1983 April 27

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS PAPHITIS AND OTHERS,

Applicants,

v.

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

Respondents.

(*Case No.* 403/82).

Educational officers—Schemes of Service—They are subsidiary legislation and as such they have to conform strictly to the provisions of the enabling law, in this case s.24 of the Public Educational Service Law, 1969 (*Law* 10/69) *and s.4(2)(b) of the Public Educational Service (Increase of Salaries Restructuring and Placement of Certain Posts on United Salary Scales) Law,* 1981 (*Law* 12/81)*—Schemes of Service regulating appointment or promotion to scale B10—Perfectly compatible with the provisions of the above laws and intra vires these laws—Section 4(2)(b) of Law 12/81 does not impose a duty either on the Council of Ministers in enacting an appropriate scheme or upon the respondents in giving effect to it to back-date any emplacement to the above scale.*

Industrial Relations—Collective labour agreement—Does not create rights in the domain of public law.

The applicants were holding the post of Secondary School Teacher, on Scale B.6. In January, 1981, an agreement was reached between Government and the Trade Unions of Teachers in the Public Service providing for the emplacement of Teachers holding the post of Secondary School Teacher on Scale B.6 to Scale B.10. Under a proviso to the agreement Teachers on Scale B.6 would be entitled to have their emplacement on Scale B.10, under certain circumstances, back-dated. It

could be back-dated to the day on which they would be eligible under the Schemes of Service of the replaced establishment to be promoted to Scale B.10 (of the old establishment). The qualifications envisaged by the Scheme of Service of the old Scale B.10 provided, inter alia, possession of a post-graduate (μετεκπαίδευση) qualification, entailing attendance of a yearly course at a special school approved by the Ministry of Education.

Following the above agreement a law—Law 12/81—was enacted reproducing the agreement but the relevant section of the law—section 4(2)(b)—did not reproduce the proviso.

Counsel for the applicant mainly contended that the Schemes of Service for appointment or promotion to Scale B.10 approved by the Council of Ministers, did not give effect to the provisions of s.4(2)(b) and the collective agreement between Government and educationalists and, that it is ultra-vires the law; that, also, the respondents failed to carry out their duty, allegedly cast by the aforesaid law and agreement, to give retrospective effect to the appointment of applicants to Scale B.10. In their contention, they had the qualifications necessary for promotion to Scale B.10 of the old establishment, prior to the enactment of Law 12/81, so, in virtue of the provisions of either Law 12/81 or the agreement or both, they should be placed on Scale B.10 the latest on 30.3.1981.

The respondents challenged the aforementioned factual background and alleged that applicants did not possess the qualifications that would entitle them to promotion to Scale B.10 of the old establishment, in that they did not possess the aforementioned post-graduate qualification.

Held, (1) that the burden is on the applicants to establish that the respondents erred in their appreciation of the facts of the case; that this they failed to establish because a study of the file of each applicant is consistent with the view adopted by the respondents that applicants did not possess the post-graduate qualification envisaged by the old Scheme of the Scale B.10 post; and that this appreciation of the facts of the case leads to the collapse of the factual substratum of the case for the applicants.

(2) That a scheme of service qualifies as an instrument of subsidiary legislation where it is introduced in exercise of express

statutory provisions; that subsidiary legislation must conform strictly to the provisions of the enabling law—in this case s.24 of Law 10/69 and s.4(2)(b) of Law 12/81—to be valid; that any contravention or departure therefrom, will render the legislation abortive wholly or in part; that there is nothing contentious about the Scheme of Service regulating appointment or promotion to Scale B.10; that section 4(2)(b) of Law 12/81 does not impose a duty either on the Council of Ministers in enacting an appropriate scheme or, upon the respondents in giving effect to it to back-date any emplacement thereto; accordingly the Scheme of Service was perfectly compatible with the provisions of the law and it was intra-vires the law.

Held, further, (1) that the fact of the retroaction of the law, i.e. its application as from 1979, did not in itself cast a duty upon any authority responsible either for the Schemes of Service for the new grades or the making of promotions to give retroactive effect to promotions or appointments to the new grades envisaged by Law 12/81. The retrospectiveness of the law in itself, was a neutral factor in this respect.

(2) That on principle and authority, a collective labour agreement does not create rights at public law. The Constitution, the Statute Laws and Regulations made thereunder, are the only source for the genesis of rights in the domain of public law. Legislation is the province of the legislative assembly. At best, a collective agreement between Government and Unions of public officers, signifies, so far as Government is concerned, its intent to promote before the House of Representatives appropriate legislation to implement it. By itself, the agreement creates neither rights nor does it impose obligations in the field of public law. Any other construction of a collective agreement would violate the principle of separation of powers deeply embedded in our Constitution (see *Kontemeniotis* v. *C.B.C.* (1982) 3 C.L.R. 1027, 1032).

Application dismissed.

Cases referred to:

Pankyprios Syntechnia Dimosion Ypallilon v. *Republic* (1978) 3 C.L.R. 27;

Panayides v. *Republic* (1972) 3 C.L.R. 467 at p. 479;

Malachtou v. *Attorney-General* (1981) 1 C.L.R. 543 at p. 555;

Ploussiou v. *Central Bank of Cyprus* (1982) 3 C.L.R. 398;

Kontemeniotis v. *C.B.C.* (1982) 3 C.L.R. 1027 at p. 1032;
Hadjichristophorou v. *Republic* (1983) 3 C.L.R. 280.

Recourse.

Recourse against the decision of the respondents to emplace applicants on salary scale B.10 as from 1.6.1982.

A. S. Angelides, for the applicants.

R. Vrahimi (*Mrs.*), for the respondents.

Cur. adv. vult

PIKIS J. read the following judgment. Following the enactment of Law 12/81 - a law designed to restructure the hierarchical grading and remuneration of educationalists - a scheme of service was approved by the Council of Ministers establishing the qualifications necessary for appointment to one of the newly created grades, notably B10. Shortly afterwards, on 19.6.1982, the respondents promoted a number of officers to Grade B10, including the applicants, with effect from 1.6.1982. The applicants accepted the promotion but reserved their right to question the date of their appointment, holding the view they were entitled to be appointed from a date prior to 1.6.1982, possibly as far back as 1979. And the present recourse is designed to ventilate these objections with a view to setting aside the decision in its entirety or, at least, that part that relates to the date of their emplacement on Grade B10.

It is the case of applicants that respondents were under a duty to emplace them or appoint them at Grade B10 on an earlier date, the latest from the date Law 12/81 came into force, i.e. 30.3.1981. A duty was imposed on the respondents, in the contention of applicants, by the provisions of Law 12/81 and, a collective agreement between Government and the Unions of Educationalists that preceded it, to appoint them or emplace them on Grade B10 from a date earlier than they did. Because of their failure to carry out this duty, applicants suffered injustice, in that they were equated with other educationalists of inferior rank, contrary to law and the provisions of Article 28 of the Constitution providing, inter alia, for equality before the administration.

The respondents disputed the interpretation placed by the applicants on the relevant provisions of Law 12/81 and denied every allegation of unfair or unequal treatment.

Now, the factual and legal background to the case: In January, 1981, an agreement was reached between Government and Unions of Teachers in the Public Service, providing for the restructuring of the hierarchy and remuneration of educationalists in the public service. It was minuted in a document entitled "Memorandum". Clause 'V' of the agreement provided, inter alia, for the repositioning of officers holding the position of Secondary School Teacher, Grade B6, in the old establishment, replaced by Law 12/81. It provided that they would be placed, as well as other educationalists holding a lower grade, on Grade B10 of the new order. By a proviso thereto, officers in the position of the applicants holding the post of Teacher Grade B6, would be entitled to have their appointment or emplacement at Grade B10, under certain circumstances, back-dated. It should be back-dated to the day on which they would be eligible under the rules of the replaced estalishment to be promoted to Grade B10 (of the old establishment). The qualifications envisaged by the scheme of service of the old Grade B10 provided, inter alia, possession of a post-graduate (μετεκπαίδευση) qualification, entailing attendance of a yearly course at a special school approved by the Ministry of Education.

The law enacted to give effect to the agreement embodied in the Memorandum, Law 12/81, did not reproduce the aforementioned proviso. The relevant section of the law, s.4(2)(b), incorporated every term of Clause 'V' of the Memorandum, except for the proviso. However, Law 12/81 was given retrospective effect to 1.1.1979.

The essence of the case for the applicants is that the schemes of service for appointment or promotion to Grade B10 approved by the Council of Ministers, did not give effect to the provisions of s.4(2)(b) and the collective agreement between Government and educationalists and, that it is ultra-vires the law. Also, the respondents failed to carry out their duty, allegedly cast by the aforesaid law and memorandum, to give retrospective effect to the appointment of applicants to Grade B10. In their contention, they had the qualifications necessary for promotion to Grade B10 of the old establishment, prior to the enactment of Law 12/81, so, in virtue of the provisions of either Law 12/81 or the Memorandum or both, they should be placed at Grade B10 the latest on 30.3.1981.

The respondents challenged the aforementioned factual background and alleged that applicants did not possess the qualifications that would entitle them to promotion to Grade B10 of the old establishment, in that they did not possess the aforementioned post-graduate qualification. The burden is on the applicants to establish that the respondents erred in their appreciation of the facts of the case. This they failed to establish. A study of the file of each applicant - a file that was before the respondents - is consistent with the view propounded in these proceedings and apparently adopted by the respondents that applicants did not possess the post-graduate qualification envisaged by the old scheme B10, i.e. yearly studies at a special school approved by the Ministry of Education. The qualifications they possessed from a school or institution in West Germany were held sufficient to excuse the non possession by the applicants of a leaving certificate from a sixth form secondary school. In any event, there is nothing to suggest that the school or institution they attended was a special school approved for the purpose by the Ministry of Education. This appreciation of the facts of the case leads to the collapse of the factual substratum of the case for applicants.

The submission that the schemes of service enacted in exercise of the statutory powers vested in the Council of Ministers by s.24 of Law 10/69 and devised to give effect to the provisions of s.4(2)(b) of Law 12/81 were ultra-vires the law is, in my judgment, devoid of substance. A scheme of service qualifies as an instrument of subsidiary legislation where it is introduced in exercise of express statutory provisions, as the case is with schemes of service for educationalists. (See, *Pankyprios Syntechnia Dimosion Ypallilon v. Republic* (1978) 3 C.L.R. 27 - Relevant is also the decision in *Hadjichristophorou v. Republic,* given on 11.3.83, unreported as yet)*. In the absence of empowering legislative provisions, it is settled that the Council of Ministers has power to introduce appropriate schemes of service in exercise of its powers under Article 54 of the Constitution. (See, inter alia, *Petrakis Panayides v. Republic* (1972) 3 C.L.R. 467 at 479).

Subsidiary legislation must conform strictly to the provisions of the enabling law - in this case s.24 of Law 10/69 and s.4(2)(b)

* Now reported in (1983) 3 C.L.R. 280

of Law 12/81 - to be valid. Any contravention or departure therefrom, will render the legislation abortive wholly or in part. (See, *Malachtou v. Attorney-General* (1981) 1 C.L.R. 543 at 555 and, *Ploussiou v. Central Bank of Cyprus,* delivered on 5.4.1983)*. There is nothing contentious about the scheme of service regulating appointment or promotion to Grade B10. Section 4(2)(b) of Law 12/81 does not impose a duty either on the Council of Ministers in enacting an appropriate scheme or, upon the respondents in giving effect to it to back-date any emplacement thereto. The fact of the retroaction of the law, i.e. its application as from 1979, did not in itself cast a duty upon any authority responsible either for the schemes of service for the new grades or the making of promotions to give retroactive effect to promotions or appointments to the new grades envisaged by Law 12/81. The retrospectiveness of the law in itself, was a neutral factor in this respect. In my judgment, the scheme of service impugned in these proceedings was perfectly compatible with the provisions of the law. In my judgment it was intra-vires the law.

Lastly, a word about the collective agreement minuted in the Memorandum and its implications, a much debated subject in these proceedings. On principle and authority, a collective labour agreement does not create rights at public law. The Constitution, the Statute Laws and Regulations made thereunder, are the only source for the genesis of rights in the domain of public law. Legislation is the province of the legislative assembly. At best, a collective agreement between Government and Unions of public officers, signifies, so far as Government is concerned, its intent to promote before the House of Representatives appropriate legislation to implement it. By itself, the agreement creates neither rights nor does it impose obligations in the field of public law. Any other construction of a collective agreement would violate the principle of separation of powers deeply embedded in our Constitution. This proposition was explicitly approved by the Full Bench of the Supreme Court, in *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027, 1032.

The recourse fails. It is dismissed. There shall be no order as to costs.

Recourse dismissed with no order as to costs.

* Now reported in (1983) 3 C.L.R. 398.