IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS EFSTATHIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COMMITTEE OF EDUCATIONAL SERVICE,

Respondent.

(*Cases Nos.* 348/69, 112/70).

Educational Officers—Elementary education—Post of Headmaster—Acting appointment—Made on basis of merit—Reasonably open to the respondent in exercising their powers under s. 34 *of the Public Educational Service Law,* 1969 (*Law* 10/69).

Educational Officers—Promotions—Inviting to an interview those with a high quality of service—Such course not inconsistent with section 35 *of Law* 10/69—*Moreover it was reasonably open to the respondent Committee in the circumstances.*

The applicant complains against decisions of the respondent Committee regarding acting appointments and promotions to the post of Headmaster in elementary education.

Acting appointments are governed by s. 34 of the Public Educational Service Law, 1969 (Law 10/69) (quoted in full in the judgment *post*) and promotions by section 35 of the same Law which is to the effect that claims to promotion are considered on the " basis of merit, qualifications and seniority".

From the material before the Court it was obvious that applicant was not offered an acting appointment because, all those schoolteachers who were offered such appointment were, at the time, definitely and considerably superior in merit to the applicant.

Regarding the promotions the respondent Committee decided to interview those whose service was " excellent" and, out of those whose service was " very good" those who had the higher marks, for the purpose of selecting the most suitable for pro-

motion. The applicant, because of the lower quality of his service record, was not among those who were invited to an interview.

Held, (I): With regard to the acting appointments:

It was reasonably and properly open to the respondent Committee, in exercising its powers under section 34 of Law 10/69, to prefer for appointment as Acting Headmasters those who had a better record as schoolteachers.

Held, (II): With regard to the promotions:

The course adopted by the Committee, as aforesaid, was not inconsistent with section 35 of Law 10/69, and, moreover, it was reasonably open to it in the circumstances.

Applications dismissed.

Recourses.

Recourses against the decisions of the respondent Committee of Educational Service regarding acting appointments and promotions to the post of Headmaster in the elementary education.

L. Clerides with *E. Lemonaris*, for the applicant.

G. Tornaritis with *A. Eftychiou* and *A. Angelides*, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: By these recourses, which were heard together in view of their nature, the applicant has challenged decisions of the respondent Committee regarding acting appointments and promotions, respectively, to the post of Headmaster in elementary education.

I shall deal, first, with the acting appointments of Headmasters, which were made in 1969 and are challenged by recourse No. 348/69:

Section 34 of the Public Educational Service Law, 1969 (Law 10/69), which relates to acting appointments, provides as follows:-

" 34.- (1) When an office is vacant for any reason or its holder is absent on leave, or incapacitated, another person may be appointed to act in his place under such terms as may be prescribed.

(2) An acting appointment is made on the recommendation of the Minister."

The " Minister" is the Minister of Education.

In the minutes of the meeting of the respondent Committee, which was held on September 5, 1969 (see *exhibit* 4), it is stated that the Committee decided that fourteen schoolteachers named therein should be appointed in an acting capacity to the post of Headmaster in elementary education as from September 10, 1969.

In view of the fact that six of them refused to accept the offers for acting appointments, the Committee decided, on September 11, 1969 (see *exhibit* 5), to offer such appointments to six other schoolteachers.

The applicant was not offered an acting appointment either on the first or on the second occasion, and the reason for this is clearly the fact that, as it is plainly obvious from the material before me, all those schoolteachers who were offered acting appointments were, at the time, definitely and considerably superior in merit to the applicant; and, in my opinion, it was reasonably and properly open to the respondent Committee, in exercising its powers under section 34 of Law 10/69, to prefer for appointment as acting Headmasters those who had a better record as schoolteachers.

I shall deal, next, with the promotions to the post of Headmaster, which were made in 1970 and are challenged by recourse No. 112/70:

The relevant legislative provision is section 35 of Law 10/69, the material part of which provides as follows:-

" 35 (1) .....

(2) The claims of educationalists to promotion are considered on the basis of merit, qualifications and seniority.

....."

In the minutes of the meeting of the respondent Committee, which took place on January 28, 1970 (see *exhibit* 2), it is stated

that the Committee, after having examined the personal files of the candidates who were in law eligible for promotion to the post of Headmaster and were, also, among those promoted to the post of schoolteacher, grade A, on October 3, 1969, and having heard the views of the Head of the Department concerned, decided to interview those whose service was "excellent" and, out of those whose service was "very good", those who had the higher marks, for the purpose of selecting the most suitable for promotion to the vacant posts of Headmaster. The applicant, because of the lower quality of his service record, was not among the fifty-four candidates who were, thus, invited to an interview. Eventually, the promotions which are challenged by the applicant were made by the Committee on February 26, 1970 (see *exhibit* 9).

I am of the view that the course adopted by the Committee, as aforesaid, was not inconsistent with section 35 of Law 10/69, and, moreover, that it was reasonably open to it in the circumstances.

In the light of all the foregoing I am of the opinion that the applicant has failed to substantiate the existence of any ground for annulment envisaged by Article 146.1 of the Constitution and, consequently, both his two present recourses have to be dismissed; but, without any order as to costs.

Applications dismissed; no order as to costs.