IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ANDREAS PROTOPAPAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION,

Respondent.

(*Case No.* 243/65).

Elementary Education—School-teachers—Promotions—Applicant's recourse against his non-promotion to the post of Headmaster, grade B—The Teachers of Communal Elementary Schools Law, 1963 (*Law of the Greek Communal Chamber No. 7 of* 1963) *section* 12(1) *and* (4)—*Recourse dismissed as being out of time in view of Article* 146.3 *of the Constitution—Recourse would, also, have failed on the merits—Vacancies to be filled by promotion being twenty-five, whereas the Applicant was placed thirty-third in order of merit—"Additional qualifications" in section* 12(4) *of the said Law—Expression means "academic qualifications" of a school-teacher—Not some success in examinations of a secondary-education standard, such as those for the General Education Certificate (G.C.E)—See, also, below.*

Constitutional and Administrative Law—Recourse under Article 146 *of the Constitution—Time of seventy-five days within which such recourse may be filed—Article* 146.3—*Provision as to time mandatory—Therefore, the Court must take note of it and apply it* ex proprio motu *in the public interest, notwithstanding that counsel for the Respondent did not raise the point.*

Recourse under Article 146 *of the Constitution—Time—Article* 146.3 *of the Constitution—See above.*

Time—Time within which a recourse must be filed—Article 146.3—*Provision mandatory and has to be applied in the public interest by the Court* ex proprio motu—*See, also, above.*

Administrative Law—Internal Regulations—Competence in that respect of the Educational Service Committee set up under section 7 *of the Transfer of Exercise of Competence of the Greek Communal*

Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965)—Said Committee has inherent competence to lay down by internal regulations or rules of practice the criteria and practice for the proper exercise of its statutory powers—So long as such regulations do not conflict with any provision of the Constitution or of any Law in force or with the principles of proper Administration.

Educational Service Committee—Inherent competence to make internal regulations—See above.

Regulations—Internal regulations—Competence of the Educational Service Committee to make internal regulations—See above.

Internal Regulations—Competence of a collective administration to make such regulations—See above.

Regulatory powers of an administrative body—See above.

Public Officers—Promotions—See above under Elementary Education.

School-Teachers—Promotions—See above under Elementary Education; Administrative Law.

Promotions—Promotions of public officers or school-teachers—See above under Elementary Education.

In this case the Applicant complains against the decision not to promote him to the post of Headmaster Grade B, taken by the Educational Service Committee (Ministry of Education) set up under section 7 of the Transfer of Exercise of Competence of the Greek Communal Chamber Law, 1965 (Law No. 12 of 1965). This decision was taken on the 30th August, 1965 and brought to the knowledge of Applicant on the 1st September 1965. The instant recourse was filed on the 14th December, 1965, *i.e.* more than the seventy-five days after the 1st September, 1965 required by Article 146, paragraph 3 of the Constitution. This point was never raised by counsel for Respondent. On the other hand, Applicant addressed a letter to the said Committee on the 10th October 1965, in answer to which he was informed on the 14th October, 1965, that vacant promotion posts were being filled in order of merit on the basis of the marks received by the candidates. Applicant was eligible for promotion to Headmaster, grade B, under the provisions of section 12 of the Teachers of Communal Elementary Schools Law, 1963, (Law of the Greek Communal Chamber No. 7 of 1963). The vacancies to be filled were twenty-five whereas the Applicant was placed thirty-third in order of merit. It would seem also

that the said Committee made certain internal Regulations or rules of practice for the purpose of applying section 12 of Law No. 7 of 1963 (*supra*).

In dismissing the recourse both as being out of time and on the merits, the Court:-

Held: (1)(A) The Applicant came to know of his non-promotion as early as the 1st September 1965. It follows, therefore, necessarily that this recourse having been filed on the 14th December, 1963, is out of time by virtue of paragraph 3 of Article 146 of the Constitution, since it was filed more than seventy-five days after the 1st September, 1965.

(B) It is correct that this point has not been raised by counsel for the Respondent; but it is a matter which this Court is bound to note of its own motion in view of the fact that Article 146.3 of the Constitution is a mandatory provision which has to be applied in the public interest (See *Moran* and *The Republic*, 1 R.S.C.C. 10, at p. 13).

(C) True, the Applicant addressed a letter to the Educational Service Committee on the 10th October 1965, in answer to which he was informed on the 14th October, 1965, that vacant promotion posts were being filled in order of merit on the basis of the marks received by the candidates. But this reply can in no way be considered as amounting to a new decision on the matter reached after a fresh examination thereof.

(D) This recourse, therefore, is dismissed as being out of time.

(2) Furthermore I am of the opinion that it would have failed on the merits too:

(A) The vacancies to be filled were twenty-five and the Applicant was placed thirty-third in order of merit and by section 12(1) of Law No. 7 of 1963 it is expressly provided that a promotion can only be made to a vacant post.

(B) Qualifications (other than what is required under section 12 of Law 7 of 1963, *supra*, for eligibility for promotion) were indeed a most material factor, because it is expressly provided in sub-section (4) of the said section 12 that postgraduate studies or additional qualifications are to be regarded as an advantage. "Qualifications" in this context mean academic qualifications of a school-teacher and it cannot be said that success in two subjects of General Education Certificate (English) examinations,

which are of a secondary education standard, could be regarded as qualifications falling within sub-section (4) (*supra*).

(3) (A) Counsel for Applicant has, further, contended that internal regulations, on the basis of which the Educational Service Committee acted, have wrongly led to the non-promotion of the Applicant.

(B) The said regulations appear to have been made by the said Committee for the purposes of applying section 12 of Law No. 7 of 1963 (*supra*). I can, indeed, find nothing in them which is either contrary to the Constitution or to the said section 12 or to the notions of proper administration.

(C) The Educational Service Committee has inherent competence to lay down by internal regulations—or rules of practice—as such regulations are in substance—the criteria and practice for the proper exercise of its statutory powers and so long as such regulations do not conflict with any provision of the Constitution or of any law in force, and they do not amount to an excess or abuse of power, this Court cannot be expected to intervene, or to dictate to the Committee what criteria or practice it should adopt.

Application dismissed with £15 *costs against Applicant.*

Cases referred to:

Moran and *The Republic,* 1 R.S.C.C. 10, at p. 13 *applied.*

Recourse.

Recourse against the non-promotion of Applicant to the post of Headmaster, grade B, in Elementary Education.

L. Clerides and *A. Argyrides,* for the Applicant.

Chr. Mitsides and *G. Tornaritis,* for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this Case the Applicant complains against his non-promotion to the post of Headmaster, grade B, in Elementary Education.

As the motion for relief has been framed it is made to appear as if the relevant administrative decision was taken originally

by the Ministry of Education, on the 1st September, 1965, and was then finally confirmed by the Educational Service Committee, on the 14th October, 1965; in fact, however, there has been only one decision in the matter (see *exhibit* 3) and it was taken on the 30th August, 1965, by the Educational Service Committee, which has been set up in the Ministry of Education under section 7 of The Transfer of Exercise of Competence of the Greek Communal Chamber and The Ministry of Education Law, 1965 (Law 12/65).

There is, also, in the motion for relief a complaint against an alleged omission to promote the Applicant; this is clearly an alternative claim, which in the circumstances of this Case is not well-founded, in view of the fact that a decision has been taken, in the exercise of discretionary powers, to the effect complained of, and so it could be said that this is a case of an omission.

Thus, what we are really concerned with in this Case is the validity of the decision taken as aforesaid on the 30th August, 1965.

The Applicant is a permanently appointed elementary school-teacher, who until August, 1965, had served as such for about thirteen years; therefore he was eligible for promotion to Headmaster, grade B, under the provisions of section 12 of the Teachers of Communal Elementary Schools Law, 1963 (Greek Communal Law 7/63), which requires as a qualification for the purpose a past service of at least ten years.

In addition to his teaching qualifications the Applicant has passed the General Certificate of Education Examinations of the United Kingdom in Modern Greek (A level) and Ancient Greek (O level).

On the 15th, 17th and 18th June, 1965, the Educational Service Committee interviewed candidates with a view to promotions to Headmaster, grade B—the Applicant being one of them—and on the 30th August, 1965, it decided to promote twenty-five out of such candidates—the Applicant not being one of them.

As a result the Applicant has filed this recourse on the 14th December, 1965.

It is common ground that the Applicant came to know of his non-promotion as early as the 1st September, 1965. It fol ows, therefore, necessarily that this recourse is out of time

by virtue of Article 146.3 of the Constitution, since it was filed more than seventy-five days after the 1st September, 1965. It is correct that this point has not been raised by counsel for Respondent but it is a matter which this Court is bound to note of its own motion in view of the fact that Article 146.3 is a mandatory provision which has to be applied in the public interest (see *Moran* and *The Republic* 1 R.S.C.C. p. 10 at p. 13).

As a matter of fact the Applicant wrote a letter on the 1st September, 1965, protesting against his non-promotion, and he received a reply dated the 13th September, 1965 (see *exhibit* 1) by which he was informed that his name had been included in the list of school-teachers eligible for promotion to Headmaster, grade B, but that he was not so promoted due to lack of a vacant post. Even if the Applicant's letter of the 1st September, 1965, could be taken to amount to a request for a reconsideration of his case, and the letter of the 13th September, 1965, could be taken to amount to the final word in the matter of the authorities concerned, then again this recourse would be out of time, under Article 146.3, in view of the fact that the period between the 13th September, 1965, and the 14th December, 1965, is well over seventy-five days.

Nor can this Case be considered as not being out of time because of the fact that the Applicant addressed a letter to the Educational Service Committee on the 10th October, 1965, in answer to which he was informed, on the 14th October, 1965, that vacant promotion posts were being filled in order of merit on the basis of the marks received by the candidates (see *exhibit* 2); the reply of the 14th October, 1965, can in no way be treated as amounting to a new decision in the matter reached after a fresh examination thereof.

This recourse, therefore, has, in any case, to be dismissed as being out of time, in view of Article 146.3.

Furthermore, I am of the opinion that it would have to fail on the merits, too:-

As it appears from the relevant minutes of the Educational Service Committee, (*exhibit* 3) the promotions to the vacant posts of Headmaster, grade B, were made in order of merit, such merit having been judged on the basis of the length of service of the candidates, of the marks given to them on being inspected in relation to their work by Inspectors of the Education Office and of the marks given to them by the Educational Service

Committee at the interviews. In this respect the said minutes must be read together with the evidence of Mr. Andreas Kourros, who was present at the meeting of the Educational Service Committee, of the 30th August, 1965, as the Head of the Department of Elementary Education; as he has, *inter alia*, explained, seniority is taken into account when the overall marks of two candidates are equal.

From the aforesaid minutes (see table C of *exhibit* 3) it appears that the Applicant was placed thirty-third in order of merit and as the vacant posts of Headmasters, grade B. were apparently only twenty-five he was not promoted.

Counsel for the Applicant have submitted that the criteria which were taken into consideration, in deciding on the promotions in question, did not represent the totality of the relevant criteria which should have been taken into account; criteria such as character, suitability and qualifications were, according to counsel for the Applicant, omitted from consideration.

I cannot agree with this contention: Surely the suitability of candidates was reflected in the marks given to them on inspection of their work and could also be assessed, as far as personal traits were concerned, at the interviews; and character was part of the overall picture of suitability.

Qualifications (other than what is required, as aforestated, under section 12 of Law 7/63 for eligibility for promotion) were indeed a most relevant factor, because it is expressly stated in sub-section (4) of the said section 12 that postgraduate studies or additional qualifications are to be regarded as an advantage. The Applicant, however, did not possess any such qualifications, so that it could be said that they were omitted from consideration in examining his case; in my view the qualifications envisaged by sub-section (4) of section 12 are academic qualifications additional to the normal academic qualifications of a schoolteacher and it cannot be said that success in two subjects of G.C.E. examinations, which are of secondary education standard, could be regarded as qualifications of the Applicant falling within sub-section (4).

I have, as a result, on the basis of the material before me, no doubt in my mind that all material considerations were duly taken into account in the course of the administrative action which led to the non-promotion of the Applicant.

Counsel for the Applicant have, further, contended that

internal regulations, which are set out in *exhibit* 4, and on the basis of which—according to the evidence of Mr. Kourros—the Educational Service Committee acted, have wrongly led to the non-promotion of the Applicant.

The said regulations appear on the face of them to have been made for the purpose of applying section 12 of Law 7/63; I can, indeed, find nothing in them which is either contrary to any provision of the Constitution or to such section or to the notions of proper administration.

The Educational Service Committee has inherent competence to lay down by internal regulations—or rules of practice, as such internal regulations are in substance—the criteria and practice for the proper exercise of its statutory powers and so long as such regulations do not conflict with any provision of the Constitution or of any Law in force, and they do not amount to an excess or abuse of powers, this Court cannot be expected to intervene, or to dictate to the Committee what criteria or practice it should adopt.

In the present Case I am quite satisfied that no cause, as above, exists calling for intervention by this Court in relation to this aspect of this Case. The internal regulations in question were in existence before the setting up of the Educational Service Committee—having been apparently made for the purposes of section 12 of Law 7/63 by the organ exercising previously the relevant powers under section 12—and the Committee was properly entitled to adopt them and continue applying them.

I can, indeed, find no ground warranting interference with the non-promotion of the Applicant; the vacant posts concerned were filled by candidates who were found by the Educational Service Committee, in a manner properly open to it, to be more suitable for promotion than the Applicant; and once this was so the Applicant could not be promoted—even if found otherwise eligible for the purpose—because by express provision in section 12(1) of Law 7/63 a promotion can only be made to a vacant post; Applicant was thirty-third in order of merit and the vacant posts were not sufficient for him to be promoted too.

It has to be pointed out, also, at this stage, that the Applicant is not challenging in this Case the validity of the promotions of those who were promoted, instead of him, by virtue of the decision of the 30th August, 1965, and, therefore, this Court

in this recourse has not really been called upon to decide whether the Educational Service Committee has acted properly or improperly in preferring anyone else to the Applicant; but I might add, nevertheless, that, on the material before me, the Applicant does not appear to me to have established that he could succeed in annulling any one of the promotions concerned; the mere fact of the seniority of the Applicant over most of those who were promoted could not be held as sufficient, in spite of his relatively inferior merits, to lead to the conclusion that abuse or excess of powers of the Committee has been established.

For all the above reasons this recourse fails and is dismissed accordingly.

Regarding costs I see no reason not to award at least part of the Respondent's costs against the Applicant. I am making, therefore, an order for costs against him for £15, subject always to the order for costs in his favour made on the 4th November, 1966, remaining unaffected; and I assess the costs, due to him under such order, at £10.

Application dismissed.
Order for costs as aforesaid.