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ANDREAS
GAVRIEL
v.
REPUBLIC
(MINISTER
OF EDUCATION)

[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS GAVRIEL,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

THE MINISTER OF EDUCATION,

Respondent.

(Case No. 210/65).

Education—Teachers—Transfer of a schoolmaster from technical education to secondary education—Power of the Committee of Educational Service to effect such transfer—Constitution and Composition of Committee at the material time—Discretion—Proper exercise in the best interests of education—No abuse of powers—The Transfer of the Exercise of Competence of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965), sections 2, 7 (2) (a) (b) and (c) (3), 16 (1)—See, also, herebelow.

Collective organ—Constitution and Composition of a collective organ—Bad or defective composition leads to its incompetence and renders its decisions void—The concept of lawful composition of a collective organ is repugnant to the participation in its deliberations of persons who are no members or are no longer members of such collective organ according to law.

Administrative Law—Collective organ—Defective constitution or composition—Effects—See above under Education; Collective Organ.

Greek Communal Chamber—Appointments—Acting appointments made by the Committee of Administration of the Greek Communal Chamber continue in force after the dissolution of the Greek Communal Chamber by the said Law No. 12 of 1965, supra—This by operation of the proviso to sub-section (1) of section 16 of that Law.

Communal Chamber—Greek Communal Chamber—Its dissolution by Law No. 12 of 1965, supra—See above.

Committee of Educational Service—Competence functions—Section 7(3) of Law No. 12 of 1965, supra—Constitution and Composition—Section 7(2)—See above under Education; Collective Organ.

Public Service Commission—Competence—In relation to appointments of Heads of Department in the Ministry of Education.

Ministry of Education—Transfer to the Ministry of Education of powers held by the Greek Communal Chamber before its dissolution—Section 3 of the said Law No. 12 of 1965.

Discretion—Proper use—No abuse of powers—See above under Education.

Excess and abuse of powers—See above under Education.

Abuse of powers—See above under Education.

Teachers—Schoolmasters—Transfer of from technical education to secondary education—See above under Education.

Schoolmasters—Transfer—See above under Education.

Technical Education—Secondary Education—Transfer of a school-teacher from one to the other—See above under Education.

Secondary Education—Technical Education—Transfer from one to the other—See above under Education.

Committee of Administration of the Greek Communal Chamber—Acting appointment by—Continues in force by operation of proviso to sub-section (1) of section 16 of Law No. 12 of 1965, supra, after the dissolution of the Greek Communal Chamber—See above under Greek Communal Chamber.

Transfer—Transfer of schoolmasters or teachers from technical education to secondary education or vice versa—See above under Education.

By this recourse the Applicant challenges the decision of the Respondent to transfer him from the Technical School of Nicosia, (a school of Technical Education) to the Kykko Gymnasium for boys, a school of Secondary Education. The Applicant is a Teacher of Physics and Chemistry and at the time of the decision complained of he was posted at the Technical School Nicosia. This decision, taken by the appropriate organ in the matter *i.e.* the Committee of Educational Service, at its meeting held on the 9th, 10th and 11th September, 1965, was communicated to the Applicant by a letter dated the 14th September, 1965. As a result this recourse was filed under Article 146 of the Constitution. It is based on the following grounds of law :

(A) That the said Committee of Educational Service has no power to transfer a teacher from technical education to

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secondary education and that, therefore, the *sub judice* decision was taken in excess of powers.

(B) That at the time the decision was taken the said Committee was not properly constituted and that, in any event, at the material time the composition of the Committee was defective in view of the fact that in addition to the members provided by the relevant Law (*infra*), two public officers non-authorised thereby were sitting on the Committee.

(C) That in any case the decision was taken in abuse of powers.

With regard to Ground (A) (*supra*) it was submitted by counsel for Applicant that the Transfer of the Exercise of Competence of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965) creates separate compartments of education and that there is no legal power to make a transfer from one compartment of education to the other. In support of his submission he cited section 7 (2) (c) of the said Law.

Section 7 makes provision for the establishment and organization of the services for the exercise of the administrative powers transferred from the then Greek Communal Chamber to the Ministry of Education by section 3 of the same Law. By virtue of section 7 (2) the Committee of Educational Service is constituted and its composition is defined. The Committee, thus, consists of five members, three of whom are appointed by the President of the Republic, the 4th is the Director of the Personnel Department and the 5th is the officer in charge of the Higher and Secondary Education, or the Elementary Education, or the Technical, Agricultural and generally the Vocational Education, depending on whether the exercise of power relates to an Inspector of Secondary Education or a schoolmaster, to an Inspector of Elementary Education or a schoolteacher, or to an Inspector of Technical, or Agricultural or Vocational Education or to a master or Inspector of Technical, Agricultural or Vocational schools (see section 7(2)(a)(b) and (c)).

As already stated the Applicant was at the time the decision complained of was taken a master of technical school posted at the Technical School Nicosia. It follows therefore that: (1) The Head of the Technical Education ought to sit on the Committee, (2) whereas the Head of the Higher and Secondary Education or of the Elementary Education could not take part in the decision complained of.

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In annulling the decision complained of on the second leg of ground (B) hereabove *i.e.* on the ground of defective composition of the Committee at the time, because the Head of the Higher and Secondary Education took part in the decision contrary to section 7 (2) (c) of the said Law, the Court :

Held, I. As to ground (A), supra, i.e. as to whether or not the Committee of Educational Service has powers to transfer from technical education to secondary education :

(1) The functions of the Committee of Educational Service are set out in section 7 (3) of the Law No. 12 of 1965 (*supra*) and they include the appointment, classification, establishment, promotion, transfer, secondment, posting and retirement of Inspectors of Education, schoolmasters and teachers and the exercise of disciplinary control over them including power to dismiss them. I find, therefore, no merit in the argument on behalf of the Applicant that the Committee had no powers to take the decision complained of to transfer the Applicant from the compartment of Technical Education to that of Secondary Education.

Held, II. As to ground (B) (supra) i.e. as regards the argument that at the time the sub judice decision was taken the Committee of Educational Service was not properly constituted or, in any event, that at the material time the composition of the said Committee was defective etc. etc. :

(1) (a) At the time the *sub judice* decision was taken (September 1965) the Head of the Technical Education was Mr. Syrimis, who was still on leave since January 1965. The officer replacing him was Mr. Origenis Spyridakis, an Inspector of Physics, who was appointed in January, 1965, by the Committee of Administration of the Greek Communal Chamber, which was then the appropriate organ to make such appointment at the time, to act in the place of Mr. Syrimis. After the enactment of the said Law No. 12 of 1965 (March 1965) (*supra*) the appropriate organ to appoint the Head of Department is the Public Service Commission. The Public Service Commission took no action in the case of Mr. Spyridakis, who sat on the Committee when the decision complained of was taken (September, 1965).

(b) It was argued on behalf of the Applicant that since no acting appointment was made by the Public Service Commission, Mr. Spyridakis was not, at the material time, properly appointed to act and, therefore, he was not properly on the Committee.

(c) I am inclined to agree with counsel on behalf of the Respondent that no such acting appointment was necessary in view of the proviso to sub-section (1) of section 16 of the Law. By operation of this section the acting appointment of Mr. Spyridakis continued in force after the dissolution of the Greek Communal Chamber by the said Law No. 12 of 1965 (*supra*). It follows that he was properly on the Committee at the meeting when the *sub judice* decision was taken.

2 (a) On the other hand, it is clear that the persons who sat on the Committee when the decision complained of was taken were the three persons appointed by the President of the Republic under section 7 (2) (a) of the Law, the Head of Higher and Secondary Education Mr. Vrahas and the Acting Head of Technical Education, the said Mr. Origenis Spyridakis. Present also was Dr. Kouros, the Head of Elementary Education who, however, took no part in the *sub judice* decision.

(b) It is, therefore, clear that both the Head of Technical Education and the Head of Higher Education were present and took part in the decision.

(c) The question now arises whether this departure from the provisions of section 7 (2) (c) (*supra*) regarding the composition of the Committee affects the validity of the decision so taken. The answer is that it does. Bad composition of a collective organ leads to its incompetence and renders its decisions void. (See the Decisions of the Greek Council of State No. 1273/1953 (in Συμπλήρωμα Νομολογίας Ζαχαροπούλου 1953-1960, Vol. 1 a-k p. 559 para. 59) and No. 1481/1956 in Decisions of Council of State 1956 Vol. Γ. at p. 125). But the concept of proper composition of a collective organ is repugnant to the participation therein of a person who is not included among its members according to law or who is no longer such a member. (See Kyriakopoulos on Greek Administrative Law, Vol. B, 4th ed. p. 20).

Held, III. As regards ground (C) (supra) i.e. that in any event the decision complained of was taken in abuse of powers :

(1) It was submitted by counsel on behalf of the Applicant that even if the Respondents had power to make the transfer in question, they exercised their discretion wrongly and abused their powers on the ground that such transfer was undesirable from the educational point of view because a different method of teaching and approach to the subject is used in the technical

schools from the one used in secondary education and also because the administrative duties at the two schools are different and for this reason the power to transfer should be used sparingly.

(2) I am clearly of the opinion that the Applicant has failed to substantiate this allegation. The Applicant is a teacher of physics and chemistry which are subjects not peculiar to technical education but on the contrary they are common to both technical and secondary education. On the material before me, there is nothing to show that the Respondents, in the exercise of their powers, acted in any way improperly or otherwise than in the best interests of education, and for this reason I would not be prepared to interfere on this ground with the decision complained of.

Held, IV. Result :

In the result, for the reasons stated regarding ground (B) above, this recourse must succeed and the decision complained of is hereby declared null and void ; it is now up to the Committee of Educational Service to consider this matter afresh in its proper composition. No order as to costs.

*Sub judice decision annulled. No order as to costs.
Order in terms.*

Cases referred to :

Decisions of the Greek Council of State :

No. 1273/1953 in Συμπλήρωμα Νομολογίας Ζαχαροπούλου 1953-1960 Vol. I a-k, p. 559 para. 59;

No. 1481/1956 in Decisions of the Council of State 1956, Vol. Γ. p. 125.

Recourse.

Recourse against the decision of the Respondent to transfer Applicant from the Technical School Nicosia to the Kykko Gymnasium for boys.

A. Triantafyllides, for the Applicant.

G. Tornaritis, for the Respondent.

Cur. adv. vult.

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The following Judgment was delivered by:

LOIZOU, J.: By this recourse the Applicant seeks a declaration that the decision of the Respondent to transfer him from the Technical School Nicosia to the Kykko Gymnasium for Boys is null and void and of no effect whatsoever.

The Applicant is a teacher of Physics and Chemistry and at the time of the decision complained of he was posted at the Technical School Nicosia. At a meeting of the Committee of Educational Service held on the 9th, 10th and 11th September, 1965 it was decided, *inter alia*, to post the Applicant to the Kykko Gymnasium for Boys. The minutes of the meeting have been produced and are *exhibit* "D". This decision was conveyed to the Applicant by a letter dated the 14th September, 1965 (*exhibit* 1 attached to the Application). The Applicant objected to this transfer and on the 19th October, 1965 his objection was rejected (*exhibit* 2 attached to the Application). As a result this recourse was filed.

This Application is based on the following grounds of law:

- (A) That the Committee of Educational Service has no power to transfer a teacher from technical education to secondary education and that, therefore, the decision complained of was taken in excess of power.
- (B) That at the time the decision was taken the committee was not properly constituted and
- (C) That in any case the decision was taken in abuse of power.

A. With regard to this ground it was submitted by learned counsel for the Applicant that Law 12/65 creates separate compartments of education and that there is no legal power to make a transfer from one compartment of education to the other. In support of his submission he cited section 7 of the said law and particularly paragraph (c) of sub-section (2) thereof.

This section 7 makes provision for the establishment and organization of the services for the exercise of the administrative powers transferred from the then Greek Communal Chamber to the Ministry of Education by section 3 of the law. By virtue of sub-section (2) of this section the Committee of Educational Service is constituted and its composition is defined. The committee consists of five members three of whom are appointed

by the President of the Republic, the 4th is the Director of the Personnel Department and the 5th is the officer in charge of the Higher and Secondary education, or the Elementary education, or the Technical, Agricultural and generally the Vocational education depending on whether the exercise of power relates to an Inspector of Secondary education or a schoolmaster, to an Inspector of Elementary education or a schoolteacher, or to an Inspector of Technical, Agricultural or Vocational education or to a master or Inspector of Technical, Agricultural or Vocational schools.

The functions of the Committee are set out in sub-section (3) and they include the appointment, classification, establishment, promotion, transfer, secondment, posting and retirement of Inspectors of Education, schoolmasters and teachers and the exercise of disciplinary control over them including power to dismiss.

The provisions of paragraph (c) of sub-section 2 of section 7, learned counsel argued, afford a clear indication that separate compartments of education are created and that the transfer from one compartment of education to the other is not permitted; if it were otherwise, he said, it would mean, in a case of a transfer for instance, that whereas the Head of the Department to which the officer affected belongs would be sitting on the committee, the Head of the recipient department would have no say in the matter and this could never have been contemplated by the legislature. I find no merit in this argument especially in view of the fact that four of the persons who constitute the committee are regular members thereof and one must assume that they are aware of the needs of education generally and of the merits and qualifications of each officer.

B. The second point argued is that at the time of the decision the committee was not properly constituted in view of the fact that the head of technical education to which the Applicant belonged was not present. The substantive holder of this post at the time was Mr. Stavros Syrimis. This officer, in January, 1965, went on leave abroad and has since retired but when the decision complained of was taken he was still on leave. In January, 1965 Mr. Origenis Spyridakis Inspector of Physics was appointed by the Committee of Administration of the Greek Communal Chamber, which was the appropriate organ to make such appointment at the time, to act in the place of Mr. Syrimis (*exhibit "C"*). After the enactment of Law 12/65

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the appropriate organ to appoint the Head of Department was the Public Service Commission. The Public Service Commission took no action in the case of Mr. Spyridakis. Learned counsel's argument was that since no acting appointment was made by the Public Service Commission Mr. Spyridakis was not properly appointed to act and, therefore, he was not properly on the committee. Learned counsel for the Respondent argued that no such acting appointment was necessary and this in view of the proviso to sub-section (1) of section 16 of the law. I am inclined to agree with the view that by operation of this section the acting appointment of Mr. Spyridakis continued in force after the dissolution of the Greek Communal Chamber and that therefore he was properly on the committee at the meeting when the decision complained of was taken.

But in so far as the composition of the committee is concerned learned counsel for the Applicant made another point after the production of the minutes of the meeting at which the decision complained of was taken (*exhibit "D"*). He submitted that the composition of the committee was in any case defective in view of the fact that in addition to the Head of the Technical Education the Head of Higher and Secondary Education and also of Elementary Education were sitting on the committee. That these officers were present clearly appears from the minutes.

Learned counsel for the Respondent in the course of his address said this on the question of the composition of the committee: "The persons who sat on the committee when the decision complained of was taken were the three persons appointed under paragraph 'a' of sub-section (2) of section 7, the Head of Secondary and Higher Education Mr. Vrahas and Mr. Origenis Spyridakis the Head of Technical Education. Present also was Mr. Kouros who took no part in the decision". It is, therefore, clear that both the Head of the Technical and the Head of the Higher and Secondary Education were present and took part in the decision. The question now arises whether this departure from the provisions of section 7(2)(c) regarding the composition of the committee affects the validity of the decision. In the text-book on Greek Administrative Law by Kyriakopoulos vol. B at p. 20 it is stated:

«Απαραίτητος προϋπόθεσις τῆς ἐννόμου λειτουργίας τοῦ συλλογικοῦ ὄργανου εἶναι ἡ νόμιμο; αὐτοῦ συγκρότησις. Τοῦ νόμου ὀρίζοντος ἐκ πόσων καὶ τίνων ἀτόμων ἀπαρτίζεται τὸ συλλογικὸν ὄργανον προϋπόθεσιν τῆς νομίμου ὑποστάσεως καὶ λειτουργίας, ἀλλὰ καὶ τοῦ ἐγκύρου τῶν ἀποφάσεων,

ἀποτελεί ἡ συγκρότησις αὐτοῦ ἐκ πάντων τῶν προσώπων, τὰ ὅποια νόμῳ καθωρίσθησαν, διὰ ν' ἀποκτήσῃ τοῦτο γένεσιν καὶ μορφήν συλλογικοῦ ὄργανου. Πρὸς τὴν ἔννοιαν δὲ τῆς νομίμου συγκροτήσεως τοῦ συλλογικοῦ ὄργανου ἀντίκειται ἢ εἰς αὐτὸ συμμετοχὴ προσώπου μὴ περιλαμβανόμενου μεταξὺ τῶν κατὰ νόμον μελῶν αὐτοῦ ἢ στερηθέντος τῆς ἰδιότητος ταύτης λ.χ. δυνάμει δικαστικῆς ἀποφάσεως».

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To the effect that bad composition of a collective organ leads to its incompetence and renders its decisions voidable are the Decisions of the Council of State 1273/53 (Συμπλήρωμα Νομολογίας Ζαχαροπούλου 1953–1960 vol. 1 a–k p. 559 para. 59) and 1481/56 (Decisions of the Council of State of 1956 vol. Γ. at p. 125).

In the light of the above I am of the view that on this ground the recourse must succeed and the decision complained of, in so far as it affects the Applicant, must be declared null and void.

C. Although this disposes of the case I think I should deal very briefly with Applicant's ground "C" i.e. the allegation that the Respondents exercised their discretion wrongly and abused their powers; it was submitted on the part of the Applicant that even if the Respondents had power to make the transfer they exercised their discretion wrongly and abused their powers on the ground that such transfer was undesirable from the educational point of view because a different method of teaching and approach to the subject is used in the technical schools from the one used in secondary education and also because the administrative duties at the two schools are different and for this reason the power to transfer should be used sparingly.

I am clearly of the opinion that the Applicant has failed to substantiate this allegation. The Applicant is a teacher of physics and chemistry which are subjects not peculiar to technical education but on the contrary they are common to both technical and secondary education. On the material before me there is nothing to show that the Respondents, in the exercise of their powers, acted in any way improperly or otherwise than in the best interests of education, and for this reason I would not be prepared to interfere with the decision complained of on this ground.

In the result, for the reasons I have stated under ground "B" above, this recourse must succeed and the decision complain-

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ed of is hereby declared null and void; it is now up to the Committee of Educational Service to consider this matter afresh in its proper composition.

In all the circumstances I have decided to make no order as to costs.

Sub judice decision annulled.

No order as to costs.

Order in terms.