

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS YIALLOURIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

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CONSTANTINOS  
YIALLOURIDES  
v.  
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(EDUCATIONAL  
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(Cases Nos. 367/68, 383/68).

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*Public Service and Public Officers—Transfer—See herebelow under  
Secondary Education.*

*Secondary Education—Transfer of Headmaster; mainly based on  
the recommendations of the local School Committee—Section  
25(1) of the Masters of Communal Secondary Education Schools  
Law, 1963 (Greek Communal Chamber Law No. 10 of 1963)—  
Respondent's discretion—Said local School Committee's state-  
ment that Applicant lacked in administrative abilities contradicted  
by Education Inspectors' various reports on him—Disregard of  
said Inspectors' reports and failure of the Respondent to ascertain  
true position—Consequently, transfer complained of is contrary  
to Law and in excess and abuse of powers through the exercise  
by the Respondent of its relevant discretionary powers in a  
defective manner—See, also, herebelow.*

*Secondary Education—Transfer—Refusal of Applicant's request for  
transfer based on the orally expressed views of a local School  
Committee—Section 25(1) of the said Law No. 10 of 1963  
(supra)—Said section envisages written recommendations (and  
properly reasoned) and not views expressed orally—Consequently,  
the Respondent has acted contrary to Law and in a manner  
incompatible with good administration—And their decision refu-  
sing Applicant's said request for transfer has to be annulled as  
being contrary to Law and in excess and abuse of powers.*

*Practice—Costs—Part only of costs awarded to successful Applicant—  
Because Respondent acted in the matter in good faith.*

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*Administrative acts or decisions—Contrary to Law and in excess and abuse of powers—See hereabove.*

*Discretionary powers—Defective exercise thereof—Administrative organ labouring under a material misconception of fact—Failure to take properly into account of material factors—Resulting decision has, therefore, to be annulled as being contrary to Law and in excess and abuse of powers.*

*Misconception—Failure to ascertain true position—Decision contrary to law and in excess and abuse of powers—See hereabove.*

*Excess and abuse of powers—See hereabove.*

In these two cases the Applicant—who is a Headmaster, Grade B, in the Greek Secondary Education—complains (1) against his transfer from the Solea Gymnasium at Evrychou to the Pedhoulas Gymnasium as from the school-year 1968/69; (2) against the refusal by the Respondent to transfer him from the Pedhoulas Gymnasium to Morphou to be posted at any of the Gymnasiums there during the current school-year 1968/69.

It is quite clear that the recommendations of the local Evrychou School Committee were all along the paramount factor which led to the transfer of the Applicant from the Solea Gymnasium to the Pedhoulas Gymnasium. As regards the said refusal on the part of the Respondent Educational Service Committee to transfer the Applicant from Pedhoulas to Morphou it is also clear that Respondent has acted on the basis of only orally expressed views of the local Morphou School Committee. Under section 25(1) of the relevant legislation, which at the material time was the Masters of Communal Education Schools Law, 1963 (Greek Communal Chamber Law No. 10 of 1963), the recommendations of the local School Committee concerned are taken into account regarding transfers of schoolmasters—along with reasons of health and family reasons—if they are not in conflict with the needs of education in general. It would seem the health of the Applicant's wife is far from good; as early as 1963 the Applicant had informed the education authorities that his wife was in need of constant medical attention. So, as his wife could not stay with the Applicant at Evrychou and had to reside at Morphou, it is quite natural that she could not follow him to Pedhoulas either; Pedhoulas is further away from Morphou than Evrychou; therefore, the transfer of the Applicant to Pedhoulas (*supra*) must have increased his personal hardship.

Annulling the decisions complained of, the Court:-

*Held, I. As regards the Applicant's said transfer to Pedhoulas:*

(1) On the material before me I have reached the conclusion that in the matter of the transfer of the Applicant to Pedhoulas the Respondent Educational Service Committee acted erroneously.

(a) In the first place, it treated the recommendations of the Evrychou School Committee as establishing unequivocally, by themselves alone, education needs of such weight as to prevent the Respondent from acting with due regard to the family difficulties of the Applicant due to his wife's precarious state of health. This was a wrong approach; what should have been done was to consider the views of the Evrychou School Committee together with the family circumstances of the Applicant and decide the question of the transfer or not of the Applicant on the basis of the totality of all relevant factors with particular needs of education in general, such needs to be ascertained not merely on the basis of what the Evrychou School Committee had stated but through the appropriate organs of the Ministry of Education such as its Inspectors and other responsible officials. Consequently, I must hold that the Respondent has dealt with the matter in the course of a defective exercise of its discretionary powers under the said Law No. 10 of 1963 (*supra*).

(b) Moreover, the Respondent was not at all on safe ground in relying, as it did, on the statement of the Evrychou School Committee to the effect that the Applicant did not possess the essential administrative abilities, whereas it appears from the relevant reports of the education Inspectors that the Applicant was always being given full marks regarding administrative abilities.

(2) It seems to me quite clear that the Respondent either disregarded without proper cause the aforesaid reports of the education Inspectors or failed to pay due regard to them; thus it failed to take properly into account a most material factor and consequently it exercised its discretion in a defective manner, labouring throughout under a serious misconception.

(3) The course that the Respondent should have adopted, in view of direct conflict between the Inspectors' reports and the recommendations of the Evrychou School Committee, was

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to try to ascertain what was exactly the correct position; and this could only have been properly done by requesting the appropriate authorities in the Ministry of Education to inspect the work of the Applicant and place their findings before the Respondent before it reached a final decision regarding the transfer of the Applicant; as this was not done, it follows that the Respondent has failed to ascertain adequately and correctly all relevant facts before exercising its discretionary powers.

(4) For all the foregoing reasons the decision to transfer the Applicant to Pedhoulas Gymnasium has to be declared *null* and *void* as being contrary to law and in excess and abuse of powers.

*Held, II. As regards the Respondent's refusal to transfer the Applicant to the Morphou Gymnasium.*

(1) It is clear that the Respondent Educational Service Committee has acted in this matter on the basis of only orally expressed views of the local Morphou School Committee; and there is nothing on record to show what were these views and on what they were based, so as to judge whether they amounted to anything which could properly be taken into account and be treated as outweighing the need to meet as far as possible—always in the light of the needs of education—the family difficulties of the Applicant.

(2) When section 25(1) of the said Law No. 10 of 1963 (*supra*) speaks about the recommendations of a School Committee it envisages officially made i.e. written recommendations and not views expressed orally.

(3) It was therefore erroneous on the part of the Respondent to rely on the said views of the Morphou School Committee as orally expressed to it; if it was felt that such views merited consideration the said School Committee ought to have been requested to put them in writing, with adequate reasons therefor.

(4) It follows that the Respondent in refusing to post the Applicant at Morphou has again, acted contrary to law and in a manner incompatible with good administration, leading to abuse and excess of powers; as a result this action of the Respondent, too, has to be annulled.

*Held, III.* (1) It is now up to the Respondent to reconsider the case of the Applicant in the proper manner and decide on it afresh.

(2) Regarding costs I have decided to award to the Applicant only part of his costs, which I assess at £20; I take this view because I feel that the Respondent has acted in this matter in good faith; it agreed to re-examine the case of the Applicant and reached a reasoned decision in respect thereof.

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

### Recourse.

Recourse against the decision of the Respondent Educational Service Committee to transfer Applicant, who is a Headmaster Grade B, in Greek Secondary Education, from the Solea Gymnasium at Evrychou to the Pedhoulas Gymnasium.

*L. Papaphilippou*, for the Applicant.

*G. Tornaritis*, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

TRIANAFYLLIDES, J.: These proceedings arose out of the transfer of the Applicant—who is a Headmaster, Grade B, in Greek secondary education—from the Solea Gymnasium at Evrychou to the Pedhoulas Gymnasium, as from the school-year 1968/69.

Such transfer was decided upon by the Respondent Educational Service Committee on the 1st July, 1968 (see *exhibit* 12) and the Applicant was formally notified of it by means of a letter dated the 15th July, 1968 (see blue 121 in the personal file of the Applicant, *exhibit* 16).

The Applicant came to know of such transfer, for the first time, through a publication in a newspaper; as he had not applied, himself, for such a transfer and as he had reasons to object to it he protested, in writing, on the 10th July, 1968, to the Respondent, as well as to the Minister of Education (see *exhibits* 1 and 2).

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Having received no reply he wrote, once again, to the Respondent on the 24th July, 1968 (see *exhibit 3*).

As, still, no reply was given to the Applicant, he filed, on the 9th September, 1968, recourse 312/68 (see *exhibit 4*) against his transfer; his recourse was withdrawn on the 14th January, 1969, in view of further administrative action which supervened in the meantime, as hereinafter stated.

After the Applicant had filed recourse 312/68 he received from the Respondent a letter dated the 11th September, 1968 (see *exhibit 5A*) informing him that the Respondent had found itself unable, for educational reasons, to reverse its decision regarding the transfer of the Applicant; as it appears from relevant minutes of the Respondent (see *exhibit 11*) the case of the Applicant, together with other similar cases, had been reconsidered at a series of meetings of the Respondent which were held between the 20th August, 1968, and the 26th August, 1968.

The Applicant applied for an interview with the Respondent regarding his transfer; and his request having been granted by the Respondent on the 1st October, 1968 (see *exhibit 9*), he appeared before the Respondent on the 4th October, 1968 (see *exhibit 8*). At such interview the Applicant supplemented what he had to say by placing before the Respondent a lengthy written statement (see *exhibit 14*).

On the 13th November, 1968, the Applicant filed a new recourse, case 367/68, against his transfer; and this is one of the two cases in relation to which this judgment is being given.

On the 19th November, 1968, the Respondent re-examined the Applicant's case and it decided that it could not grant his request for a transfer back to the Solea Gymnasium because, in spite of the family reasons which had been put forward by the Applicant, there existed the educational reasons which had led the Respondent to decide on his transfer away from such Gymnasium, viz. the strong objections against him of the Evrychou School Committee, to the effect that the Applicant did not possess the essential administrative abilities; thus, the transfer of the Applicant to the Pedhoulas Gymnasium was finalized. The Respondent examined, also, a request of the Applicant that he should, in the alternative, be transferred to Morphou and decided that such request could not be granted for similar educational reasons, viz. that the Morphou School

Committee had requested that he should not be posted at any any of the Gymnasia there (see the relevant minutes of the Respondent, *exhibit 7*).

It is quite clear from the context of this decision of the Respondent that the recommendations of the Evrychou School Committee were all along the paramount factor which led to the transfer of the Applicant from the Solea Gymnasium to the Pedhoulas Gymnasium.

The Applicant was informed accordingly by letter dated the 23rd November, 1968 (see *exhibit 6*); and he, as a result, filed recourse 383/68, on the 11th December, 1968; this being the second of the two cases in relation to which this judgment is being delivered.

It may be stated, at this stage, that the Applicant since 1966 had requested to be transferred from Evrychou to Morphou or Nicosia in view of the "precarious state of the health" of his wife (see blue 115 in *exhibit 16*); and, actually, since October 1967 he had been granted permission, by the Ministry of Education, to reside at Morphou "for family reasons", even though he continued being posted at Evrychou (see blue 120 in *exhibit 16*).

There is not before the Court a clear picture regarding the state of the health of the wife of the Applicant; but it does seem to be common ground that her health is not good; and as early as 1963 the Applicant had informed the education authorities that his wife was in need of constant medical attention (see blue 106 in *exhibit 16*). So, as his wife could not stay with the Applicant at Evrychou and had to reside at Morphou, it is quite natural that she could not follow him to Pedhoulas, either; Pedhoulas is further away from Morphou than Evrychou and, therefore, the transfer of the Applicant there must have increased his personal hardship.

The matter of the health of his wife was stressed by the Applicant when he protested, originally, on the 10th July, 1968, against his transfer to Pedhoulas (see *exhibits 1 and 2*) and it was reiterated in the document which he placed before the Respondent on the 4th October, 1968 (see *exhibit 14*). Actually, the Respondent by its decision of the 19th November, 1968 (*exhibit 7*) accepted that the Applicant had family difficulties but it took the view that the Applicant had to remain at Pedhoulas for educational reasons, viz. the objections

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against him of the School Committees of Evrychou and Morphou, of the two places where the Applicant wished to work instead of at Pedhoulas.

The Applicant has denied the allegation of the Evrychou School Committee that he did not possess the essential administrative abilities.

The said allegation is contained in a letter addressed to the Respondent by the Evrychou School Committee on the 15th April, 1967 (see *exhibit 15*); and this document is expressly referred to in the *sub judice* decision, taken by the Respondent on the 19th November, 1968.

The Respondent took, in 1967, no action on the basis of such letter and the Applicant remained posted at the Solea Gymnasium for the school-year 1967/68.

On the 30th March, 1968, the same School Committee, in answer to a relevant circular of the Respondent, wrote back saying that it was not prepared to express any view regarding transfers of staff because certain previous recommendations had not been taken into account (see, again, *exhibit 15*); and this document, too, is expressly referred to in the Respondent's decision of the 19th November, 1968.

Under section 25(1) of the relevant legislation, which at the material time was the Masters of Communal Secondary Education Schools Law (Greek Communal Chamber Law 10/63), the recommendations of the School Committee concerned are taken into account regarding transfers of masters—along with reasons of health and family reasons—if they are not in conflict with the needs of education in general.

On the basis of all the material before me I have reached the conclusion that in the matter of the transfer of the Applicant to Pedhoulas the Respondent acted erroneously:—

In the first place, it treated the recommendations of the Evrychou School Committee as establishing unequivocally, by themselves alone, education needs of such weight as to prevent the Respondent from acting with due regard for the family difficulties of the Applicant; this was a wrong approach; what should have been done was to consider the views of the Evrychou School Committee together with the family circumstances of the Applicant and decide the question of the transfer



or not of the Applicant on the basis of the totality of all relevant factors with particular reference to the needs of education in general, such needs having been ascertained not merely on the basis of what the Evrychou School Committee had stated but through the appropriate organs of the Ministry of Education, such as its Inspectors and other responsible officials; therefore, I must hold that the Respondent has dealt with the matter of the transfer of the Applicant in the course of a defective exercise of its discretionary powers under Law 10/63.

Moreover, the Respondent was not at all on safe ground in relying, as it did, on the allegation of the Evrychou School Committee to the effect that the Applicant did not possess the essential administrative abilities; from the relevant reports of the education Inspectors, which are to be found in the confidential file regarding the Applicant (see *exhibit* 19), it appears that when his work was inspected in December 1964 he was given a total of 23 1/2 marks out of a maximum of 25, and regarding his administrative abilities he was given the best possible marks, viz. 5 marks; also, when his work was inspected, earlier, in July 1963, he was given 23 marks out of 25, and regarding administrative abilities he was, again, given 5 marks.

I have, therefore, reached the conclusion that the Respondent in relying on what was stated by the Evrychou School Committee was labouring under a serious misconception; or, to say the least, there exists, in my opinion, a very great probability that the Respondent has acted on the basis of such a misconception; and, in both such eventualities the *sub judice* decision of the Respondent cannot be treated as being a valid one.

It seems to me to be quite clear that the Respondent either disregarded without proper cause the aforesaid reports or failed to pay due regard to them; thus, it failed to take properly into account a most material factor and consequently it exercised its discretion in a defective manner.

The course that the Respondent should have adopted, in view of the direct conflict between the Inspectors' reports and the recommendations of the Evrychou School Committee, was to try to ascertain what exactly was the correct position; and this could only have been properly done by requesting the

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appropriate authorities in the Ministry of Education to inspect the work of the Applicant and place their findings before the Respondent before it reached a final decision regarding the transfer of the Applicant; as this was not done, it follows that the Respondent has failed to ascertain adequately and correctly all relevant facts before exercising its discretionary powers.

For all the foregoing reasons the administrative action, finalized by the decision of the 19th November, 1968, and entailing the transfer of the Applicant to Pedhoulas, has to be declared to be *null and void* and of no effect whatsoever as being contrary to law and in abuse and excess of powers.

Regarding the second part of the decision reached by the Respondent on the 19th November, 1968, viz. that the Applicant could not be posted at Morphou, it is clear that the Respondent has acted on the basis of only orally expressed views of the Morphou School Committee; and there is nothing on record to show what were these views and on what they were based, so as to judge whether they amounted to anything which could properly be taken into account and be treated as outweighing the need to meet as far as possible—in the light, always, of the needs of education—the family difficulties of the Applicant.

When section 25(1) of Law 10/63 speaks about the recommendations of a School Committee it envisages officially made, and, consequently, written, recommendations, and not views expressed orally.

It was, therefore, erroneous on the part of the Respondent to rely on the said views of the Morphou School Committee, as orally expressed to it; if it was felt that such views merited consideration the School Committee ought to have been requested to put them on record, with adequate reasons therefor.

It follows that the Respondent in refusing to post the Applicant at Morphou has, again, acted contrary to law and in a manner incompatible with good administration, leading to abuse and excess of powers; as a result, this action of the Respondent, too, has to be annulled.

It is now up to the Respondent to reconsider the case of the Applicant, in the proper manner, and decide on it afresh.

Regarding costs I have decided to award to the Applicant, and against the Respondent, only part of his costs, which I assess at £20; I take this view because I feel that the Respondent has acted in this matter in good faith; it agreed to re-examine the case of the Applicant and reached a reasoned decision in respect thereof.

I must, also, express my appreciation for the fact that the Respondent, through its counsel, has greatly assisted the Court by producing before it all relevant records.

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

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