whether or not section 41 was at all applicable to the case of Applicant, so as to found a right of Applicant to be appointed as Headmistress, grade B, were the 2nd proviso thereto to be held of no valid effect.

This section is a provision limited, in its application, only to "permanent" Headmasters and Assistant Headmasters who were serving at the time of the enactment of Law 10/63. When it speaks of permanent Headmasters serving at the time of its enactment, Law 10/63 does not, in my opinion, refer to persons, like Applicant, who were discharging the

duties of Headmaster or Headmistress, but only to persons who had received permanent appointments to posts of Headmasters or Headmistresses, as such posts existed on the enactment of Law 10/63; otherwise the said section 41 would not have spoken expressly of "permanent" Headmasters.

It is quite clear from the material before me, and particularly *exhibit 8*, that Applicant was occupying at the time, on a permanent basis, only the organic post of school-mistress, grade B; therefore, the proper transitional provision of Law 10/63, applicable to her, was not section 41 at all, but section 42 of such Law which provides that schoolmasters (or schoolmistresses), serving at the time of the enactment of the said Law, "except the permanent Headmasters and Assistant Headmasters", remain in the same grade in which they are to be found and retain their then basic salary, notwithstanding any provision of Law 10/63 to the contrary.

In view of the above I am of the opinion that Applicant, not being entitled under section 41 of Law 10/63 to appointment as Headmistress, grade B, or even as Assistant Headmistress, but being entitled, only to continue as schoolmistress, grade B, under section 42, cannot be said to have had any existing legitimate interest of hers adversely and directly affected, in the sense of Article 146(2) of the Constitution, by her appointment as Assistant Headmistress, which was something more than what she was legally entitled to, in the circumstances; her appointment as Assistant Headmistress, far from involving a detriment for her, entails on the contrary advancement for Applicant, both from the point of view of organic post and emoluments, beyond the post of schoolmistress, grade B.

Thus, in my opinion, Applicant's claim in this recourse fails, first, on the ground of absence of the prerequisite laid down by Article 146(2) of the Constitution.

Whether or not Applicant may or may not be appointed as a Headmistress, grade B, under section 13 of Law 10/63, is a matter outside the scope of this recourse, because it is common ground that Applicant is not attacking her appointment as Assistant Headmistress as a decision under the said section 13, but as an appointment offered in the course of placing in the new organic structure of Law 10/63, and under the transitional provisions thereof, those already in service, such as Applicant. So, the matter of any rights of Applicant

under section 13 remains entirely open.

If on the other hand I were to reach a conclusion contrary to my foregoing one, viz. that section 41 was properly applicable to Applicant, through the expression "Headmaster" therein being widely interpreted to apply to a schoolmistress who was, in fact, at the material time, discharging the duties of a Headmistress and receiving the relevant allowance of a Headmistress, like Applicant—and Mr. Georghiades himself in evidence was often carried away and described Applicant as "Headmistress" on occasions when he could only have meant "schoolmistress"—then I would still be of the opinion that this recourse fails, because the contentions advanced by Applicant as to why she should succeed cannot, in my opinion, be upheld, for the following reasons:—

Applicant has alleged, in the first place, that the 2nd proviso to section 41 amounts to a legislative step calculated to break clause 5 of the agreement made on the 25th August, 1961, between the Greek Communal Chamber and the Applicant *(exhibit 1)* and that it is, therefore, contrary to Article 26 of the Constitution which safeguards the freedom to contract.

Such clause reads as follows:-

«Ἡ Συνέλευσις ἀναλαμβάνει ὅπως ἐξασφαλίσῃ εἰς τὴν Κυρίαν Νιόβην Φράγκου τὴν θέσιν Διευθυντρίας τοῦ Σχολείου τούτου».

In my opinion what clause 5 of *exhibit 1* really provided for was that the Greek Communal Chamber undertook to ensure that the Applicant would remain the Headmistress of the school which she had sold, under *exhibit 1*, to the Chamber. Such clause could not, however, be taken as also providing that Applicant would in future receive appointment to an organic post of Headmistress, in the educational service, as such post might be created in future by legislation.

In this respect a distinction has to be made between being Headmistress of a particular school, without being, at the same time, appointed to the organic post of Headmistress too, and, being a Headmistress holding at the same time appointment to such an organic post. In my view it is the former alternative which has been provided for under clause 5 of *exhibit 1* and, as a result, on the 28th August, 1961, Applicant, being a schoolmistress, was "assigned duties of

Headmistress" of the school in question (*vide exhibit 2).* That was only three days after *exhibit 1* had been executed and it is significant of the relevant consensus of the parties, at the time, that Applicant did not complain against *exhibit 2* as being contrary to *exhibit 1.*

I am, therefore, of the opinion that, in the circumstances of this Case, no question of breach of clause 5 of *exhibit 1* arises, through the application to Applicant of the 2nd proviso to section 41 of Law 10/63, because it is clear that Applicant, though given only the new organic post of Assistant Headmistress, under Law 10/63, is still entrusted with the duties of Headmistress of the school to which *exhibit 1* relates, *(vide exhibit 3).*

Even if, however, the said clause 5 were to be given a different interpretation, than above, and to be found to provide for an organic appointment of Applicant as Headmistress, and even if it were also to be found that the 2nd proviso to section 41 was calculated to break clause 5 of *exhibit 1*, then again I could not hold that the said proviso is unconstitutional as being contrary to Article 26 of the Constitution. Such Article, which safeguards the freedom to contract, by laying down that—"Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract", cannot be construed as also providing against a breach of contract; it only safeguards the right to enter into a contract.

Counsel for Applicant has next argued that section 41 is also contrary to Articles 6 and 28 of the Constitution, in that it discriminates against Applicant, because Applicant is practically the only one out of those who have sold their schools to the Greek Communal Chamber, who has not received an organic appointment as Headmistress.

There is nothing in section 41 to indicate that it is intended to discriminate against Applicant or anyone else and I find it indeed impossible to accept that the 2nd proviso to section 41 was drafted, as it has been drafted, in order to bring about that alone Applicant out of all those who have sold their schools, would not receive appointment as Headmistress.

The circumstances of the sale of each particular private school to the Greek Communal Chamber are not before the

Court, but no doubt they differ between them; also, no doubt, the individual merits and qualifications of those who sold their schools to the Chamber, and also entered at the time the educational services, cannot be exactly the same in all cases concerned.

In the absence, therefore, of cogent proof—which does not exist before me in this Case—to the effect that section 41 results in meting out to Applicant treatment prejudicially different than that meted out to any other educationalist who has sold his or her school to the Greek Communal Chamber and does possess exactly the same merits and qualifications as Applicant, I cannot reach the conclusion that section 41 is discriminatory against Applicant, merely because in the particular circumstances of her case it was found possible under it to appoint her as an Assistant Headmistress only.

Counsel for Applicant, on the assumption that clause 5 of *exhibit 1* entitled Applicant to appointment to an organic post of a Headmistress, has argued that the enactment of a provision such as section 41, and particularly of the 2nd proviso thereto, is a step taken contrary to the principles of proper administration and contrary to the rules of natural justice, as understood in their wider sense, because it led to a repudiation by the Communal Chamber of its obligations under clause 5.

As already found, the above assumption about the effect of clause 5 is not well-founded. But even if it were, this Court can only refuse to apply legislation which has been enacted by a legislative organ, if it is contrary to the Constitution; it has no power to refuse to apply legislation which is contrary to the rules of natural justice—and which does not happen, for the same reason, to be also contrary to the Constitution—or which is contrary to the principles of proper administration—without being, for the same reason, also contrary to the Constitution.

And I am not satisfied, even if the meaning of clause 5 were to be as alleged by Applicant, that section 41 could be held to be contrary to any *provision of the Constitution* relating to natural justice or proper administration.

For all the above reasons I am of the opinion that Applicant cannot succeed in this recourse and it has to be dismissed.

Regarding costs I have decided not to make any order and leave each party bear its own costs. I have taken such a course because, though this recourse has failed in the end, it is certainly one which Applicant was entitled to file for the protection of her interests, as she saw them in all good faith.

Application dismissed.
No order as to costs.

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