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[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

PANAYIOTIS PAPAZACHARIOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case No. 246/70).

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*Educational Service—Secondary Education—Promotions—  
Post of Inspector of Secondary Education Grade “A”—  
Decision of the Educational Service Commission pro-  
moting the interested party instead of, and in preference  
to, the applicant—Not duly reasoned—Annulled as  
being thus contrary to law i.e. to the well established  
principles of Administrative Law requiring due reasoning  
of administrative decisions, particularly those unfavourable  
to the subject—And as taken under a misconception of  
the real facts.*

*Administrative acts and decisions—Reasoning—Due reasoning  
required—Especially when the decision is adverse or  
unfavourable to the subject, in which case the reasoning  
must be specific—In the instant case the sub judge  
decision not to promote the applicant is one of the few  
classic cases in which no reasons at all are given—Such  
lack of reasoning renders it a decision contrary to law—  
Cf. supra.*

*Reasoning of administrative acts or decisions—Need for due  
reasoning—Particularly when such decisions are  
unfavourable to the subject—Cf. supra.*

*Administrative acts or decisions—Contrary to law in the  
sense of Article 146.1 of the Constitution—Decision  
contrary to well established principles of Administrative  
Law—Such as the decision in the instant case where  
there is a lack of due reasoning—Cf. supra.*

*Administrative Law*—Well established principles of Administrative Law—Requiring due reasoning of administrative decisions—Lack of such reasoning renders the decision contrary to law i.e. contrary to the well established principles of Administrative Law.

*Promotions*—Duty of the Educational Service Commission in effecting promotions—Its paramount duty is to select the most suitable candidate for the particular post.

*Educational Service*—Inspector of Secondary Education Grade "A"—Scheme of Service—Requirement of "successful educational service of at least 10 years" in the said scheme—Whether years spent on post-graduate course should be deemed to fall within the meaning of such scheme.

*Words and Phrases*—"Successful educational service of at least ten years" in the aforesaid scheme of service (see supra immediately hereabove).

*Discretionary powers*—Vested in the Public Service Commission as well as in the Educational Service Commission—Promotions and appointments—Judicial control of such discretion—When the Court will interfere with the exercise of such discretion—Principles applicable.

The facts sufficiently appear in the judgment of the learned Judge, annulling the *sub judice* decision as being contrary to law i.e. contrary to the well established principles of administrative law in that there was lack of due reasoning; and also in that it was taken under a misconception of the real facts.

Cases referred to :

*Pattichis and Another v. The Republic* (1968) 3 C.L.R. 374, at p. 382;

*Partellides v. The Republic* (1969) 3 C.L.R. 291, at p. 296;

*Papapetrou and The Republic*, 2 R.S.C.C. 61;

*Georghiades v. The Republic* (1967) 3 C.L.R. 653;

*Constantinou v. The Republic* (1966) 3 C.L.R. 793;

*Constantinides v. The Republic* (1967) 3 C.L.R. 7, at p. 14;

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*Pancyprian Federation of Labour (PEO) v. The Board of Cinematograph Films Censors (1965) 3 C.L.R. 27, at p. 37;*

*HadjiSavva v. The Republic* (reported in this Part at p. 174, *ante*)

**Recourse.**

Recourse against the decision of the Respondent Educational Service Committee to promote or appoint the interested party, Xenophon A. Christophides, to the post of Inspector of Secondary Education, Grade "A", in preference and instead of the applicant.

*R. Constantinides*, for the applicant.

*G. Tornaritis*, for the respondent.

*M. Christophides*, for the interested party.

*Cur. adv. vult*

The following judgment was delivered by :-

HADJIANASTASSIOU, J. : In these proceedings, under Article 146 of the Constitution, the applicant, a school teacher, seeks to challenge the validity of the decision of the Educational Service Commission for the promotion and/or appointment of Mr. Xenophon A. Christophides (the interested party), to the post of Inspector of Secondary Education, Grade "A", as being null and void and of no effect whatsoever.

The facts are these :-

The applicant is a school teacher of physics, and on March 1, 1959, was appointed and posted to a school of secondary education at Rizokarpaso. During the school year 1959—60 he was transferred to the Commercial Lyceum of Larnaca. Later on he was again transferred to the Second Gymnasium in Famagusta and remained serving there until the school year 1965. Apparently as from the year 1965 to 1969 he went abroad in order to pursue higher studies in England. When he completed his studies he returned to Cyprus in the year 1969, and was posted to the Gymnasium for Girls in Famagusta.

In the meantime, on September 3, 1969, the applicant addressed a letter to the educational authorities and, on

October 15 of the same year, Mr. Savvides, on behalf of the Director-General, in reply to the applicant said that it was decided that his leave of absence without pay for the years 1965-66, 1966-67, 1967-68 would be turned into educational leave without pay; and in the light of that decision his revised salary scale would come into force as from September 1, 1969. However, an amount of £180 was granted to the applicant for the period of two years as from October 1, 1969, because of his special qualifications. Furthermore, the applicant was told that because he had completed his studies and started work earning wages at the Daresbury Nuclear Physics Laboratory from October 1, 1968 to July 1, 1969, that period would not be considered as educational leave. (See *exhibit 1*).

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On the other hand, the qualifications of the applicant are as follows :-

- (a) Graduate of Gymnasium;
- (b) Diploma in Physics of the University of Athens in the year 1954-59;
- (c) Diploma for Advanced Studies in Science (Physics) of the Victoria University of Manchester, in 1966, and
- (d) A Ph.D. Degree in 1968.

His performance during the year 1961-62 showed a total mark of  $17\frac{1}{2}$  and in 1969-70 showed  $19\frac{1}{2}$  out of 25 marks.

On the other hand, the interested party, who joined the Educational Service three years later on, was appointed and posted to the Technical School of Nicosia for the year 1962-63. He was transferred to the Central Pancyprian Gymnasium for the school year 1963 and remained serving there until 1970. His performance during the year 1967-68 showed a total mark of  $22\frac{1}{4}$  and for the year 1968-69 showed  $23\frac{1}{2}$ . His qualifications are :-

- (a) Graduate of Gymnasium;
- (b) B.Sc.—3rd class Honours of the University of London 1958-1961; and

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(c) Post Graduate Certificate in Education, 1961-62  
of the same University.

On April 17, 1970, the Educational Service Commission for Teachers, (hereinafter referred to as the Commission) advertised a notice in the official Gazette of the Republic, inviting applications for the filling of one vacancy of the post of Inspector of Secondary Education, Grade "A", relating to the subject in Physics. There were five applicants including Mr. Panayiotis Papazachariou and the interested party.

On May 25, 1970, the Commission interviewed the said five applicants and on May 27, they met in the presence of the Director of Education in order to fill the post in question. The minutes (*exhibit 4*) of that meeting are, *inter alia*, in these terms :-

"The Commission having examined the personal files and confidential reports of the candidates and after taking into consideration the views of the Director, as well as the stand of the appropriate authority dated 18.5.70 *viz.* that for educational reasons it was necessary that preference should be given for the filling of the post in question to an educationalist who specializes in Physics, decided, after considering the merits, qualifications, seniority, as well as the general impression formed from the personal interview regarding each candidate, to appoint Mr. Xenophon Christophides, a teacher in Physics, as being the most suitable, as from July 15, 1970."

The said scheme of service (*exhibit 3*) regarding the vacant post of Inspector, was approved by the Council of Ministers on February 3, 1966 under its Decision No. 5354. The scheme in question reads as follows :-

*"Duties and Responsibilities.*

- (a) Inspection of secondary education schools and inspection and guidance of the teaching staff within his special field in accordance with instructions or on the basis of the relevant curriculum;
- (b) Active participation in educational conferences and refresher courses for the teaching staff of

secondary schools generally, and more particularly matters coming within his special field.

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- (c) Any other duties that might be assigned to him.

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A University diploma or degree or certificate of an equivalent school of higher education in the subject within his special field qualifying for classification as a secondary school teacher, 1st grade, under the relevant law.

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Post-graduate training abroad in educational matters or in a subject connected with the duties of the post in question, lasting at least one academic year, or in the case of a holder of a diploma of a teacher's training college or Academy of education lasting one academic period for 6 months.

Successful educational service of at least 10 years; familiarity with modern developments within his special field."

Then a note appears in the said scheme of service, which reads :-

"Note : In case none of the otherwise qualified candidates in any particular field has the required years of educational service, a candidate having at least seven years of such service, may be selected from amongst them."

On August 24, 1970, the applicant feeling aggrieved because of the decision of the Commission, filed the present recourse, and it was based on the following three legal grounds :-

- (a) That the decision of the Commission was contrary to Section 28 of the Public Educational Service Law, 1969, (Law 10/69) because the interested party did not possess the qualifications required under the scheme of service for the post of Inspector of Secondary Education, viz., of successful educational service of at least 10 years;
- (b) The said decision was contrary to the principle of selecting the best candidate amongst the candidates of the said post because the Commission has

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preferred and promoted the interested party instead of the applicant who was manifestly superior to the interested party regarding merit, qualifications and seniority; and,

(c) That the said decision was not specially reasoned.

On October 14, the respondent filed the opposition and paragraph 1 reads, *inter alia*, as follows :-

“The respondent..... alleged that the actual service of the applicant in the schools is 7 years and not 11, as he has alleged, for the reason that for 4 years he was on leave.”

Pausing here for a moment, it would be observed, that if those years, that is to say, 1965-66, 1966-67 and 1967-68, which were recognized as being educational leave, were taken into consideration by the Commission, then no doubt, the applicant would have had the 10 years service required by the scheme of service. I shall, of course, revert at a later stage regarding the words ‘successful educational service’.

On January 21, 1971, counsel on behalf of the respondent, in compliance with the instructions of the Court, filed a statement (blue 16) signed by Mr. Cosmas, a member of the Commission, which runs as follows :-

“I, A. L. Cosmas.... as far as I could best remember, the then Director of Education Mr. Kl. Georghiades, during the meeting of the Commission dated 27.5.70, suggested that Mr. Xen. Christophides should be selected for the appointment to the post of Inspector of Secondary Education, Grade ‘A’ (Physics) for the following reasons :-

- (a) Higher marks;
- (b) Longer actual teaching service at the schools;
- (c) Post-graduate training in educational matters as required by the relevant schemes of service; and
- (d) The Ph.D. Degree held by the applicant, once it was obtained after a thesis prepared by him regarding Nuclear Physics was entirely

unconnected with the duties of the post of Inspector.”

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It is pertinent to state that though in going through the notes (blue 17) under Nos. 28, 29, 30 and 31, everyone in hierarchy seemed to be in agreement that for the filling of the post in question a teacher ought to be preferred who specialised in Physics, nevertheless, in spite of the fact that the applicant (see comparative table) is a graduate of the University of Athens in Physics and has obtained a Diploma for Advanced Studies in Science—Physics in 1966, the Director of Education made no reference at all to those Diplomas; and that he only criticised the Ph.D. of the applicant, obtained by him in 1968, as being unconnected with the duties of the post in question, though regarding the case of the interested party, whom he recommended, he never indicated the subjects for which his diploma in Physics was obtained. See also (note 11) in the personal file of the applicant in which it appears that regarding the Ph.D. the Director of Education, as he put it, “it would be substantial gain to have scientists with Ph.D.”.

I think that I should have added that, in the way the decision of the Commission was drafted, I entertain serious doubts whether the Commission before reaching their decision, in view of the contents of the letter, (*exhibit 1*) and particularly of the specific reference as to physics, had actually addressed their mind to the fact that the applicant, or indeed any one amongst the candidates, was qualified under the scheme of service regarding both the 10 years and the specialization in Physics. I think, however, though as I said earlier no reference is made in the said minutes, this situation appears to be clarified in some way from the statements made by counsel on behalf of the respondent during the hearing of this case on May 7, and 22, 1971, and also from the evidence of Mr. Ierides, a Senior Administrative Officer of the Ministry of Education.

Be that as it may, on May 7, 1971, Mr. Tornaritis made the following statement :-

“After careful consideration of this case, and after perusing the various resolutions of the respondents, particularly with regard to the



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question of the 10 years service provided by the scheme of service, I have reached the opinion that I must advise the respondents to reconsider their decision on this point.”

Then an adjournment was granted with the consent of all counsel concerned to May 22. On that date, in the absence of Mr. Tornaritis, Counsel on behalf of the applicant made four propositions.

The first proposition was that, the decision of the Commission was contrary to Section 28 of Law 10/69 because the interested party did not possess the qualifications required by the scheme of service (having only 7 years of educational service), as compared to the applicant who had the 10 years required by the said scheme of service.

The second proposition was that, in the absence of a definition as to what is meant by the words ‘educational service’ one should rely on the provisions of section 76(1) of the said Law 10/69 which introduces the practice prevailing and which was adopted by the Educational Authorities *viz.*, that the years of post-graduate studies were considered as part of the educational service of a teacher; and that in the absence of any regulations made under the new Law, the existing practice was binding on the Commission and ought to credit the applicant with those years of his post-graduate studies. Counsel relies on *Pattichis and Another v. The Republic (Ministry of Education and Another)* (1968) 3 C.L.R. 374, at p. 382.

The third proposition was that, the Commission erred regarding the question of seniority in not selecting the applicant who was most senior and their decision, therefore, was defective because it was reached contrary to Section 37(1) of Law 10/69.

Finally, the fourth proposition was that, the said decision of the Commission was not specially reasoned, being an adverse one to the applicant; and that the Commission misdirected itself both as to question of law and to the facts of the case.

Then to a question by Court, Mr. Eftychiou, on behalf of the respondent, said :-

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"I have been informed this morning by the representative of the respondent that Mr. Tornaritis has placed before them his views, and the respondent are now in a position through me to make this declaration: That the Educational Committee certainly takes into consideration, the educational years of studies as part and parcel of the years of service of an officer who has gone abroad in order to pursue higher studies after leave was granted by the appropriate authority. This fact was before the Commission when they were taking their decision, that the applicant possessed the ten years of service required by the scheme of service."

Later on counsel continued with this statement:-

"I have been briefed by the representative of the Educational Commission that they have never considered actually whether the period of four years educational studies comes within the meaning of successful service."

When the opening address of Counsel was concluded and as Mr. Eftychiou was unable to be of any assistance to the Court because, as he put it, due to lack of further instructions, this case was adjourned again for various reasons appearing in blues 27 and 28.

Reverting now to the question of post-graduate studies which certainly are taken into consideration as being part of the educational years of the service of an educationalist, I think, that this finds further support by the evidence of Mr. Ierides, who in his evidence said:-

"Dr. Pattichis at that particular moment when he was considered for appointment, had actually eleven and a half years of educational service. Those eleven and a half years included a period of five and a half years of educational leave. At that particular time, as I said earlier, the identical wording of the present scheme of service was in force, viz. that ten years of successful educational service were required for a candidate to be appointed to the post of Inspector, first grade."

This matter was carried further judicially because in *Pattichis (supra)*, the Court, after dealing with the

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complaint of Mr. Kolitsis that both appointees (Dr. Koutsakos and Mr. HjiStephanou) were credited with all the years spent by them on post-graduate education, said at p. 382 :-

“There is nothing in the minute of the subject decision, or otherwise before me, to show or suggest that in making either of the disputed appointments the commission was in any way influenced by any mistake relative to the years of service with which any of the candidates could properly be credited. Regarding specially the point based on s. 13(3) of the 1963 Law, the provision about equivalence of years of post-graduate study with years of service contained in that subsection is, by its express terms, established ‘for the purposes of this paragraph’, which deals with promotion to the post of ‘Assistant Director’, and there is no warrant for applying it to any other appointment.”

Later on the Court dealing with the question of ‘superior educational qualifications’ said :-

“By definition a ‘qualification’ is ‘a quality, accomplishment, etc., which qualifies or fits a person for some office or function’ (Shorter Oxford Dictionary). Every diploma or degree signifies an educational accomplishment. But if the course of study as a result of which it was obtained is not relevant to, or goes beyond what is required for, the efficient discharge of the duties of a particular post, it does not constitute a ‘qualification’ for that post.”

I find it convenient to deal with the relevant legislation. Section 28 of Law 10/69, which deals with qualifications, is in these terms :-

“No one is appointed as a teacher unless —

(c) he possesses the qualifications which are laid down in the scheme of service for the particular office to which the appointment is proposed to be made.”

Regarding the question of seniority, s. 37(1) provides that :- Seniority between educational officers holding the

same office shall be determined by the effective date of appointment or promotion to the particular office or class or grade.

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Then I turn to section 76(1) of the same law which deals with the regulations and other matters, which in Greek reads as follows :-

«76(1) Τό Ὑπουργικόν Συμβούλιον δύναται νά ἐκδίδῃ Κανονισμούς πρὸς καλυτέραν ἐφαρμογὴν τῶν διατάξεων τοῦ παρόντος Νόμου καὶ πρὸς ρύθμισιν γενικῶς παντός θέματος ἀφορῶντος εἰς τὴν Ἐπιτροπὴν, τὴν ἐκπαιδευτικὴν ὑπηρεσίαν καὶ τοὺς ἐκπαιδευτικούς λειτουργούς».

and in English is in these terms :-

“The Council of Ministers may make regulations for the better carrying out of the provisions of this Law and for regulating generally every subject regarding the educational service commission and the educational officers.”

Then the proviso which follows reads in Greek as follows :-

«Νοεῖται ὅτι μέχρις οὗ οἱ τοιοῦτοι Κανονισμοὶ ἐκδοθῶσιν ἢ οἰοδήποτε θέμα καθορισθῆ ἄλλως δυνάμει τοῦ παρόντος Νόμου, οἰοδήποτε κανονισμοὶ ἢ διοικητικαὶ πράξεις καὶ διοικητικαὶ ὁδηγίαι αἱ ὁποῖαι περιέχονται εἰς ἐγκυκλίους ἢ ἄλλως καὶ ἡ ὑφισταμένη τακτικὴ ἀναφορικῶς πρὸς τὴν ἐκπαιδευτικὴν ὑπηρεσίαν καὶ ἐκπαιδευτικούς λειτουργούς ἐξακολουθοῦσι νά ἰσχύωσι καθ' ἣν ἔκτασιν δὲν ἀντίκεινται πρὸς τὰς διατάξεις τοῦ παρόντος Νόμου».

and in English is in these terms :-

“Provided that until the said regulations are made or any other subject is prescribed otherwise under this Law, every regulation, or administrative act and administrative instruction contained in circulars or otherwise, and the existing practice regarding the educational service and the educational officers continue to remain in force so far as they do not contravene the provisions of this Law.”

Then on December 6, 1971, Mr. Tornaritis, strangely

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enough, argued contrary to his earlier stand, and I propose quoting his argument. At blues 29 and 30 he said :-

“The respondents considered that when the scheme of service required 10 years ‘evthokimos ipiresia’ that it meant 10 years actual teaching, and that the years 1965—1968 when the applicant was on educational leave could not be considered as years of educational service as required by the schemes of service. A ground which led the commission in considering this, was that in the schemes of service under qualifications required for the post, further to the university diploma a post-graduate course abroad was required, and it cannot be considered that the years which the applicant spent to acquire the post-graduate course could be considered again as years for his educational service, and that is why the respondents considered that the applicant did not fulfil the schemes of service regarding the 10 years actual teaching.”

But with due respect to counsel’s argument—though I appreciate his difficulties—the Commission has never approached this question, or, even if they did, (and I have my serious doubts) they never said so, and this appears in their reply to Mr. Adamides dated July 2, 1970, (blue 101). What is more significant, however, in the light of the argument of Mr. Tornaritis, is that the Commission, (who apparently knew that under the said scheme of service they had to satisfy themselves first that, the applicant could not qualify for the reasons now submitted on their behalf) before embarking to utilize the Note in the scheme, had to convene a meeting in order to think of the reasons why the interested party was preferred from the applicant. This extract from the minutes dated June 30, 1970, shows clearly (a) that they have misdirected themselves as to the correct approach of the scheme of service; and (b) that in making the said appointment they have not given any cogent reasons. They simply said in Greek :- (See blue 100A).

«Αποφασίζεται όπως δοθῆ ἀπάντησις, ὅτι ἡ Ἐπιτροπὴ ἐπέλεξε τὸν κ. Ξεν. Χριστοφίδην διὰ τὴν

ὡς ἄνω θέσιν, εὐροῦσα ὅτι οὗτος ἀνταπεκρίνετο πληρέστερον τοῦ κ. Παπαζαχαρίου πρὸς τὰ ὑπὸ τῆς κειμένης νομοθεσίας καὶ τῶν Σχεδίων Ὑπηρεσίας καθοριζόμενα κριτήρια».

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("It is decided that a reply be given to the effect that the Commission has selected Mr. Xen. Christophides for the above post, having found that he fulfilled the criteria, set up by standing legislation and the schemes of service, more fully than Mr. Papazachariou").

Mr. Christophides, after supporting the argument of counsel for the respondent (and I assume that he was not aware of this extract) conceded that the years spent abroad by the applicant to pursue higher studies, are taken into consideration by the educational authorities, but for the purposes only of increments and pension. In support of his argument on this point, he referred to two decisions of the Greek Council of State, *i.e.* case No. 2496/67 reported in 1967 of the Decisions of the Greek Council of State at p. 2968, and Case No. 2456/56 (not available), the decision of which was adopted in Case No. 2496/67. Now I have read the decision of the first case only, but with respect, the decision of this case, if anything, is against both legs of the argument of counsel. I propose quoting in a moment from the said case, but before doing so, I would like to place on record my indebtedness to counsel for their assistance in solving the problem with which I am confronted.

It is also interesting to note that the educational authorities in our country appear to take the same stand as in Greece on this point, and this appears in an extract in the personal file of the applicant, dated September 9, 1969, (under note 32). This extract refers to the post-graduate years of the applicant, and is as follows :-

"These years are not recognized for the purposes of promotion, increments and pension in accordance with the law. In order to be recognized it would be needed that his leave of absence should be turned into educational leave, as in the case of Mrs. Lambraki, on the understanding that he will sign the relevant contract of undertaking (symvoleon

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ipohreoseon).” (See also Minute dated November 18, 1966, regarding educational leave).

Furthermore, in view of the fact that the same scheme of service was considered in *Pattichis* case (*supra*), and because of s. 76(1) of Law 10 of 1969, it is interesting to know that under s. 18 of Law 10/63 (now repealed) regarding the question as to what is “recognized service” within the meaning of this section, it reads :-

«Ὡς ἀνεγνωρισμένη ὑπηρεσία ἐν τῇ ἐννοίᾳ τοῦ παρόντος ἀρθροῦ νοεῖται ἡ συνεχῆς ἐκπαιδευτικὴ ὑπηρεσία εἰς ἀνεγνωρισμένα σχολεῖα τῆς Κύπρου ἢ τοῦ ἐξωτερικοῦ ἢ προσηκόντως βεβαιουμένη ὑπὸ τῆς διορισάσης ἀρχῆς. Συνεχῆς δὲ λογίζεται καὶ ἡ ὑπηρεσία ἢ διακοπεῖσα λόγῳ ἀδείας ἀσθενείας ἢ ἐκπαιδευτικῆς ἀδείας». (See also s. 32 which deals with educational leave).

(“As recognised service within the meaning of this section it is meant the continuous educational service at recognized schools of Cyprus or abroad which is duly confirmed by the appointing authority. The service which was broken due to sick leave or educational leave is also deemed to be continuous”).

Whilst on this point, I think this passage from the well-known textbook of Zacharopoulos (Symplyroma Nomologias 1935—1952) makes it even clearer. Under the heading “Educational Leave” in paragraph 417 at p. 658, it reads as follows :-

«Ὁ ἐν ἐκπαιδευτικῇ ἀδείᾳ διανυόμενος χρόνος δὲν δύναται νὰ θεωρηθῆ ὡς ἥσσονος ὑπηρεσιακῆς σημασίας ἢ ὁ ἐν τῇ ἀσκήσει τῶν καθηκόντων διανυόμενος, οὐδὲ νὰ δημιουργῆ διὰ τὸν ὑπάλληλον βάσιν δυσμενοῦς κρίσεως, 683/46».

(“The time spent during educational leave cannot be considered as being of less importance, from the service point of view, than the one spent in the course of exercising one’s duties, nor can it create the basis of unfavourably judging the officer”).

In Case 2497/67 (Γ), a decision of the Council of State, regarding educational leave it was said that :-

«... ὡς πραγματικὴν δημοσίαν ὑπηρεσίαν νοεῖ ὁ

πηρεσίαν διανυθείσαν υπό υπαλλήλου, τελοῦντος ἐν ὑπηρεσιακῇ σχέσει δημοσίου δικαίου πρὸς τὸ Κράτος, δὲν ἀποβλέπει δὲ καὶ εἰς τὴν ἔμπρακτον ἀσκήσιν καθηκόντων, ἥτις ἐκ πολλῶν νομίμων λόγων εἶναι δυνατόν νὰ ὑφίσταται διακοπὰς (Σ.Τ.Ε. 1565/1966). Τοιαύτη ὑπηρεσία εἶναι κατὰ συνέπειαν καὶ ἡ διανυθείσα ἐν ἐκπαιδευτικῇ ἀδείᾳ, δοθέντος ὅτι κατ' αὐτὴν ἀναστέλλεται ἀπλῶς ἡ ἐνεργὸς ἀσκήσις τῶν καθηκόντων τοῦ ἐκπαιδευομένου ἐπὶ τῷ τέλει ὅπως ἀποκτήσῃ οὗτος μείζονα ὑπηρεσιακὰ ἐφόδια (Σ.Τ.Ε. 2454/1966), ἀνεξαρτήτως δὲ τοῦ ἂν ἡ ἀδεία αὕτη ἦτο μετὰ ἢ ἄνευ ἀποδοχῶν. Νομίμως ὄθεν ἐν προκειμένῳ διὰ τὸν ὑπολογισμὸν τοῦ χρόνου τῆς κατὰ τὴν διαληφθείσαν διάταξιν τοῦ ἀρθροῦ 1 τοῦ Ν.Δ. 4352/1964 πραγματικῆς δημοσίας ὑπηρεσίας τοῦ αἰτοῦντος καὶ τὴν προσβαλλομένην ἀπόλυσιν αὐτοῦ ἐλήφθη ὑπ' ὄψιν τὸ τετράμηνον χρονικὸν διάστημα, καθ' ὃ οὗτος διετέλεσεν ἐν ἐκπαιδευτικῇ ἀδείᾳ ἄνευ ἀποδοχῶν, ἐλεγχομένου οὕτως ἀβασίμου τοῦ τάναντία ὑποστηρίζοντος λόγου ἀκυρώσεως, εἰς ὃν μόνον περιωρίσθη ἡ ὑπὸ κρίσιν αἰτήσις διὰ προφορικῆς ἐπ' ἀκροατηρίου δηλώσεως τοῦ πληρεξουσίου δικηγόρου τοῦ αἰτοῦντος».

“... as actual public service it is meant service spent by an officer who is under a relation of service within the public Law with the State and it does not aim at the actual performance of duties which, due to many lawful causes, may necessitate the breaking of the service. (Council of State 1565/1966). Such service is consequently the one spent during educational leave, given that in the course thereof it is simply the active performance of duties of the educational officer which is postponed, for the purpose of acquiring greater service qualifications, (Council of State 2454/1966), notwithstanding that such leave was with or without pay. Therefore in determining the period of the actual public service of the applicant, in accordance with the discontinued provision of Article 1 of Law 4352/1964, and his dismissal which is attacked, the four months' period during which he was on educational leave without pay, was lawfully taken into consideration, thus rendering as baseless the ground for annulment,

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which urges the contrary and on which ground the application under consideration was solely limited, according to a verbal statement of applicant's Counsel in open Court").

Whilst on this point, I should add that, once every diploma or degree signifies an educational accomplishment, it is to the credit of the Ministry of Education to encourage educationalists to pursue higher studies abroad in order to raise both the efficiency and quality of the educational service as a whole. In my view, the teachers must be afforded every possible chance to familiarize themselves with modern ideas on new educational systems, particularly with the latest achievements abroad in one's special field. I think, therefore, that the quality of their service must be also assessed in the light of successful contribution to the advancement and diffusion of knowledge by publishing their experience in order to help the teaching world of Cyprus to get also the advantages of those of their colleagues who had the good fortune to specialize in a particular field.

With these thoughts, and taking into consideration the nature of the educational service and the way the confidential reports are prepared by inspectors regarding whether or not an educationalist has a successful service, I would be inclined to add that sufficient reasons must be at all times given to enable the court in its judicial control to draw the conclusions from such material before it, whether a candidate possesses not only a teaching ability, but also his general output in service. What is then the meaning of the term "successful service" in the said scheme of service? According to the Conclusions of the Jurisprudence of the Greek Council of State 1929—52, at p. 355, "successful service" is :-

«Η εὐδόκιμος ὑπηρεσία. Ὡς τοιαύτη δὲ νοεῖται ἡ ἐπιτρέπουσα τὴν συναγωγὴν τεκμηρίου ἰκανότητος διὰ τὴν ἐπαρκῆ ἀσκήσιν καθηκόντων ἄνωτέρου βαθμοῦ : 650(46). Συναφῶς ἐκρίθη ὅτι ἡ μετὰ νωχελείας καὶ βραδύτητος ἐκτέλεσις τῶν καθηκόντων, μὴ συνιστῶσα κατ' ἀνάγκην καὶ πειθαρχικὸν παράπτωμα, συνιστᾶ ἐν τούτοις ἔλλειψις οὐσιαστικῶν προσόντων : 41(48)».

And in English "successful service" is considered as

being service which permits one to draw the conclusion at to the ability of an officer to exercise sufficiently the duties of a higher post: 650 (46). Therefore, it was decided that an officer who exercises his duties in a sluggish manner and in a slow way, though not amounting to a disciplinary offence, nevertheless, it amounts to lack of substantial qualifications, 41(48)".

Directing myself with these judicial pronouncements, and in view of all circumstances, including the practice followed by the educational authorities, I have reached the conclusion that the contention of counsel cannot succeed because the post-graduate years, once they have been recognized as educational leave, are deemed to be falling within the meaning of actual educational service, irrespective of whether or not an educationalist was not exercising the functions of teaching at school. For the reasons I have endeavoured to explain, I would, therefore, dismiss this contention of counsel.

Reverting now to the powers of the Educational Service Commission for Teachers, I find it convenient to state that the Commission has been set up under the Public Educational Service Law, 1969, (Law 10/69), which is modelled on the same lines as the Public Service Commission Law, 1967, (Law 33/67) which repealed the Public Service Commission (Temporary Provisions) Law 1965 (Law 72/65). In view of the same structure I am of the view that the decisions of this Court regarding the public service of the Republic should be deemed to be also helpful to the educational service regarding appointments, promotions, etc.

I would recall what has been said in a number of cases that the paramount duty of the Public Service Commission in effecting appointments and promotions is the selection of the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates (*Partellides v. The Republic* (1969) 3 C.L.R. 291 at p. 296), according to the scheme of service in question. (*Papapetrou and The Republic*, 2 R.S.C.C. 61; also *Georghiades v. The Republic* (1967) 3 C.L.R. 653). It has also been stressed that the Court will not interfere with the discretionary power exercised by the Commission

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in effecting such appointments, but a power, once it is exercised, such exercise must be for the purpose for which it was given. As long as a discretion is exercised in a valid manner, the Court will not interfere with the exercise of such discretion by the substitution of its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits the Court could have reached a different conclusion. A discretion is exercised in a valid manner, if in its exercise, all material considerations have been taken into account, due weight is given to material facts, and it has not been based on misconception of law or facts. In other words, there is a duty that even discretion must be exercised in a certain manner as stated above. A defective or invalid exercise of a discretion may, therefore, amount to excess or abuse of powers. (*Constantinou v. The Republic* (1966) 3 C.L.R. 793).

Having dealt shortly with the duties and discretionary powers of the Commission, the next question which is posed is whether the decision of the Commission is duly reasoned in the present case. There is a line of decided cases of this Court showing that due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, and particularly when such decision is unfavourable to the subject (*Pancyprian Federation of Labour (PEO) v. The Board of Cinematograph Films Censors* (1965) 3 C.L.R., 27; also *Constantinides v. The Republic* (1967) 3 C.L.R. 7, at p. 14). The whole object, of course, of the rule requiring reasons to be given for administrative decisions, is to enable the person concerned, as well as the Court, on review to ascertain in each particular case whether the decision is well-founded in fact and in accordance with the law. (*Hadjisavva v. The Republic*, (reported in this part at p. 174, *ante*)).

Having considered carefully the arguments of counsel, and after perusing all relevant documents before me including the conflicting belated statements made on behalf of the respondent, I am of the view that this is one of the few classic cases in which no reasons at all are contained in the decision of the Commission, which was made under a misconception of the real facts and contrary to the provisions of the law.

Since one of the concepts of administrative law is that administrative decisions must be duly reasoned, in my view, that must be clearly read as meaning that proper adequate reasons must be given. The reasons that are set out, whether they are right or wrong, must be reasons which not only will be intelligible, but also can reasonably be said to deal with the substantive points raised, viz. whether the applicant could qualify under the scheme of service, in view of his marks regarding his ability as a teacher, and because it appeared from his personal file that he had the required years of service. I would, therefore, find myself in agreement with counsel for the applicant that the decision of the Commission was not reasoned at all. Exercising my powers under Article 146, I would declare that such decision or act is null and void and of no effect whatsoever.

In the light of this judgment, and because all counsel submitted that there was no reason to proceed and decide the question of construction of the said scheme of service, viz. whether actual teaching service was required, I have decided to adopt their stand in order not to prejudice the members of the commission when re-examining the case of the applicant. Regarding the question of costs, I think that an amount of £15 in favour of the applicant is justified under the circumstances.

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

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