

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSANTHOS P.
KOUDOUNARIS
v.
REPUBLIC
(MINISTRY OF
EDUCATION)

CHRYSANTHOS P. KOUDOUNARIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION,

Respondent.

(Case No. 325/66).

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Time within which such recourse may be made—Article 146.3 of the Constitution—Applicant's recourse dismissed as being out of time in view of paragraph 3 of Article 146 of the Constitution—Respondent's reply, dated the 18th October, 1966, to a letter dated the 11th October, 1966, of the Applicant's counsel, not amounting to a new decision reached after a fresh examination of the matter—Being merely informatory—Decision of the Respondent is that contained in a letter dated the 29th September, 1966, and communicated personally to the Applicant more than 75 days prior to the filing on the 31st December, 1966, of the present recourse—Therefore this recourse is out of time—See, also, herebelow.

Elementary Education — School-teachers — Dismissals — Applicant's dismissal under the provisions of section 9 of the Teachers of Communal Elementary Schools Law, 1963 (Greek Communal Law No. 7 of 1963)—Dismissal decided upon and communicated to Applicant in August 1965—Respondent's reply dated the 18th October, 1966, confirming its previous decision dated the 29th September, 1966, whereby Respondent rejected Applicant's application for re-employment dated the 5th September, 1966—Not amounting to a fresh decision—Merely informatory—Recourse filed on the 31st December, 1966, dismissed as having been filed out of time in view of Article 146.3 of the Constitution— See, also, above under Administrative and Constitutional Law.

Recourse under Article 146 of the Constitution—Time within which such recourse may be made— Article 146.3—Decisions or acts which can be challenged by such recourse—Not new decision

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but merely confirmatory or informatory acts—Cannot be made the subject of the recourse under Article 146—See, also, hereabove.

Decisions or acts—Administrative decisions or acts—Merely confirmatory or informatory acts cannot be challenged by means of the recourse under Article 146 of the Constitution—See, also, above.

Confirmatory or Informatory acts—See above.

Time—Time within which a recourse under Article 146 of the Constitution may be made—Article 146.3 of the Constitution—See above.

The facts of this case sufficiently appear in the judgment of the Court.

Recourse.

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

P. Laoutas, for the Applicant.

G. Tornaritis, for Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

LOIZOU, J.: The Applicant was an elementary school-teacher on probation having been appointed in September, 1959.

On the 13th August, 1965, the committee of Educational Services of the Ministry of Education acting under the provisions of section 9 of Law No. 7/63 of the Greek Communal Chamber dismissed the Applicant from the service on the ground that his work was not considered satisfactory. The Applicant did not challenge the decision to dismiss him by recourse but instead he applied to the President of the Republic requesting him to intervene in the matter.

Over a year later i.e. on the 5th September, 1966, the Applicant wrote a letter to the committee requesting them to re-employ him to his former post. This letter was forwarded to the committee by Applicant's counsel under cover of a letter signed by him and bearing the same date. Both these letters have been produced and are *exhibit 2* in this case.

On the 29th September, 1966, the committee replied to the Applicant rejecting his application and informing him that they could not re-employ him to a post for which his services had already been considered unsatisfactory (*exhibit 5*).

On the 11th October, 1966 Applicant's counsel, apparently unaware of *exhibit* 5, wrote to the Respondents a letter (*exhibit* 3) which reads as follows:

«'Αντιλαμβάνομαι ότι υπάρχουν τώρα αρκετά κενά θέσεις δημοδιδασκάλων ούτως ώστε να δύνασθε εύκόλως πλέον να αναθεωρήσετε την προγενεστέρα σας απόφασιν περί τερματισμοῦ τῶν ὑπηρεσιῶν τοῦ πελάτου μου κ. Χρυσάνθου Π. Κουδουνάρη τέως διδασκάλου.

2. Τὴν 5/9/1966 ἀπετάθη ἡν πρὸς ὑμᾶς διὰ τὸν ἐπαναδιορισμὸν τοῦ καὶ δὲν ἔτυχον ἀπαντήσεως μέχρι σήμερον.

3. Ὅθεν καλεῖσθε ὅπως, ἐν ὄψει τοῦ γεγονότος εἰς τὴν παραρ. 1 ἀνωτέρω ἐπισπεύσετε τὴν ἀπάντησιν τακτοποιοῦντες τὸ ζήτημα».

To this letter the Respondents replied on the 18th October, 1966. This letter is *exhibit* 4 and reads as follows:

«Εἰς ἀπάντησιν τῆς ὑπὸ ἡμερομηνίαν 11 Ὀκτωβρίου 1966 ἐπιστολῆς σας πληροφορεῖσθε ὅτι εἰς τὴν αἴτησιν τοῦ Χρ. Π. Κουδουνάρη διὰ διορισμὸν εἰς τὴν Στοιχειώδη Ἐκπαιδευσιν ἐδόθη ἀπάντησις τὴν 29ην Σεπτεμβρίου, ἀντίγραφον τῆς ὁποίας σᾶς παραθέτω:

Ἐἰς ἀπάντησιν τῆς ὑπὸ ἡμερομηνίαν 5/9/66 ἐπιστολῆς σας πληροφορεῖσθαι ὅτι ἡ Ἐπιτροπὴ Ἐκπαιδευτικῆς Ὑπηρεσίας δὲν δύναται νὰ σᾶς προσφέρῃ διορισμὸν εἰς θέσιν διὰ τὴν ὁποίαν ἡ ὑπηρεσία σας ἐκρίθη ἤδη ἀνεπαρκῆς».

As a result, on the 31st December, 1966, the Applicant filed the present recourse praying "for a declaration of the court that the decision of the Respondent communicated to Applicant's counsel on the 19th October, 1966, by letter dated 18th October, 1966, by which Applicant's counsel was informed that the committee of Educational Services was not prepared to re-employ Applicant as a school-teacher, is null and void and of no effect whatsoever".

Counsel for the Respondents submitted that the recourse is out of time and both counsel agreed that this preliminary point be determined first.

By virtue of Article 146.3 of the Constitution a recourse "shall be made within 75 days of the date when the decision or act was published or if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

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There is no question, indeed it is admitted, that the reply of the Respondents to the Applicant dated 29th September, 1966, *exhibit 5*, was communicated to the Applicant personally more than 75 days prior to the filing of the recourse. Counsel for the Applicant has explained that the Applicant did not show this letter to his counsel and submitted that the letter dated 18th October, 1966, *exhibit 4*, which was received by counsel on the 19th October, 1966 amounts to a new administrative act and that, therefore, the recourse is within the time limit prescribed by the Constitution.

Having considered this matter carefully, in the light of the material before me, I have come to the conclusion that the letter dated 18th October, 1966, *exhibit 4*, can in no way be treated as amounting to a new decision in the matter reached after a fresh examination thereof. In my view the decision of the Respondent is contained in *exhibit 5* which was communicated to the Applicant more than 75 days prior to the filing of the recourse and *exhibit 4* is merely informative.

Having reached this conclusion I must uphold the submission of counsel for the Respondent that the recourse is out of time in view of Article 146.3 of the Constitution.

The recourse is, therefore, dismissed with costs which I assess at £12.

*Application dismissed with
£12.- costs.*