

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS CARAYIANNIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF EDUCATION,
2. THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

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CONSTANTINOS
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v.
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EDUCATION
AND ANOTHER)

(Case No. 332/68).

Public Officers—Transfer—Secondary Education—Headmaster's application for transfer from a rural post to Nicosia mainly on family reasons—And after serving for five consecutive years in a rural school—Section 25(2) of the Masters of Communal Secondary Education Schools Law, 1963 (Law of the Greek Communal Chamber No. 10 of 1963)—Decision of the Respondent Educational Service Committee rejecting said application—Not duly reasoned—And taken without due weight having been given to a most relevant factor i.e. the Applicant's family difficulties—Said decision annulled as taken contrary to law, namely the general principles of Administrative Law, and in excess and abuse of powers (Petrondas v. The Attorney-General, reported in this Part at p. 214 ante, followed). See, also, herebelow under Public Officers.

Secondary Education—Headmaster—Transfer—Refusal of—Annulled—See hereabove.

Headmasters and Schoolmasters in the Secondary Education—See hereabove.

Administrative Acts—Need for due reasoning of—General and sweeping statements will not do—Need for adequate specific reasoning.

Administrative Law—Administrative Acts—Due reasoning required etc. etc.—See hereabove.

Public Officers—Transfers—Application for—Family difficulties of the public officer concerned have to be weighed together with

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the exigencies of the service in the present case, the educational needs.

Reasoning of administrative acts—Due reasoning required—Vague and sweeping statements are not sufficient—Need for adequate and specific reasons being given.

Collective organ—Educational Service Committee—Minutes of its meetings—Anything but adequate or satisfactory ones—Observations of the Court on the most unsatisfactory state of affairs regarding minutes of certain meetings of the Respondent Committee, made in the case of Petrondas v. The Attorney-General (reported in this Part at p. 214 ante) restated.

Minutes and Records of meetings of a collective organ—See immediately hereabove.

Administrative acts or decisions—Annulled as having been done or taken contrary to Law namely the general principles of Administrative Law and in excess and abuse of powers.

Abuse and excess of powers—See above.

Principles of Administrative Law—Acts contrary to such principles are acts contrary to Law—See above.

In this case the Applicant a Headmaster, Secondary Education complains against the decision of the Respondent Educational Service Committee—in the Ministry of Education—whereby they refused to transfer him from Lapithos to Nicosia with effect from the school year 1968/1969. The Applicant has been serving at Lapithos since the school-year 1963/1964; in other words at the end of the school-year 1967/1968 he was completing five years' service in a rural school and, consequently he was entitled to be transferred from Lapithos unless there existed cogent reasons to the contrary (see section 25(2) of the Masters of Communal Secondary Education Schools Law, 1963 (Law No. 10 of 1963 of the Greek Communal Chamber); see also *Petrondas v. The Attorney-General*, (reported in this Part at p. 214 ante)).

One of the main reasons given in support of the Applicant's application for transfer was the ill-health of his daughter Maria a child of just over three years old, such reason being fully supported by a medical certificate signed by the Government Specialist in Child Health dated March 26, 1968.

The Respondent Committee took the decision to refuse the Applicant's application for transfer at their meeting of July 1, 1968 and the Applicant was informed accordingly by their letter dated July 15, 1968 (*Exhibit 1*). On August 5, 1968, the Applicant requested a reconsideration of the matter by the Committee (*Exhibit 2*). His case was re-examined by the Committee at a series of meetings between the 20th August 1968 and the 26th August, 1968 and it was decided not to alter the decision already taken in the matter. The Applicant was informed of this by letter dated September 11, 1968 (*Exhibit 3*). Though by the letter of the 15th July (*Exhibit 1*) (*supra*), the Applicant had been informed that his request for a transfer could not be granted "*for educational reasons*", in the second letter of September 11 (*Exhibit 3 supra*) it was stated that the Committee had not been able to alter its previous decision in view of the "*absence of relevant possibilities*". On the other hand the picture presented by the relevant minutes of the Respondent Committee (*Exhibits 5 and 8*) is anything but a satisfactory or adequate one.

Annulling the refusal complained of as having been taken contrary to Law (i.e. contrary to the principles of Administrative Law) and in excess and abuse of powers, the Court:—

Held, (1). The picture presented by the relevant minutes of the Respondent Committee (*Exhibits 5 and 8*) is anything but a satisfactory or adequate one:—

(a) The minutes of the meeting of July 1, 1968 (*Exhibit 5*) are the same minutes which were described in the judgment of this Court in *Petrondas v. The Attorney-General* (reported in this Part at p. 214 *ante*) and they need not be described herein once again; the Applicant in the present case was one of those whose applications for transfer had been rejected on the strength of the contents of such minutes; and as found in *Petrondas* case (*supra*) those contents did not amount to due reasons for the decision challenged therein; likewise in the present case too, they cannot be held to amount to due reasons for the *sub judice* now decision. This is so not only for the reasons set out in the judgment in the *Petrondas* case, but, also in view of the special circumstances concerning the health of the present Applicant's daughter.

(b) The minutes for the meetings of the Respondent Committee in the period 20 to 26 August, 1968 (*Exhibit 8 supra*)—

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during which time the Applicant's case was reconsidered—are equally bare of adequate specific reasoning.

(2) There can be no doubt at all that this later decision of the Committee should have been fully reasoned, with specific reference to the case of the Applicant, who had, when seeking reconsideration of the matter by his letter of August 5, 1968 (*Exhibit 2 supra*), complained that the question of the health of his daughter had been overlooked, or rejected, without reasons being given; and especially, as the Applicant had already served five years at a rural post (at Lapithos), in the sense of section 25(2) of Law No. 10 of 1963 (*supra*) and was, therefore, entitled to be transferred unless there existed cogent reasons to the contrary (see the *Petrondas case supra*).

(3) Nor can it be said that the general and sweeping statements contained in the two letters addressed to the Applicant (*Exhibits 1 and 3 supra*)—i.e. that the Applicant's request for transfer could not be granted "for educational reasons" or in view of "the absence of relevant possibilities"—do contain sufficient, in the circumstances of this case, reasoning for the rejection of the Applicant's application for transfer. (See *Petrondas case supra*; Decisions of the Greek Council of State Nos. 206/38, 1535/50, 424/54 and 1525/58; Economou on Judicial Control of Discretionary Powers (1965) p. 233 et seq.).

(4) In the light of all the foregoing reasons I have reached the conclusion that the administrative action which resulted in the refusal of the Applicant's request for transfer is defective in that it is not duly reasoned and, as such, is contrary to Law—namely, the relevant principles of Administrative Law—and was taken in excess and abuse of powers. It must therefore be declared and it is declared to be *null and void* and of no effect whatsoever.

(5)(a) But there is more cause, still, for the annulment of the *sub judice* refusal to transfer the Applicant: From the material before me it appears that no due weight has been given to a most material consideration, namely, the family difficulties of the Applicant, due to the illness of his daughter.

(b) Such difficulties, like all family circumstances of a public officer, are matters relevant to the exigencies of the service, in a wider sense because they could quite likely affect adversely his performance in the discharge of his duties (see *Vafeadis*

v. *The Republic*, 1964 C.L.R. 454 at p. 466). Of course such difficulties would have to be weighed together with the exigencies of the service, in a narrower sense, namely in this case the educational needs.

(c) In the relevant minutes of the Respondent Committee (*Exhibit 5 supra*) it is not stated *specifically* which were exactly the educational reasons which were found to be so weighty as to prevent the transfer of the Applicant to Nicosia in spite of his family difficulties due to the illness of his daughter.

(d) The summary and insufficient way in which the case of the Applicant was examined at the meeting of the 1st July 1968 (*supra*) is shown by the fact that when it was reconsidered in August 1968 (see *Exhibit 8 supra*), it was not found that there were any educational reasons preventing his transfer from Lapithos to Nicosia, but that his transfer could not be effected as there were no "relevant possibilities"—in other words, that there was not, any longer, at the time a vacancy in a post of Headmaster in Nicosia (see *Exhibit 3 supra*).

(e) For this reason too the *sub judice* refusal to transfer the Applicant has to be annulled.

Sub judice refusal annulled.

Cases referred to:

Petrondas v. The Attorney-General (reported in this Part at p. 214 *ante*);

Vafeadis v. The Republic, 1964 C.L.R. 454 at p. 466 *followed*;

Decisions of the Greek Council of State: Nos. 206/1938, 1533/1950, 424/1954 and 1525/1958.

Recourse.

Recourse against the refusal of the Respondent Educational Service Committee to transfer Applicant, a Headmaster at a Secondary Education School, from Lapithos to Nicosia with effect from the school-years 1968/1969.

M. Christofides, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

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The following judgment was delivered by:

TRIANTAFYLLOIDES, J.: In this case the Applicant complains against the refusal of the Respondent Educational Service Committee—in the Ministry of Education—to transfer him to Nicosia, from Lapithos, with effect from the school-year 1968/1969.

The Applicant applied for such transfer on the 28th March, 1968 (see *exhibit 6*); and on the same date his wife, who was also posted at Lapithos, applied, too, to be transferred to Nicosia (see *exhibit 7*). The Applicant, at the material time, was the Headmaster of the Lapithos Gymnasium and his wife was a school-mistress serving at the same Gymnasium.

The Applicant has been serving at Lapithos since the school-year 1963/1964; in other words, at the end of the school-year 1967/1968 he was completing five years' service there.

One of the main reasons given in support of Applicant's application for transfer—as well as of the application for transfer of his wife—was the health of their daughter, Maria, who was just over three years old.

In a medical certificate it was stated that she had had repeated attacks of asthmatic bronchitis for which she needed continuous attention and treatment; that in order to avoid the effect of the humid climate of Lapithos she had been sent to stay with her grandparents in Nicosia for eighteen months prior to the 26th March, 1968, and, actually, this had had a beneficial effect on her health and reduced the number of asthmatic attacks; that it would be necessary for the child to stay in Nicosia for some more years, otherwise a deterioration of her condition might follow if she went back to a climate with high humidity, like that of Lapithos; and that it was, on the other hand, essential that the child be not separated from her parents because prolonged separation might have an adverse effect on her psychological world.

The said medical certificate was signed on the 26th March, 1968, by Dr. Hji Minas, the Government Specialist in Child Health; it was attached to the application for transfer of the wife of the Applicant, but reference to it was made, too, in the application for transfer of the Applicant himself.

In the Opposition the Respondent admitted as being correct

the above-stated position regarding the health of the Applicant's daughter.

It was further stated in the Applicant's application for transfer that he had been at Lapithos, continuously, for five years and that the family home—a house owned by the wife of the Applicant—was in Nicosia.

The refusal of the application for transfer of the Applicant was decided at a meeting of the Educational Service Committee which was held on the 1st July, 1968 (see its minutes *exhibit 5*). At the same meeting his wife's application was, also, turned down.

The Applicant was informed accordingly by letter dated the 15th July, 1968 (see *exhibit 1*).

On the 5th August, 1968, he requested a reconsideration of the matter by the Committee (see *exhibit 2*).

His case was re-examined by the Committee at a series of meetings which took place between the 20th August, 1968 and the 26th August, 1968 (see the minutes *exhibit 8*) and it was decided not to alter the decision already taken in the matter.

The Applicant was informed of this by letter dated the 11th September, 1968 (see *exhibit 3*); though by the letter of the 15th July, 1968, the Applicant had been informed that his request for a transfer could not be granted "for educational reasons", in the letter of the 11th September, 1968, it was stated that the Committee had not been able to alter its previous decision in view of the "absence of relevant possibilities"; and, actually, the phrase "for educational reasons" appears as having been erased in *exhibit 3*, which is a cyclostyled form of letter containing "educational reasons" and "absence of relevant possibilities" as alternative grounds for the refusal to review earlier decisions rejecting applications for transfer.

The picture presented by the relevant minutes of the Respondent Committee (*exhibits 5 and 8*) is anything but a satisfactory or adequate one.

The minutes of the 1st July, 1968 (*exhibit 5*) are the same minutes which were described in the judgment of this Court in *Petrondas v. The Attorney-General* (reported in this Part at p. 214 *ante*) and they need not be described herein once again; the Applicant in the present case was one of those

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whose applications for transfer had been rejected on the strength of the contents of such minutes; and as found in the *Petrondas* case the said contents did not amount to due reasons for the decision challenged therein; likewise, in the present case, too, they cannot be held to amount to due reasons for the *sub judice*, now, decision. This is so not only for the reasons set out in the judgment in the *Petrondas* case, but, also, in view of the special circumstances concerning the health of the daughter of the present Applicant.

The minutes for the meetings of the Respondent Committee during the period of 20th August, 1968 till the 26th August, 1968 (*exhibit 8*)—during which time the case of the Applicant was reconsidered—are equally bare of adequate specific reasoning.

There can be no doubt at all that this later decision of the Committee should have been fully reasoned, with specific reference to the case of the Applicant, who had, when seeking reconsideration of the matter (see *exhibit 2*), complained that the question of the health of his daughter had been overlooked, or rejected, without reasons being given; and, especially, as the Applicant had already served five years at a rural post, in the sense of section 25(2) of the Masters of Communal Secondary Education Schools Law, 1963 (Law 10/63 of the Greek Communal Chamber), and was, therefore, entitled to be transferred unless there existed cogent reasons to the contrary (see the *Petrondas* case *supra*).

Nor can it be said that the general and sweeping statements contained in the two letters addressed to the Applicant (*exhibits 1 and 3*) do contain sufficient, in the circumstances of this case, reasoning for the rejection of the application for transfer of the Applicant.

In addition to what has been stated in the *Petrondas* case (*supra*) regarding the need for, and nature of, due reasoning useful reference may be made, in this respect, to Economou on Judicial Control of Discretionary Powers (1965) p. 233 et seq., and to Decisions 206(38), 1535(50), 424(54) and 1525(58).

In the light of all the foregoing I have reached the conclusion that the administrative action which resulted in the rejection of the application for transfer of the Applicant is defective in that it is not duly reasoned, and, as such, it is contrary to law—

namely, the relevant principles of Administrative Law—and was taken in abuse of powers; it is, therefore, declared to be *null* and *void* and of no effect whatsoever.

But there is more cause, still, for the annulment of the *sub judice* refusal to transfer the Applicant:

From the material before me it appears that no due weight has been given to a most material consideration, namely, the family difficulties of the Applicant, due to the illness of his daughter.

Such difficulties, like all family circumstances of a public officer, were a matter relevant to the exigencies of the service, in a wider sense, because they could, quite likely, affect adversely his performance in the discharge of his duties (see *Vafeadis v. The Republic*, 1964 C.L.R. 454, at p. 466).

Of course, such difficulties would have to be weighed together with the exigencies of the service, in a narrower sense, namely, in this case, the educational needs.

Originally, the Applicant was informed, by the letter dated the 15th July, 1968 (*exhibit* 1) that his transfer could not be effected “for educational reasons”.

In the relevant minutes of the Respondent Committee (*exhibit* 5) it is not stated *specifically* which were exactly the educational reasons which were found to be so weighty as to prevent the transfer of the Applicant to Nicosia in spite of his family difficulties, due to the illness of his daughter; nor is there, either, any direct mention, in the said minutes, of the illness of the Applicant’s daughter.

In the circumstances, it cannot be held that the family difficulties of the Applicant were duly weighed as against the generalities stated in the opening part of the aforesaid minutes of the 1st July, 1968 (*exhibit* 5)—(which were stated in respect of the Applicant and twenty-three others)—and that it was, nevertheless, decided not to transfer him; proper administration required that there should have been examined, and stated, specifically why the Applicant’s family difficulties could not lead to his transfer, especially as there were at the time two vacant posts of Headmaster in Nicosia to which there were posted, by decisions taken at the same meeting—of the 1st July, 1968—two persons promoted there and then to the post of Headmaster from that of Assistant Headmaster.

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The summary and insufficient way in which the case of the Applicant was examined on the 1st July, 1968, is shown by the fact that, when it was reconsidered in August 1968 (see *exhibit 8*), it was not found that there were any educational reasons preventing his transfer to Nicosia, but that his transfer could not be effected as there were no “possibilities”—in other words, that there was not, any longer, at the time, a vacancy in a post of Headmaster in Nicosia; this is abundantly clear from the letter sent to the Applicant on the 11th September, 1968 (*exhibit 3*) in which the expression “for educational reasons”, which appeared in such letter, was erased.

With such a state of affairs it is impossible to accept that the case of the Applicant did receive the close attention that it required and that one of its main elements, namely, the family difficulties of the Applicant, was duly weighed.

For this reason, too, therefore, the *sub judice* refusal to transfer the Applicant has to be annulled.

In the result, this recourse succeeds; and the Respondent should pay, also, to Applicant £10 towards costs.

*Sub judice decision annulled;
order for costs as above.*