

1982 January 26

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS ECONOMIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case No. 393/81).

5 *Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962—Flagrant illegality—Militates strongly in favour of making a provisional order even though no irreparable damage is likely to result and irrespective of obstacles that may be caused to the administration—But particular caution should be exercised especially where the granting of the order will dispose of the case on its merits and also in cases of transfers of public officers—Educational officer—Transfer—Even though merits of the case arguable no flagrant illegality established justifying the granting of a provisional order.*

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15 *Educational Officers—Appointments—Permanent appointments—Posting after a permanent appointment—Whether possible—Regulation 15(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972.*

20 The applicant, an elementary school teacher, was until September, 1981 serving on secondment in secondary education schools and was serving at the 4th Gymnasium of Paphos. On September 29, 1981 the respondent Committee decided to offer a permanent appointment in secondary education to the applicant, with retrospective effect as from January 1, 1979; by the same decision the applicant was to be posted at the Danellos Technical School at Larnaca. The usual offer was

then made to applicant in which it was, inter alia, stated that he was posted to the above school at Larnaca. Applicant accepted the offer of appointment; and after challenging his transfer from the 4th Gymnasium Paphos to the Dianellos Technical School at Larnaca, he filed an application for a provisional order suspending the operation of the decision concerning his transfer till the final determination of the recourse. 5

Counsel for the applicant mainly contended:

- (a) That the posting of applicant at Larnaca was flagrantly illegal on the ground that the decision on the basis of which he was so posted speaks of a "permanent appointment" and that, therefore, there was no question of posting him as posting is, by virtue of regulation 15(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972, possible only in the case of first appointment on probation. 10 15
- (b) That even assuming that such appointment and posting was possible such posting should have been made under regulation 14(1) of the above Regulations i.e. the educational need for such posting should have been verified by the appropriate authority i.e. the Minister of Education acting usually through the Director-General of the Ministry and that nothing about this appears in the sub judice decision. 20 25

*Held*, that flagrant illegality is a matter which militates strongly in favour of making a Provisional Order even though no irreparable damage or harm is likely to result and even irrespective of obstacles that may be caused to the administration by the making of the Order; that it is well established that particular caution must be exercised especially where the granting of the order will virtually dispose of the case on its merits and also in cases of transfers of public officers; that on the material before this Court, even though the merits of this case may be arguable in the sense that the recourse is not one that is either bound to succeed or doomed to failure no flagrant illegality has been established as would justify the granting of the Provisional Order applied for and in the absence of any other ground this application will be refused. 30 35

*Application dismissed.* 40

## Cases referred to:

- Sofocleous v. The Republic* (1971) 3 C.L.R. 345;  
*Papadopoulou v. The Republic* (1975) 3 C.L.R. 89;  
*Michaelides v. The Republic* (1980) 3 C.L.R. 430;  
5 *C.T.C. Consultants Ltd. v. The Cyprus Tourist Organization*  
(1976) 3 C.L.R. 390;  
*Procopiou and Others v. The Republic* (1979) 3 C.L.R. 686;  
*Sofocleous v. The Republic* (1981) 3 C.L.R. 360.

**Application for a provisional order.**

- 10 Application for a provisional order suspending the effect  
of the decision of the respondent by virtue of which the applicant  
was transferred from the 4th Gymnasium of Paphos to the  
Dianellos Technical School of Larnaca pending the final deter-  
mination of a recourse against the validity of such decision.

- 15 *A.S. Angelides*, for the applicant.

*E. Papadopoullou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

- L. LOIZOU J. read the following judgment. The applicant  
in this case who is a teacher of Secondary Education filed a  
recourse by which he seeks the following relief:

- 25 1) A declaration that the decision or act of the respondents,  
the Educational Service Committee, to transfer him from the  
4th Gymnasium of Paphos to the Dianellos Technical School  
of Larnaca as well as any previous or interim or subsequent  
act of theirs is null, unlawful and of no legal effect whatsoever.

2) A declaration that their decision to appoint and/or post  
him at the Dianellos Technical School of Larnaca as well as  
any previous, interim or subsequent act of theirs is null, unlawful  
and of no legal effect whatsoever.

- 30 3) A declaration that the omission of the respondents to leave  
and/or post the applicant at the 4th Gymnasium of Paphos  
where he was posted by their own decision as from the 6th  
October, 1980, is unlawful and everything omitted ought to  
have been performed.

The recourse is based on the following grounds of law:

That the respondents acted in excess and/or abuse of powers and/or contrary to the law and/or the regulations and/or without any authority and contrary to the interests of education.

2. That the respondents acted without due inquiry and discriminated against him. 5

3. That the decision challenged amounts to a punitive measure or disguised disciplinary prosecution against him or is aimed at extraneous purposes other than educational needs and were taken in contravention to the principles of equality and the rules of natural justice. 10

4. That the successive transfers were effected by a procedure which contravenes the law and is in violation of vested rights of the applicant and unlawfully changed his service rights.

5. That the decision challenged lacks reasoning which is not possible to be supplemented by the material in the file. 15

On the date of the filing of the recourse the applicant also filed, under rule 13 of the Supreme Constitutional Court Rules, an application for a Provisional Order (a) suspending the operation of the decision concerning his transfer from the 4th Gymnasium of Paphos to the Dianellios Technical School of Larnaca till the final determination of the applicant's recourse or of the application for Provisional Order and (b) suspending his transfer and/or appointment and/or posting at the Dianellios Technical School until the determination of the recourse or the determination of the present application. 20 25

In the affidavit in support of the application the applicant adopts the facts in support of his recourse and further, inter alia, alleges that the decision challenged by the recourse is flagrantly illegal, that it is vindictive or punitive or is aimed at serving an extraneous purpose and not an educational need and that it will cause him irreparable harm material and moral. 30

In the course of the hearing of the application, however, counsel for the applicant abandoned all other grounds and relied solely on the issue of flagrant illegality. 35

The facts as far as relevant for the purposes of the application are the following:

The applicant has served for twenty years as an elementary school teacher. In 1979 he, together with 52 other teachers, followed a special course for teachers of practical knowledge and on the 6th October, 1980, he was posted at the 4th Gymnasium of Paphos as a teacher of practical knowledge for the academic year 1980-81 after he had applied for such appointment to the respondents. The letter posting him at the above school is blue 122 in his personal file (*exhibit 6*). On the 11th March, 1981, the applicant addressed a letter (blue 124 in *exhibit 6*) to the Director-General of the Ministry of Education by which he requested the termination of his secondment to the secondary education until the final settlement of certain disputes concerning the service of teachers of elementary education who were seconded to the secondary education

By letter dated 16th September, 1981 (*exhibit 2*) the applicant was informed that the respondent Committee had decided his transfer with effect from the 10th September, 1981, from the 4th Gymnasium of Paphos to an elementary school at Larnaca. By another letter which is dated 14th September, 1981, addressed to the applicant by the Head of Elementary Education (*exhibit 3*) he was informed that the appropriate authority had decided under the provisions of s. 39(2) of Law 10/69 to transfer him from the elementary school of Larnaca to the elementary school of Ayios Lazaros with effect from the 10th September, 1981. The decision to transfer applicant from Paphos to Larnaca was taken by the respondent Committee at a meeting held on the 8th September, 1981, the relevant extract of the minutes of this meeting have been produced as *exhibit 4*. It is stated therein that the Committee took into consideration the provisions of the law and the regulations and the educational needs both generally and with regard to each school as conveyed to them by the Head of the Elementary Education. It is to be noted that at the same meeting the wife of the applicant, who is an elementary school teacher, was also transferred from Paphos to Larnaca but it was stressed by counsel for the applicant in the course of the hearing that her transfer to Larnaca is not challenged.

With regard to the 53 elementary school teachers who were

serving on secondment in secondary education schools an agreement in principle was reached on the 4th May, 1981, at a meeting held between the Ministry of Education and the trade union of teachers belonging to the higher and secondary education whereby, inter alia, the said teachers would be appointed to the secondary education and that their appointment would be with retrospective effect as from the 1st January, 1979. This agreement was approved by the Council of Ministers on the 14th May, 1981, by decision No. 20363 (exhibit 1). 5

By a letter dated 28th September, 1981 (exhibit 7) respondents were informed by the Acting Director-General of the Ministry of Education that the Ministry of Finance had approved the filling of 53 posts, corresponding to the number of teachers who had been teaching the subject of practical knowledge in secondary schools. As a result the respondent Committee at a meeting held on the 29th September, 1981, decided to offer permanent appointment to the teachers in question, including the applicant with retrospective effect as from the 1st January, 1979 (exhibit 8). By the said decision the applicant was to be posted at the Dianellios Technical School at Larnaca. By letter dated 22nd October, 1981 (exhibit 5) the Chairman of the respondent Committee informed the applicant of the decision in exhibit 8 and further that an offer would be made to him soon. The usual offer was made to the applicant by letter dated 7th November, 1981 (exhibit 9) in which, inter alia, it is stated that he was posted to the Dianellios Technical School at Larnaca. Counsel for the respondents in the course of her address stated that the applicant has accepted the offer for such appointment 10  
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In support of his case counsel for the applicant in order to establish the flagrant illegality on which the application is based has drawn the attention of the Court, inter alia, to regulations 13-22 with particular emphasis on regulations 14 and 16 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, of 1972 published in Supplement No. 3 to the Gazette of the 10th November, 1972, under Notification 205. 30  
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The gist of the argument of learned counsel for the applicant was that the posting of the applicant at the Dianellios Technical School was flagrantly illegal: Firstly, on the ground that 40

exhibit 8 which is the decision on the basis of which he was so posted speaks of a "permanent appointment" and that, therefore, there was no question of posting him as posting is by virtue of regulation 15(1) only possible in case of first appointment on probation. Secondly, the applicant and the other 52 school teachers were already posted in the secondary education and on their appointment or promotion with retrospective effect as from the 1st January, 1979, they were already posted in specified posts of the secondary education and there was no question of a new posting.

Lastly learned counsel argued that even assuming that such appointment and posting was possible such posting should have been made under regulation 14(1) i.e. the educational need for such posting should have been verified by the appropriate authority i.e. the Minister of Education acting usually through the Director-General of the Ministry and that nothing about this appears in either exhibit 7 or 8.

The principles applicable in an application of this nature have been expounded in a line of authorities such as *Sofocleous v. The Republic* (1971) 3 C.L.R., 345, *Papadopoulou v. The Republic* (1975) 3 C.L.R. 89, *Michaelides v. The Republic* (1980) 3 C.L.R. 430, *C.T.C. Consultants Ltd. v. The Cyprus Tourist Organization* (1976) 3 C.L.R. 390, *Gedeon Procopiou and Others v. The Republic* (1979) 3 C.L.R. 686 and *Agni Sofocleous v. The Republic* (1981) 3 C.L.R. 360. It follows from the above authorities that flagrant illegality is a matter which militates strongly in favour of making a Provisional Order even though no irreparable damage or harm is likely to result and even irrespective of obstacles that may be caused to the administration by the making of the Order. It is, however, well established that particular caution must be exercised especially where the granting of the order will virtually dispose of the case on its merits and also in cases of transfers of public officers. (See *Th. Tsatsos Application for Annulment before the Council of State*, 3rd ed., pp. 428-429).

Having considered carefully the arguments advanced in support of the application I am clearly of the view, on the material before me, that even though the merits of this case may be arguable in the sense that the recourse is not one that is either

bound to succeed or doomed to failure no flagrant illegality has been established as would justify the granting of the Provisional Order applied for and in the absence of any other ground this application will be refused.

In the circumstances I will make no order as to costs.

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*Application dismissed. No order  
as to costs.*