1966
June 24,
Dec. 31

IOULIANI CHRISTODOULIDOU
and
THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF EDUCATION,
2. ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOULIANI CHRISTODOULIDOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION,

2. THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondent.

(Case No. 15/66).

Elementary Education—School-teachers—Appointments—Decision not to re-appoint applicant taken by the Educational Service Committee, Ministry of Education—Based on the provisions of section 34(2) of The Teachers of Elementary Communal Schools Law, 1963 (Greek Communal Law No. 7 of 1963) —Said decision not to re-appoint applicant due to unsatisfactory service, a product of a material misconception—Because in accordance with the accepted criteria the marks awarded to applicant show that her (applicant's) service ought to have been graded as satisfactory—Therefore, the sub judice said decision must be annulled as being contrary to law and, also, as having been taken in excess and abuse of powers—See, also, herebelow.

Administrative Law—Decision based on a material misconception —Such decision, as the one involved in this case (supra), is, therefore, contrary to law within Article 146, paragraph 1, of the Constitution—Because the aforesaid material misconception leads to the relevant legislation not being properly applied—And, further, the aforesaid decision has been taken in excess and abuse of powers within the meaning of paragraph 1 of Article 146, supra—See, also, under Elementary Education, above.

In this recourse the applicant, who was a temporary school-teacher, complains against the decision of the Educational Service Committee, in the Ministry of Education, not to reappoint her because, on the basis of the provisions of section

34(2) of The Teachers of Elementary Communal Schools Law, 1963, (Greek Communal Chamber Law No. 7 of 1963), her service during the school-year 1962/1963 was not satisfactory. Section 34(2) provides, inter alia, that temporary school-teachers serving on the enactment of the said Law, and who have served satisfactorily for the past three years, may be appointed on contract depending on the needs of the service. It should be noted that a school-teacher's service is graded as "satisfactory" if he or she receives a total of 15-17 marks; and in case the said total results in a mixed number then, though the fraction remains, it is treated for purposes of grading the service, as a whole unit, as an "integer" ("άκεραία μονάς"). Now, as it appears from the relevant records, the total marks awarded to applicant in respect of her service as a school-teacher, in the school-year 1962/1963, was 14.15 marks. Therefore, for purposes of grading her service in the school-year as aforesaid, the applicant ought to have been regarded as having been awarded, in respect of such year, a total of 15 marks and her service ought to have been graded as "satisfactory". It follows that the *sub judice* decision based on the ground that the service of the applicant in the school-year 1962/1963 was unsatisfactory is the product of a misconception and must be annulled.

The Court in annulling the decision complained of:-

Held, (1) the *sub judice* decision of the Educational Service Committee to the effect that applicant dould not be re-appointed, due to unsatisfactory service in the school-year 1962/1963, is the product of a misconception, because if the relevant criteria had been properly applied, then the applicant's relevant service would have been regarded as satisfactory.

(2) Such decision is, therefore, declared to be null and void and of no effect whatsoever as being, *inter alia*, contrary to law-(in the sense that a misconception such as the one involved in this case leads to the relevant legislation not being properly applied to the particular facts of the matter: (see, also, Conclusions from Jurisprudence of the Greek Council of State 1929-1959, p. 267)- and, further, as being a decision taken in excess and abuse of powers.

Recourse.

Recourse against the decision of the Respondent not to re-appoint Applicant as a school-teacher.

D. Papachrysostomou, for the Applicant.

Chr. Mitsides, for Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this recourse the Applicant complains against her non-appointment as elementary school-teacher. The sub judice decision was communicated to the Applicant by letter of the 30th December, 1965, (see *exhibit* 1) and it was taken on the 21st December, 1965, by the Educational Service Committee, in the Ministry of Education (see *exhibit* 9).

A further complaint of the Applicant, that she has not been appointed on an established basis, has not been pursued at all at the hearing of this Case and is deemed, thus, to have been abandoned.

The history of events in this Case is shortly as follows:-

The Applicant has never been a permanently appointed school-teacher. She was appointed on probation, as from the 1st September, 1952, and she worked in such capacity until the 1st June, 1957, when, due to child-birth, her probationary appointment was turned into a temporary one. Her appointment was terminated on the 31st August, 1960, but she was re-appointed in January, 1961, (see the report on her service, dated 28th March, 1964, *exhibit* 8).

It is common ground that appointments of temporary school-teachers are made yearly, for the duration of each school-year, commencing on the 1st September.

On the 1st September, 1963, Applicant was addressed a letter (see *exhibit* 2), informing her that the Appointments Committee, in the Education Office, had decided to terminate her service as from the 31st August, 1963, due to the unsatisfactory marks awarded to her as a school-teacher. By a further letter, dated 13th January, 1964, (see *exhibit* 3) she was informed that it had been wrongly stated, in *exhibit*

2, that her services had been terminated, and that the true position was that she had not been re-appointed because of unsatisfactory marks; reliance was placed, in the said letter, on section 34(2) of the Teachers of Elementary Communal Schools Law, 1963 (Greek Communal Chamber Law 7/63).

Against the decision communicated by the letter *exhibit* 2 Applicant filed recourse 27/64. Then on the 10th March, 1965, Applicant withdrew such recourse, pending a decision in the matter by the Review Committee, which was functioning at the time under the Greek Communal Chamber, (see relevant record, *exhibit* 4).

As no action was taken by the said Review Committee, Applicant filed a further recourse, 203/65, which was, eventually, withdrawn on the 6th November, 1965, when it was undertaken by Respondent to reconsider the matter and give to Applicant a final reply thereon (see relevant record, *exhibit* 5).

As stated already, the matter was considered by the Educational Service Committee on the 21st December, 1965, and, as a result, the letter *exhibit* 1 was addressed to Applicant on the 30th December, 1965.

Applicant filed the present recourse on the 22nd January, 1966.

There can be no doubt that the subject-matter of these proceedings is, and can be, only the final decision (*exhibit* 9) of the Educational Service Committee, taken, as aforesaid, on the 21st December, 1965. In any case this recourse would be out-of-time, under Article 146(3) of the Constitution as regards any earlier decision in the matter of the non-appointment of the Applicant.

The said Committee has recorded in its decision (*exhibit* 9) that, having examined the case, it came to the conclusion that, on the basis of the provisions of section 34(2) of Law 7/63, it could not re-appoint the Applicant because her service, during the school-year 1962/1963, was not satisfactory.

I must state, at this stage, that I find the decision in question to be duly reasoned and that, therefore, I cannot accept the submission of counsel for Applicant that it is invalid for lack of proper reasoning.

The provision relied upon by the Educational Service Committee, section 34(2) of Law 7/63, provides, *inter alia*, that temporary school-teachers, serving on the enactment of the said Law, and who have served satisfactorily for the past three years, may be appointed on contract, depending on the needs of the service.

As it appears from the relevant records of the Greek Education Office (see *exhibit* 6) the total marks awarded to Applicant in respect of her service as a schoolteacher, in the school-year 1962/1963, was 14.15 marks.

Counsel for Applicant has attacked, in general, the system of inspection of the work of school-teachers as being irregular We need not, however, go into this question, because I have reached the conclusion, for the reasons that follow, that, in any case, the Educational Service Committee has acted under a material misconception, thus rendering it necessary for this Court to annul the sub judice decision of the Committee The said reasons are -

In the decision of the Appointments Committee, dated 9th August, 1963, by which it was decided not to re-appoint the Applicant for the school-year 1963/1964 (see *exhibit* 7) are set out, also, the criteria for grading the service of school-teachers on the basis of marks awarded to them. A school-teacher's service is graded as "satisfactory" if he or she receives a total of 15-17 marks, "good" if the total of the marks is 18-20, and so on, and in case the said total results in a mixed number then, though the fraction remains, it is treated, for purposes of grading the service, as a whole unit, as an integer, ("εἰς περίπτωσιν καθ' ἣν τὸ ἄθροισμα τῶν ἐπὶ μέρους βαθμῶν εἶναι μικτὸς ἀριθμός, τὸ κλᾶσμα παραμένει μὲν ἀλλὰ διὰ σκοποὺς τοποθετησεως εἰς τοὺς ὡς ἄνω πίνακας (χαρακτηρισμὸς βαθμολογίας) λογίζεται ὡς ἀκεραία μονάς").

There is nothing to show that the criteria in question which were at the time laid down by the competent organs of the Greek Communal Chamber, had been changed or abandoned between the 9th August, 1963 and the 21st December, 1965, when the sub judice decision was reached, it must, therefore, be taken that they continued to be applicable

On the basis of the said criteria Applicant ought to have been regarded, for the purpose of grading her service in the

school-year 1962/1963, as having been awarded, in respect of such year, a total of 15 marks, and not the total of 14.15 marks which she actually received, because the fraction 0.15—or 15/100—ought to have been treated as an integer i.e. as 1 mark; thus, her service for the particular school-year would have been graded as "satisfactory".

Yet, on the contrary, the Educational Service Committee, on the 21st December, 1965—as well as the Appointments Committee, in 1963—reached the conclusion that the Applicant's service was not "satisfactory", as required for the purposes of section 34(2) of Law 7/63, through misapplying the relevant criteria; it, obviously, failed to treat the fraction, 0.15, as an integer, and, as a result, it relied only on the actual total of the marks awarded to the Applicant, which was below the minimum requirement of 15 marks, whereas, in accordance with the said criteria, the total of the marks of the Applicant, for purposes of grading her service, ought to have been regarded—as explained already—as being 15 marks.

It follows that the sub judice decision, of the Educational Service Committee, that the Applicant could not be re-appointed, due to unsatisfactory service in the school-year 1962/1963, is the product of a misconception, because if the relevant criteria had been properly applied then the Applicant's relevant service would have been regarded as satisfactory. Such decision is, therefore, declared to be null and void and of no effect whatsoever as being, *inter alia*, contrary to law—(in the sense that a misconception such as the one involved in this Case leads to the relevant legislation not being properly applied to the particular facts of the matter; see, also, Conclusions from the Jurisprudence of the Greek Council of State 1929-1959, p. 267)—and as being, further, a decision taken in excess and abuse of powers.

The matter will now have to be reconsidered by the Educational Service Committee on its proper basis.

Regarding costs I have decided to award Applicant £10 costs.

Sub judice decision annulled.
Order for costs as aforesaid.