

1982 August 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AGNI N. SOFOCLEOUS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 258/81).

Educational officers—Elementary Education School teachers—Transfers—Within discretion of Educational Service Committee—Transfer of Assistant Headmistress in accordance with educational needs—Discretion of respondent Educational Service Committee properly exercised on the material before the Court.

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“Educational needs”—“Needs of the Service”—“Interest of the service”—“Interest of the Education”—“Educational reasons”—Regulation 13(a) and (b) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972.

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Educational Officers—Elementary School teachers—Transfers—They need not be made to a more favourable post—There may be transfers anywhere for educational needs and for disciplinary grounds—Proviso (i) to regulation 16 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972.

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Administrative Law—Administrative acts and decisions—Reasoning—Supplemented by material in the relevant file.

The applicant, an Assistant Headmistress in the Elementary Education, who has since 1974 been posted at Strovolos Elementary School, was on June 25, 1981 transferred by the

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respondent Committee to Tseri Elementary School with effect from September 1981; and hence this recourse. The sub judice transfer was effected after a list of vacancies and other requirements was sent by the appropriate authority to the respondent Committee. The minute of the respondent Committee in so far as relevant reads: "The Educational Service Committee having studied the applications for transfer which were submitted by educational officers of elementary education and having in mind (a) the provisions relating to transfers in the Educational Service Laws 1969-1979, as well as the Educational Officers' Regulations of 1972 to (No. 2) of 1974; (b) the general and the per school educational needs as they were communicated by the department of elementary education decides the transfers which appear on the attached appendix to these minutes and which will take effect as from the 1st September, 1981".

Counsel for applicant mainly contended:

(a) That the transfer of the applicant could only be possible if made to a more favourable post as provided by regulation 16(3)(i)* of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972; and that under regulation 13(a)(i)** she could not be transferred as she had only served in Strovolos for three years instead of the desired minimum of four.

(b) That the sub judice decision was not duly reasoned.

Held, (1) that a transfer need not be to a more-favourable post only, because there may be transfers anywhere for educational needs or in the case of disciplinary transfers (see para. (i) of the proviso to regulation 16 of the above Regulations quoted at p. 791 post).

(2) That the question of postings and transfers is a matter within the competence of the respondent Educational Service Committee; that for the proper exercise of its discretion, the respondent Committee must carry out a due inquiry and consider, subject to the exigencies of the service as the paramount

* Regulation 16(3)(i) is quoted at p. 791 post.

** Regulation 13(a)(i) is quoted at pp. 793-94 post.

consideration, the personal circumstances of all officers, including the hardship that it will be caused to them, as well as the equality of treatment between officers and to act in accordance with the provisions of the relevant laws and regulations, including, of course, the general principles of Administrative Law; that, on the material before it, this Court is satisfied that the respondent Committee has done so and exercised its discretion properly. 5

(3) That the sub judice decision is duly reasoned because the reasoning therefor is supplemented by the material in the file. 10

Application dismissed.

Cases referred to:

Lambrou v. Republic (1970) 3 C.L.R. 75 at p. 78;

Saruhan v. Republic, 2 R.S.C.C. 133;

Korai v. C.B.C. (1973) 3 C.L.R. 546 at p. 568; 15

Nissis v. Republic (1967) 3 C.L.R. 671 at p. 675.

Recourse.

Recourse against the decision of the respondent whereby applicant was transferred from Strovolos "C" Elementary School to Tseri Elementary School. 20

A.S. Angelides, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOS J. read the following judgment. By the present recourse the applicant seeks the annulment of the decision of the respondent Committee by which she was transferred as from the 1.9.1981 from the Strovolos "C" Elementary School, where she was serving as Assistant Headmistress, to the Tseri Elementary School. 25 30

The salient facts of the case which have already been set out in my judgment(*) on the application on a provisional order, are these:

The applicant, upon her appointment as schoolmistress

* Reported as *Agni Sofocleous v. The Republic* (1981) 3 C.L.R. p. 360.

in the Elementary Education, was posted to Galini Elementary School and from 1959–1961 she was transferred to her village Katydata. On her own application and giving as a reason her marriage to her husband who as a member of the Police
5 Force was—and has been since then—posted in Nicosia, where the matrimonial home was to be set up, she was transferred to Nicosia and has been serving here in various schools ever since. In fact, since 1974, she has been posted at Strovolos “C” Elementary School.

10 The applicant is an active trade-unionist in the Elementary School Teachers’ Organization (POED), having been elected at the elections of POED on the 24th May, 1981, for two years as a general representative. The Headmaster of Strovolos “C” Elementary School is the new President of POED, whom
15 she replaces when he is engaged with his trade union activities.

The sub judice transfer of the applicant was effected after a list of vacancies and other requirements (exhibit 1) was sent by the appropriate authority to the respondent Committee and the minute of the respondent Committee dated the 25th
20 June, 1981, (exhibit 2) in so far as relevant reads: “The Educational Service Committee having studied the applications for transfer which were submitted by educational officers of elementary education and having in mind (a) the provisions relating to transfers in the Educational Service Laws 1969–1979,
25 as well as the Educational Officers’ Regulations of 1972 to (No. 2) of 1974; (b) the general and the per school educational needs as they were communicated by the department of elementary education decides the transfers which appear on the attached appendix to these minutes and which will take effect as from
30 the 1st September, 1981”.

The applicant by letter dated 2.7.1981 (Appendix E) objected to the transfer and the reasons she gave for her objection were that she is doing specialised work at the Strovolos School, that her husband is a member of the Police Force stationed
35 in Nicosia and, so, she cannot use the family car to travel to Tseri and, that she has already worked in rural areas from 1956–1961.

After the filing of this recourse she was informed by the respondent that her objection had been turned down.

The recourse is based on the following grounds of Law:

1. The respondents have acted contrary to Law and or the Regulations, namely the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972, as amended, hereinafter to be referred to as the Regulations, and or in excess or abuse of power, and or without competence and contrary to the interests of education. 5
2. The respondents failed to carry out a proper inquiry.
3. The respondents decision constitutes a disciplinary action and or was intended to serve other purposes than the educational needs and or was taken contrary to the principle of equality and the Rules of Natural Justice. 10
4. The respondents omitted to examine the fact that being involved in trade union activities, the applicant ought not to be moved away from her post in Nicosia, and 15
5. The sub judice decision is not duly reasoned and its reasoning cannot be completed from the material in the file.

It has been argued that the transfer of the applicant was only possible if it was made to a more favourable post as provided by regulation 16(3)(i), or if her further stay at the same school conflicts with a justified request of another educational officer for transfer under subparagraph (ii) of the same regulation. Moreover, according to regulation 19(1)(c), educational officers promoted to Assistant Headmasters are liable to transfer to schools in rural areas provided they have not already served in such schools before their promotion or if the needs of the service so demand and in the case of the applicant she had in fact been promoted some years earlier and she had already served in rural areas and there was nothing to suggest that educational needs demanded her said transfer. 20
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It was further argued that under regulation 13(a)(1) she could not be transferred as she had only served in Strovolos for three years instead of the desired minimum of four, as provided by the said regulation. 35

Regulation 16, in so far as relevant to this case reads as follows:

“16.—(1) Educational officers are transferred—

(a) in accordance with the educational needs;

5 (b) on their own application for serious personal or family reasons, provided that the interest of the service is also served.

(2) _____

(3) The educational officers transferred as above are subject to further transfer, after having served for a certain period of time and as possibilities for transfer may occur, as follows:

(a) _____

(b) School-teachers are transferred to larger B schools and subsequently, after serving at such schools, and depending on possibilities that may arise, are transferred to A schools:

Provided that in both the above instances—

(i) the transfer is to a more favourable for the educational officer post, except in cases of transfer for educational needs or disciplinary transfers;

20 (ii) an educational officer is not transferred without an application on his part except if there exist educational reasons or if his further stay at the same school conflicts with a justified request of another educational officer for transfer”.

25 It is clear from the wording of para. (i) of the proviso to the aforesaid regulation that a transfer need not be to a more favourable post only but there may be transfers anywhere for educational needs or in the case of disciplinary transfers. The applicant has, however, contended that there do not appear to exist any educational needs in her case, or that such educational needs have been verified to exist by the appropriate Authority as defined in section 2 of the Public Educational Service Laws, 1969 to 1979, which is the Minister acting through his Director-General. Moreover such needs must be specific

and not general or vague, (*Lambrou v. The Republic* (1970) 3 C.L.R. 75 at p. 78).

It was further argued that the fact that another educational officer was transferred from Tseri to Nicosia, thus creating a vacancy, cannot be considered as having created an educational need which has been as such verified by the appropriate Authority according to regulation 14(1). 5

It appears that there were required at Tseri Elementary school, where during the year 1980–1981 there served six teachers, two more teachers for the year 1981–1982 in order to bring the staff of that school to a total of eight teachers, as stated in the list (exhibit 1), which is the document prepared by the appropriate Authority and forwarded to the respondent Committee, setting out, and to my mind verifying therein the educational needs of the various elementary schools of the Nicosia district. In fact, from the relevant documents and files it transpires that the respondent Committee transferred three teachers, other than the applicant, to Tseri as one of the six teachers serving there was also transferred to Nicosia. Moreover in the list of transfers attached to exhibit 2, it is shown that a certain Polymnia Philippou, an Assistant Headmistress was transferred from Tseri to Nicosia by decision of the respondent Committee, taken at its meeting of the 25th June 1981, that is at the same meeting at which the transfer of the applicant was also decided. As a result of this a vacancy was created at this school for an Assistant Headmaster or Headmistress, which had to be filled so that the educational needs of the school, as verified by the appropriate Authority would be satisfied. 10 15 20 25

As stated in the affidavit sworn by Mr. Andreas Papadouris, a member of the respondent Committee, Polymnia Philippou being the youngest Assistant Headmistress, was transferred for a year to Tseri, and in the following year she was replaced by the applicant as having after her the lesser years of service. The intention of the respondent Committee being that on the subsequent year the applicant would also be replaced by the Assistant Headmistress or master, who was next in the line of seniority starting from the most senior. 30 35

There being obviously a duly verified educational need at

Tseri Elementary School to have an Assistant Headmaster or Mistress posted there, the applicant could be so transferred under the Regulations and regulation 19(1)(c) in particular, which provides that those promoted to the post of Assistant
 5 Headmaster, Elementary education, are subject to transfer to schools of rural areas, if they have not already served in such schools before their promotion, or if the needs of the service require this. It may also be said that a specific request
 10 for the posting there of an Assistant Headmaster was not necessary as a teacher is defined in section 2 of the Public Education Service Law, 1969 to mean the Educational officer appointed for service in public schools of elementary education and includes a Headmaster and a kindergarten instructor, and "educational officer" is defined in regulation 2 of the Regulations to mean
 15 a member of the teaching staff, and "a teaching staff" is defined to mean a teacher.

The term "educational needs" is defined in regulation 13(a) of the Regulations and according to paragraph (b) thereof the terms "needs of the service", "interest of the service",
 20 "interest of the education" and "educational reasons" are all interpreted as meaning "educational needs".

Regulation 13(a)(i) which is in part three of the Regulations under the heading "Postings and Transfers", provides.

"13. Διά τούς σκοπούς του παρόντος Μέρους—

25 (α) μη επηρεαζομένης τῆς εὐρύτητος τῆς ἐννοίας τοῦ ὄρου, 'ἐκπαιδευτικαὶ ἀνάγκαι' νοοῦνται κατὰ κύριον λόγον—

(i) ἡ κατανομή τοῦ διδακτικοῦ προσωπικοῦ, περιλαμβανομένων καὶ τῶν διευθυντικῶν θέσεων, κατὰ τρόπον ἐξασφαλίζοντα τὴν ἐπαρκῆ ἐπ'ἀνδρωσιν τῶν σχολείων καὶ τὴν κατὰ σχολεῖον ἰσορροπον σύνθεσιν τοῦ τοιοῦτου προσωπικοῦ καθ' ὅσον ἀφορᾷ εἰς τὰ προσόντα, τὰς εἰδικότητας καὶ τὸ
 30 φῦλον. Προκειμένου περὶ διευθυντῶν σχολείων συμπεριλαμβάνεται καὶ ἡ ἀνάγκη ἐξασφαλίσεως σταθερότητος διὰ τῆς παραμονῆς αὐτῶν εἰς τὸ αὐτὸ σχολεῖον ἐπὶ τινα ἔτη καὶ, εἰ δυνατὸν, μέχρι
 35 τεσσάρων ἐτῶν τοῦλάχιστον·

(ii) ἡ δυνατότης παροχῆς καθοδηγήσεως καὶ βοήθειας

εις νεοδιοριζομενους εκπαιδευτικους λειτουργους προς διευκολυσιν τῆς επιτυχούς προσαρμογῆς αὐτῶν εις τὸ ἐπάγγελμα·

- (iii) ἡ εὐχέρεια διευθετήσεως περιπτώσεων ὑπαγορευομένων ἐξ ἄλλων νομίμων λόγων· 5
- (iv) ἐξαιρετικαὶ περιπτώσεις ὑπαγορευούσαι ἀμεσον λύσιν πρὸς ὁμαλήν λειτουργίαν τῶν σχολείων”.

(“13. For the purposes of this part—

- (a) without prejudice to the generality of the meaning of the term “educational needs” are understood mainly— 10
- (i) the distribution of the teaching staff, including the managerial posts, in a way safeguarding the sufficient manning of schools and the balanced composition of such staff regarding the qualifications, specialities and sex. In the case of Headmasters there is included the need for safeguarding stability by their stay at the same school for some years and, if possible, for at least four years; 15 20
- (ii) the possibility of granting guidance and help to newly appointed educational officers for facilitating their successful adaptation to the profession;
- (iii) the ease of settling cases dictated by other legal reasons; 25
- (iv) exceptional cases directing immediate solution for the smooth functioning of the schools”).

It is clear that the apportionment and distribution of the teaching staff, including managerial posts, in a manner securing the satisfactory manning and the balanced composition of such staff in every school with regard to their qualifications, specializations and sex, is an educational need and it is in view of this definition that I have concluded that exhibit 1 sets out the educational needs of the schools as it gives the distribution and apportionment of the staff in respect of each school in the Nicosia District, including that of Tseri Elementary School with which we have been concerned. 30 35

The last part of the aforesaid paragraphs shows, without myself deciding whether the term "Headmaster" therein includes an Assistant Headmaster, but assuming that it does, that the provision for a Headmaster to remain for some years in a school and if possible up to at least four years, is not an imperative one and therefore the decision to transfer from Strovolos to Tseri the applicant after serving less than three years at the former, does not constitute a violation of this provision.

The question of postings and transfers is no doubt a matter within the competence of the respondent Committee, whereas the verification of the educational needs as defined in regulation 13 is a matter within the competence of the appropriate Authority. Inevitably when there exist vacancies in schools and also when consequential vacancies are created when the respondent Committee finds legitimate and grants the applications of educational officers for transfer, there exist educational needs as defined in regulation 13 to be specified by other transfers. It is then upon the respondent Committee to exercise its discretion and decide as to which officer will be transferred to fill such vacancies, so that the educational needs of each school will be satisfied. For the proper exercise of its discretion, the respondent Committee must carry out a due inquiry and consider, subject to the exigencies of the service as the paramount consideration, the personal circumstances of all officers, including the hardship that it will be caused to them, as well as the equality of treatment between officers and to act in accordance with the provisions of the relevant laws and regulations, including, of course, the general principles of Administrative Law.

On the material before me, I am satisfied that the respondent Committee has done so and exercised its discretion properly. I do not agree that there were special circumstances as regards the applicant which had not been duly considered. As I said in my judgment on her application for a provisional order "_____ her claim that this transfer may interfere with her trade union activities, cannot really stand because of the nature of the office she holds in POED—she is called upon to vote from time to time at general meetings—and that such transfer does not call necessarily for a change of residence. Nor does the fact that she frequently acts for the Headmaster because of his

absence on account of his trade union activities can have by itself a bearing in this case inasmuch as acting for the Headmaster of a school is one of the duties that under the relevant scheme of service an Assistant Headmaster/Mistress is called upon to perform".

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Moreover the pioneer work that she developed at Strovolos school can equally be continued at Tseri for the benefit of the pupils of that school also. Needless to say that Tseri village is only a few miles away from Strovolos where she resides and is served by a regular bus service.

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The next ground of law relied upon on behalf of the applicant is that her transfer was effected because she belongs to the Movement of the teachers that won the last election at the Pancyprrian Organization of Greek Teachers (POED) and not for the reasons given by the respondent Committee in this sub judice decision. In support of this contention a comparable table of the officers and general representatives of the two rival Movements in the Teachers Organization has been produced (exhibit 7) showing that more educational officers belonging to the Movement to which the applicant belongs were transferred than those belonging to the rival one.

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I am not satisfied that by itself and without any other concrete evidence, including the personal files and records of the career of each officer appearing on this comparable table, the applicant has discharged the onus of establishing excess or abuse of power which rests upon her who is the one who makes this application (see *Saruhan v. Republic*, 2 R.S.C.C. 133, at p. 136 (c); *Korai v. C.B.C.* (1973) 3 C.L.R. 546, at 568; *Nedjati Administrative Law* (Ed. 1974), pp. 250-251; *Nissis v. Republic* (1967) 3 C.L.R. 671. at 675). This ground, therefore, must also fail.

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Finally it has been argued that the sub judice decision is not duly reasoned. I do not accept that contention as the reasoning for the subject decision is supplemented by the material in the file and in so far as her objection to the transfer is concerned, the respondent Committee at its meeting of the 15th October, 1981, found (see Minutes exhibit 8) that the transfer of the applicant was necessitated by the educational needs and rejected her application.

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5 Having been satisfied that the sub judice decision was taken in accordance with the law, including the general principles of administrative law and the relevant regulations and that the reasoning for it can be deducted from all the material in the file and that it was taken after a proper inquiry into the circumstances of all the educational officers concerned, including the applicant, and that same was reached because of the educational needs of the schools concerned and not for any other purpose as claimed by the applicant, this recourse should fail.

10 One should not lose sight of the fact that, as mentioned earlier in this judgment, the applicant served the first five years of her service at or near her home village and that she was transferred to Nicosia upon her engagement in 1961 and has, ever since, served here, though in the meantime promoted to an Assistant
15 Headmaster and that by the sub judice decision she was transferred only for a year to what is, nowadays, almost a suburb of Nicosia town.

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

20 *Application dismissed. No order as to costs.*