

1979 August 22

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ECATERINI KARAYIANNI AND OTHERS,

*Applicants,*

v.

THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case Nos. 101/78, 213/78, 214/78  
and 215/78).

5 *Educational Officers—Emplacement on higher salary scale (scale B.6)—  
Schemes of service—No evidence adduced by applicants to sub-  
stantiate their allegation that they qualified thereunder—Con-  
clusion of respondent Committee that they did not so qualify duly  
warranted by the facts before it.*

*Practice—Recourse for annulment—Factual issues not expressly  
admitted—Should be substantiated by evidence.*

10 *Equality—Discrimination—No entitlement to equal treatment on an  
illegal basis—Fact that administration did not conform with the  
law in other instances does not constitute a ground for annulling  
an administrative decision because compliance with the law was  
insisted upon in the latter instances—Principle applies with equal  
force in the case where conformity with the requirements of a  
scheme of service is in issue.*

15 In November, 1976 the applicants, who are school-mistresses  
of Domestic Science at a Gymnasium, applied to the respondent  
Committee for emplacement to salary scale B.6. The respondent  
Committee turned down their applications on the ground that  
they did not possess the qualifications provided by paragraphs

1 and 2 of the relevant schemes of service\*. Hence these recourses.

Three of the applicants admitted that they have not attended the courses provided by paragraph 2 of the schemes of service; and though applicant in Recourse No. 101/78 asserted that she successfully attended such courses she adduced no evidence in support of her assertion when faced with the denial of the respondent and when it was pointed out to her by the Court, in the course of the hearing, that for the factual issues for which there was no express admission evidence should be adduced in order to substantiate same.

Counsel for the applicants contended that the requirement of attending approved educational courses in paragraph 2 of the scheme of service was not insisted upon in the case of teachers of English, Art and Gymnastics who were placed on higher scales after completion of seven years' satisfactory service and consequently this differentiation by the Committee, being arbitrary, constituted discrimination and unequal treatment of the applicants vis-a-vis those other teachers.

*Held*, (1) that on the material before this Court there is no difficulty in holding that no courses, as provided by paragraph 2 of the schemes of service, were attended by any of the applicants; and that, therefore, the conclusion of the respondent Committee that none of the applicants satisfied this provision of the schemes of service was duly warranted by the facts before the Committee and there was no misconception of fact in the circumstances.

(2) That there exists not entitlement to equal treatment on an illegal basis; that, no doubt, if emplacement of other teachers on Scale "B.6." in disregard of the said paragraph 2 has been made, same is illegal; that the fact that the administration did not

\* The schemes of service read as follows:

- "1. At least 7 years satisfactory service to the post of school master on scale B.3 or a total of satisfactory educational service of at least 7 years, out of which at least the last one year to the post of school master on scale B.3, provided that the candidate possesses the qualifications required for first appointment to the post of school master on Scale B.3.
- .....
2. Successful attendance of courses in further education organized or approved in that behalf by the Ministry, when and as it will be decided".

conform with the law and did not comply with its requirements in other instances, does not constitute a ground for annulling an administrative decision because compliance with the law was insisted upon in the latter instances; that this principle applies with equal force in the case where conformity with the requirements of a scheme of service is in issue; that, therefore, the applicants cannot succeed on the ground of discrimination and unequal treatment; and, that, accordingly, the recourses must fail.

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*Recourses dismissed.*

Cases referred to:

*Vrakas and Another v. The Republic* (1977) 4 J.S.C. 457 at p. 477  
(to be reported in (1977) 1 C.L.R.);

*Voyiazianos v. The Republic* (1967) 3 C.L.R. 239;

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*Ioannides v. Republic* (1973) 3 C.L.R. 117.

#### **Recourses.**

Recourses against the decision of the respondent not to emplace the applicants, teachers of Domestic Science, on salary scale B.6.

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*Ph. Valiandis* for *L. Papaphilippou*, for applicant in case No. 101/78.

*K. Michaelides*, for applicants in cases Nos. 213/78, 214/78 and 215/78.

*A. S. Angelides*, for the respondent.

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*Cur. adv. vult.*

A. Loizou J. read the following judgment. By these four recourses which have been heard together as they involve common questions of law, the applicants seek a declaration that the decision of the respondent Committee dated the 18th February, 1978 not to emplace the applicants, teachers of Domestic Science, on the salary scale B.6 of the Secondary Education Service, is null and void and of no effect whatsoever.

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All four applicants are graduates of the Harocopios School of Domestic Science. Ecaterini Karayianni, applicant in Recourse No. 101/78, has been a school-mistress for Domestic Science at a Gymnasium, since 1958. Kalomira Kyprianidou, applicant in Recourse No. 213/78, has been such, since 1960, Antigoni

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Nikita, applicant in Recourse No. 214/78 and Kleri Serghi, applicant in Recourse No. 215/78 have been also serving as such, since 1962. In 1969 they were all emplaced on salary scale B.3. In November, 1976 they applied to the respondent Committee for emplacement to salary scale B.6 for which the required qualifications under the relevant scheme of service (*exhibit 'Z'*), are as follows:- 5

“ Απαιτούμενα Προσόντα:

1. Έπταετής τουλάχιστον ικανοποιητική ύπηρεσία εις τήν θέσιν Καθηγητοῦ ἐπὶ κλίμακος Β.3, ἢ 10

Συνολική ικανοποιητική εκπαιδευτική ύπηρεσία τουλάχιστον ἑπτὰ ἔτων, ἐκ τῶν ὁποίων τὸ τελευταῖον ἐν τουλάχιστον ἔτος εις τήν θέσιν Καθηγητοῦ ἐπὶ τῆς Κλίμακος Β. 3, νοουμένου ὅτι ὁ ὑποψήφιος κατέχει τὰ ἀπαιτούμενα θέματα διὰ πρῶτον διορισμὸν εις τήν θέσιν Καθηγητοῦ ἐπὶ τῆς Κλίμακος Β.3. 15

Σημ.: Οἱ ἐν τῇ ύπηρεσίᾳ κατὰ τήν 1ην Ἰουλίου, 1969 Καθηγηταὶ ἐπὶ τῆς κλίμακος Β.3 οἱ ἔχοντες ἢ συμπληροῦντες ύπηρεσίαν ὡς ἀνωτέρω προάγονται, τηρουμένων τῶν λοιπῶν ὄρων, εις τήν θέσιν Καθηγητοῦ ἐπὶ τῆς κλίμακος Β6 ἔστω καὶ ἐὰν δὲν κατέχουν τὰ ἀπαιτούμενα προσόντα διὰ πρῶτον διορισμὸν εις τήν θέσιν Καθηγητοῦ ἐπὶ τῆς κλίμακος Β.3. 20

2. Έπιτυχῆς παρακολούθησις ἐπιμορφωτικῶν μαθημάτων ὀργανουμένων ἢ ἐπὶ τούτῳ ἐγκρινομένων ὑπὸ τοῦ Ἰπουργείου, ὅταν καὶ ὡς ἤθελεν ἀποφασισθῇ. 25

(Ένεκρίθη ὑπὸ τοῦ Ἰπουργικοῦ Συμβουλίου.— Ἀποφάσεις ὑπ' ἀρ. 8974 καὶ 10.368 ἡμερ. 7.8.1969 καὶ 5 καὶ 6.4.1971).”

- (“ At least 7 years satisfactory service to the post of school master on Scale B.3, or 30

A total of satisfactory educational service of at least 7 years, out of which at least the last one year to the post of school master on Scale B.3, provided that the candidate possesses the qualifications required for first appointment to the post of school master on Scale B.3. 35

*Note:* School masters who on the 1st July, 1969, were in the

5 service on Scale B.3, who have or have completed service as above are promoted, subject to the remaining conditions, to the post of school master on Scale B.6 even if they do not possess the qualifications required for the first appointment, to the post of school master on Scale B.3.

2. Successful attendance of courses in further education organized or approved in that behalf by the Ministry, when and as it will be decided.

10 (Approved by the Council of Ministers—Decision No. 8974 and 10.368 dated 7.8.1969 and 5 and 6.4.1971”).

The respondent Committee considered the applications of the applicants at its meeting of the 18th February, 1978. After referring to the qualifications required for the post (see the minutes, exhibit 5), the Committee stated the following:—

15 “ Η Έπιτροπή Έκπαιδευτικής Υπηρεσίας, άφου έμελέτησε τας ώς άνω περιπτώσεις κατέληξεν εις τό συμπέρασμα ότι τό αίτημα τών καθηγητριών δέν δύναται νά ικανοποιηθῆ καθ’ ότι αύται δέν πληρούν τας ώς άνω προνοίας (1 και 2) τών Σχεδίων Υπηρεσίας.

Ειδικώτερον ώς πρός τήν πρόνοιαν τῆς παραγράφου 1 ή Έπιτροπή Έκπαιδευτικής Υπηρεσίας είναι τῆς γνώμης ότι άπαραίτητος προϋπόθεσις διά τήν προαγωγήν καθηγητοῦ εύρισκομένου επί τῆς κλίμακος Β.3 εις τήν κλίμακα Β.6 25 είναι όπως οὔτος εύρίσκεται εις τήν έν λόγω κλίμακα (Β.3) είτε κατά πρῶτον διορισμόν είτε διότι οὔτος κατέχη τά άπαιτούμενα προσόντα διά τόν διορισμόν εις τήν κλίμακα (Β.3). Τοῦτο προκύπτει τόσον άπό τό δεύτερον έδάφιον και τήν σημείωσιν τῆς παραγράφου 1, τών ώς άνω Σχεδίων Υπηρεσίας όσον και άπό τας προνοίας τών Σχεδίων Υπηρεσίας 30 εις άλλας περιπτώσεις προαγωγών άπό κλίμακος εις κλίμακα διαφόρων θέσεων τῆς Δημοσίας Έκπαιδευτικής Υπηρεσίας (Καθηγηταί και Έκπαιδευταί έκ τῆς κλίμακος Β.10 εις τήν κλίμακα Β.12. Έκπαιδευταί έκ τῆς κλίμακος Β.3 εις τήν 35 κλίμακα Β.6. Καθηγηταί και Έκπαιδευταί έκ τῆς κλίμακος Β.2 εις τήν κλίμακα Β.3) όπου εις έκάστην περίπτωσην δίδεται εύκαιρία μόνον μιᾶς προαγωγῆς (άνευ άποκτίσεως προσθέτων προσόντων) π.χ. Έκπαιδευτής επί κλίμακος Β.2 προάγεται εις Β.3 και δέν δύναται νά προαχθῆ εις ύψηλότερη κλίμακα

άνευ απόκτησεως ύψηλοτέρων προσόντων, ώς επίσης και πτυχιούχος τής Χαροκοπέου Σχολής Οίκιακής Οικονομίας—ώσ αι αίτήτριαι—διοριζομένη εις τήν θέσιν διδασκαλίσσης δύναται νά προαχθῆ ἐκ τής κλίμακος Β.2 εις κλίμακα Β.4 (άντίστοιχον πρὸς τήν Β.3) 5

Ἐν πάσῃ περιπτώσει ἡ Ἐπιτροπὴ Ἑκπαιδευτικῆς Ὑπηρεσίας εἶναι ἔτοιμη νά ἐπανεξετάσῃ τὸ ὅλον θέμα, εὐθύς ώς τὸ Ὑπουργεῖον πρὸς τὸ ὁποῖον παρεπέμφθη ἤδη τοῦτο ἤθελε δώσῃ διάφορον ἔρμηνείαν ἐφ' ὅσον τοῦτο εἶναι ἀρμόδιον διὰ τήν προετοιμασίαν τῶν Σχεδίων Ὑπηρεσίας." 10

("The Educational Service Committee having considered the above instances came to the conclusion that the application of the school mistresses cannot be acceded to because they do not satisfy the above provisions (1) and (2) of the schemes of service. 15

In particular with regard to the provision of para. 1 the Educational Service Committee is of opinion that a necessary prerequisite for the promotion of a school master on Scale B.3 to Scale B.6 is that he should be on the said scale (B.3) either on first appointment or because he possesses the qualifications required for appointment to Scale B.3. This emanates both from the second part and the note to paragraph 1 of the above schemes of service, as well as from the provisions of the schemes of service in other instances of promotion from a scale to a scale of various posts of the Public Educational Service (School masters and instructors on Scale B.10 to Scale B.12, instructors on Scale B.3 to Scale B.6, school masters and instructors on Scale B.2 to Scale B.3), where in each case there is given the chance of only one promotion (without acquiring additional qualifications), e.g. instructor on Scale B.2 is promoted to B.3 and he cannot be promoted to higher scale without acquiring higher qualifications, as well as a graduate of the Harocopios School of Domestic Science—as the applicants—appointed to the post of teacher can be promoted from Scale B.2 to Scale B.4 (corresponding to B.3). 20 25 30 35

In any case, however, the Educational Service Committee is prepared to reconsider the whole matter as soon as the Ministry, to which it had already been referred has given 40

different interpretation since it is competent for the preparation of the schemes of service. ).

It is clear from the aforesaid decision of the respondent Committee that all four applicants were found not to satisfy  
5 both provisions 1 and 2 of the schemes of service.

I find it more convenient to take first provision 2 of the schemes of service which was also invoked by the respondent Committee in dismissing the applicants' applications. In this respect I was faced with the situation whereby the applicant in  
10 Recourse No. 101/78 asserted that she attended successfully courses in further education organized or approved by the Ministry of Education, whereas the three other applicants admitted in para. 9 of the facts of their applications that the respondents did not organize any educational courses for  
15 teachers of domestic science. Moreover, Mr. Michaelides in his reply, on seeing the assertion in the address of Mr. Papphilippou that the applicant in Recourse No. 101/78 attended some kind of lessons or lectures organized by the Ministry of Education, pointed out that the same lectures were followed by  
20 his clients also which were not actually in a continuous series of lessons and that was why he did not refer to them. The respondents denied that the applicants or any of them attended such courses.

With regard to this factual issue as to whether the applicants  
25 did attend successfully courses in further education organized or approved in that behalf by the Ministry, as required by provision 2 of the schemes of service, no evidence was adduced, although it was pointed out by me in the course of the hearing that for the factual issues for which there was no express admission, evidence  
30 should be adduced in order to substantiate same. Moreover and independently of this, there is nothing in the personal file of any of the applicants from which the respondent Committee could infer that they did attend such courses, and I have no difficulty in holding, on the material before me, that no such  
35 courses were attended by any of the applicants. The conclusion, therefore, of the respondent Committee that none of the applicants satisfied this second provision of the schemes of service, was duly warranted by the facts before the respondent Committee and there was no misconception of fact in the circumstances.  
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It was argued on this point that this requirement of attending approved educational courses etc., was not insisted upon in the case of teachers of English, Music, Art and Gymnastics, who were being placed on higher scales after completion of seven years of satisfactory service and consequently this differentiation by the respondent Committee, being arbitrary, constituted discrimination and unequal treatment of the applicants vix-a-vis those other teachers. 5

It is well established that there exists no entitlement to equal treatment on an illegal basis (see: In *Re Pantelis Vrakas and Another* (1977) 4 J.S.C., p. 457, at p. 477\*; *Voyiazianos v. The Republic* (1967) 3 C.L.R., p. 239; *Ioannides v. The Republic* (1973) 3 C.L.R., p. 117). No doubt if emplacement of other teachers, as alleged, on Scale 'B.6' in disregard of para. 2 of the corresponding relevant schemes of service has been made, same is illegal. The fact that the administration did not conform with the law and did not comply with its requirements in other instances, it does not constitute a ground for annulling an administrative decision because compliance with the law was insisted upon in the latter instances. This principle applies with equal force in the case where conformity with the requirements of a scheme of service is in issue. 10 15 20

For all the above reasons these recourses fail as the applicants cannot succeed on the ground of discrimination and unequal treatment. Once, therefore, I have come to this conclusion, I need not examine the approach of the respondent Committee with regard to the first provision of the scheme on which extensive argument was heard, as everything which I may say on the matter will be obiter and I leave the matter entirely open. Before concluding, however, I would like to say that the applicant in Recourse No. 101/78 had no vested rights which have been defeated or ignored by the scheme of service in question nor does the principle of non retrospectivity of laws comes in issue nor there exists any misconception of fact or lack of due inquiry in these cases. 25 30 35

In the result these recourses are dismissed as all applicants do not satisfy, as yet, provision 2 of the scheme of service, but in the circumstances I make no order as to costs.

*Recourses dismissed. No order as to costs.* 40

\* To be reported in (1977) 1 C.L.R.