

[TRIANTAFYLLIDES, P.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
NICOS LAMBRAKIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case No. 32/69).

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*Schemes of Service—Interpretation by Educational Service Committee—Principles applicable—Control of Committee's discretion by the Administrative Court—Principles applicable.*

*Educational Officers—Qualifications—Secondary Education Inspector Grade "A" (Mathematics)—Requirement in relevant scheme of service for "post graduate studies abroad"—Whether it envisages such studies in a country other than Greece.*

*Presumption of regularity.*

*Schoolmasters of Communal Secondary Education Schools Law, 1963 (Greek Communal Chamber Law 10/63)—Secondary Education Inspector, Grade A.*

*Words and Phrases—"Post graduate studies, abroad" in a Scheme of Service (supra).*

The facts sufficiently appear in the Judgment of the learned President dismissing this recourse whereby the applicant was challenging the validity of the promotion of the interested party to the post of Secondary Education Inspector Grade A (Mathematics).

Cases referred to :

*Papapetrou and The Republic*, 2 R.S.C.C. 61, at p. 69;

*Petsas and The Republic*, 3 R.S.C.C. 60, at p. 63;

*Josephides and The Republic*, 2 R.S.C.C. 72;

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*The Republic v. Aivaliotis* (1971) 3 C.L.R. 89;

*Paraskevopoullou v. The Republic* (1971) 3 C.L.R. 426;

*Pierides v. The Cyprus Broadcasting Corporation* (1972)  
3 C.L.R. 149;

*Sofocleous v. The Republic* (1972) 3 C.L.R. 537.

### Recourse.

Recourse against the decision of the respondent to promote the interested party Stavros Philippides to the post of Secondary Education Inspector, Grade A (Mathematics) in preference and instead of the applicant.

*L. Papaphilippou* initially and later  
*L. Clerides*, for the applicant.

*G. Tornaritis*, for the respondent.

*A. Christofides*, for the interested party.

*Cur. adv. vult.*

The following judgment was delivered by :-

TRIANTAFYLIDIS, P.: The applicant challenges the validity of the appointment to the post of Secondary Education Inspector, Grade A (Mathematics), of the interested party, Stavros Philippides; at the material time both the applicant and the interested party were Secondary Education Assistant Headmasters.

The vacancy in the post concerned was advertised in the official Gazette (see No. 1311 in the Gazette of the 30th August, 1968); according to such advertisement, which was framed on the basis of the relevant scheme of service, the qualifications for appointment were :-

«Πανεπιστημιακόν Δίπλωμα ή Τίτλος ή Πτυχίον ισοδυνάμου Ἀνωτάτης Σχολῆς εἰς τὸ θέμα τῆς ειδικότητός του, παρέχον δικαίωμα κατατάξεως εἰς τὴν Α΄ Τάξιν Καθηγητῶν βάσει τοῦ οικείου Νόμου.

Μεταπτυχιακή ἐκπαίδευσις εἰς τὸ ἐξωτερικόν εἰς τὰ παιδαγωγικά ή εἰς θέμα συναφές πρὸς τὰ καθήκοντα τῆς θέσεως διαρκείας ἐνὸς τουλάχιστον ἀκαδημαϊκοῦ ἔτους ή ἐν περιπτώσει κατόχου πτυχίου Διδασκαλείου ή Παιδαγωγικῆς Ἀκαδημίας διαρκείας ἐνὸς ἀκαδημαϊκοῦ ἔξαμήνου.

Ευδόκιμος εκπαιδευτική υπηρεσία τουλάχιστον δέκα ἐτῶν.

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Ἐνημερότης ἐπὶ τῶν συγχρόνων ἐξελίξεων εἰς τὸ θέμα τῆς ειδικότητός του.

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Καλή γνώσις μιᾶς τουλάχιστον τῶν ἐπικρατεστέρων εὐρωπαϊκῶν γλωσσῶν».

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(“A University Degree or Title or a Diploma of an equivalent Higher Institution in relation to the subject of his specialization, entitling him to become, according to the provisions of the relevant Law, a Schoolmaster, Grade A.

Post-graduate studies abroad in Pedagogy or in relation to a subject connected with the duties of the post, for a period of at least one academic year, or in the case of a person possessing a diploma of a Teachers' Training College of a Pedagogical Academy for a period of one academic six months' term.

Satisfactory educational service for at least ten years.

To be up-to-date with current developments in relation to the subject of his specialization.

Good knowledge of at least one of the principal European languages”).

The *sub judice* appointment of the interested party has been challenged, mainly, as having been made invalidly, on the ground that it was not made in accordance with the above scheme of service, because, according to the contention of counsel for the applicant, the interested party did not possess all the qualifications required under the said scheme.

It is not in dispute that the interested party obtained, in 1957, a degree in Mathematics from the University of Thessaloniki (Salonica) in Greece, having studied there for this purpose for four academic years. It is, also, not disputed that he has obtained, in 1963, a diploma in Pedagogy, after a two years' course at a Secondary Education Teachers' Training College in Greece.

It has been submitted by counsel for the applicant that Pedagogy was not one of the subjects which the interested

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party studied in obtaining his Mathematics degree and that, therefore, he was not entitled, in view of the relevant provisions of the Schoolmasters of Communal Secondary Education Schools Law, 1963 (Greek Communal Chamber Law, 10/63)—which was in force at the material time—to become a Schoolmaster Grade A; and that, consequently, in view of the afore-quoted contents of the scheme of service for the post of Secondary Education Inspector, Grade A, he was not entitled to be appointed to such post. Obviously, this argument of counsel for the applicant is based on a reading together of the first paragraph of the said scheme of service (which requires a university qualification of the nature required for appointment as Schoolmaster, Grade A) with section 11(1)(i) of Law 10/63 which provides, *inter alia*, that a Mathematics master can be appointed as a Schoolmaster, Grade A, if he possesses a university or equivalent qualification obtained through studies including the subject of Pedagogy.

It is to be noted, however, that under sub-paragraph (ii) of section 11(1) of Law 10/63, a Mathematics master could still become a Schoolmaster, Grade A, if he possessed the relevant university, or equivalent, qualification, obtained after at least three years' studies, and if he possessed, in addition, one out of four other qualifications specified in such sub-paragraph, one of them being a diploma of a Teachers' Training College or of a Pedagogical Academy.

It is, moreover, relevant to observe that sub-section (6) of section 11 of the same Law provides that notwithstanding the provisions of, *inter alia*, sub-paragraph (i) of section 11(1)—(on which counsel for applicant has based his argument)—all Schoolmasters who were in the service when Law 10/63 was enacted and who were not trained in Pedagogy, or did not possess a degree or diploma of a Teachers' Training College or of a Pedagogical Academy, were still to be given appointments in the normally appropriate Grade, but they ought to—(if asked to do so by the Education Office)—follow lessons in Pedagogy; and that those Schoolmasters who were appointed after the enactment of Law 10/63, and did not have the training in Pedagogy envisaged by such Law, were still to be appointed and emplaced in the normally appro-

ropriate Grade, on the basis of their university qualification and years of studies, but they were bound to obtain a qualification in Pedagogy by following special lessons organized in Cyprus by the Education Office and would be deprived of their yearly increments until obtaining such qualification.

Thus, when the scheme of service for the post involved in the present proceedings is read as a whole and together with all the aforementioned relevant provisions of Law 10/63, it cannot be said that it is not reasonably open to say that what is required under such scheme, as regards academic qualifications, is only the possession of the substantive specialized academic qualification entitling a Schoolmaster to be emplaced in Grade A—(which the interested party did possess)—and that studies in Pedagogy, while studying for the particular degree, are not a material consideration in so far as compliance with such scheme of service is concerned.

In *Papapetrou and the Republic*, 2 R.S.C.C. 61, at p. 69, it was laid down that in deciding whether or not the Public Service Commission in a particular case has conformed with the relevant scheme of service the Court will not give to such scheme a different interpretation other than that which was given to it by the Commission, provided that such interpretation was reasonably open to the Commission on the basis of the wording of the scheme in question.

In *Petsas and The Republic*, 3 R.S.C.C. 60, the approach to the application of a scheme of service, which the Court adopted in the *Papapetrou* case, *supra*, was affirmed, and the Court stated, also, (at p. 63) that: "...in determining whether a certain applicant in fact possesses the relevant qualifications, the Commission is given a discretion, and this Court can only examine whether the Commission, on the material before it, could reasonably have come to a particular conclusion" (and see, too, *Josephides and The Republic*, 2 R.S.C.C. 72).

More recent relevant case-law, which may be usefully referred to are, *inter alia*, *The Republic v. Aivaliotis* (1971) 3 C.L.R. 89, *Paraskevopoullou v. The Republic* (1971) 3 C.L.R. 426 and *Pierides v. The Cyprus Broadcasting Corporation* (1972) 3 C.L.R. 149.

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Having examined the aforesaid contention of counsel for the applicant that the interested party was not qualified for appointment under the relevant scheme of service, I am of the opinion, for the reasons stated hereinabove, that it can be said that in applying the scheme of service the respondent Educational Service Committee has acted in a manner which was reasonably open to it in the circumstances.

It is to be borne in mind, too, that the interested party was, at the material time, an Assistant Headmaster; and prior to that he had been appointed as Schoolmaster, Grade A, after the coming into operation of Law 10/63. On the basis of the presumption of regularity, and in the absence of anything before me to the contrary, it may be safely inferred that he had been duly found to be qualified (possibly under sub-paragraph (ii) of section 11 of Law 10/63) for appointment as Schoolmaster, Grade A, and, thus, there could not really exist, when the time came for his promotion to Secondary Education Inspector, Grade A, any doubt that, being entitled to become a Schoolmaster, Grade A, he satisfied the requirements of the first paragraph of the above-quoted scheme of service for the post of Inspector. The present case is distinguishable from that of *Sofocleous v. The Republic* (1972) 3 C.L.R. 537, where there was clear proof that the applicant did not possess the qualifications necessary for appointment to a post from which he was seeking to be promoted without possessing such qualifications, which were necessary for his promotion, too.

Before I proceed to deal with another aspect of this case, I must stress that it is not at all an agreed fact that—as alleged by the applicant—the interested party was not taught Pedagogy while he was studying for his degree in Mathematics at the University of Thessaloniki; and, actually, both sides offered to adduce evidence on this point. I did not agree to receive such evidence when it was offered, and said that I might do so later if I were to find that the issue of whether or not the interested party was taught Pedagogy while studying for his Mathematics degree at Thessaloniki University was of decisive importance regarding the outcome of this case; for the reasons already set out in this judgment it is I think quite clear that no such importance can be

attributed to such issue, because I have found that, in any event, it was reasonably open to the respondent Committee to regard the interested party as qualified to the extent required by the first paragraph of the relevant scheme of service.

In arguing that the interested party could not be validly appointed, counsel for the applicant has submitted that the post-graduate qualification, which was obtained by the interested party after two years of studies in Greece, at a Secondary Education Teachers' Training College, was not a qualification satisfying the requirement of the second paragraph of the scheme of service, regarding post-graduate education; it was submitted, in this respect, that the said two years of studies in Greece by the interested party did not amount to post-graduate education "abroad", because the term "abroad", in the scheme of service envisages a country other than Greece, as education in Greece and Greek education in Cyprus are in substance of the same nature at the corresponding levels; counsel for the applicant contended, further, that, in any case, in relation to the interested party, his post-graduate education "abroad" should have been in a country other than Greece where he had obtained initially his university degree.

I have no difficulty in saying that it was reasonably open to the respondent Committee to treat the post-graduate studies in Greece of the interested party as satisfying the relevant requirement in the scheme of service and that the Committee need not have construed and applied such scheme in the stringent manner suggested by counsel for the applicant.

The next issue raised on behalf of the applicant was that the ten years' satisfactory educational service required under the scheme of service could only have been computed from the date on which the interested party had completed his post-graduate education in Greece, in 1963, and that, therefore, when his *sub judice* appointment was made in 1968 he did not have the required ten years' service; in my opinion the two requirements in question in the scheme of service—(as regards academic qualifications and post-graduate studies, on the one hand, and past satisfactory service, on the other hand)—are entirely

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independent of each other, and, therefore, the total of his past educational service, which was eleven and a half years could properly be taken into account.

For all the foregoing reasons I cannot find, as alleged by the applicant, that the *sub judice* appointment of the interested party was not made in accordance with the scheme of service for the post concerned.

I have, also, duly examined certain subsidiary contentions of counsel for the applicant in relation to the possibility of the respondent Committee having acted under misconceptions concerning the respective merits of the applicant and the interested party, and the actual length of the educational service of each one of them, but I am certain that, on the basis of the material concerning the candidates, which was before the Committee and has, also, been produced before me at the trial of this case, there is no room for finding that any such misconceptions affected the decision of the Committee to select for appointment the interested party.

In the result this recourse fails and it is dismissed accordingly; but I am not disposed to make an order for costs against the applicant.

*Application dismissed.  
No order as to costs.*