

1983 March 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLERI IOANNIDOU,

Applicant,

v.

THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 475/82).

Educational officers—Transfers—Judicial control—Recommendation of Head of Department for transfer of applicant—No obligation cast on respondent Commission to reason specifically its departure from such recommendation—Public Educational Service Regulations, 1972 regulations 14(1), 18 and 21. 5

Practice—Recourse for annulment—Issues raised for adjudication must be defined clearly and succinctly in the application.

The applicant, a secondary school teacher, challenged the omission of the respondents to transfer her from Larnaca to Nicosia and disputed the validity of their decision to transfer from Larnaca to Nicosia the interested party. 10

On the question whether it was incumbent upon the respondents to reason specifically their departure from the recommendations of the Head of Department for the transfer of the applicant:

Held, (after stating the principles governing judicial control of transfers) that no obligation is cast upon the Educational Service Committee to reason specifically any departure from the recommendations of the Head of Department; that they are the arbiters in law of who should be transferred. So long as they take into account all relevant considerations, as they have done in this case, the Court cannot review the exercise of their discretion. They were under no obligation to give reasons for transferring the interested party instead of the applicant. In any 15
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event, the competing claims of the applicant and interested party to transfer, were so finely balanced that a wide margin of discretion would normally vest in the Commission to do as they thought best in the circumstances; accordingly the recourse must fail (see regulations 14(1), 18 and 21 of the Public Educational Service Regulations 1972).

Application dismissed.

Per curiam:

In proceedings under Article 146.1, as indeed in any other proceedings, the issues raised for adjudication must be defined clearly and succinctly and the Court cannot review a decision other than that challenged in the application.

Cases referred to:

- 15 *Lazarou v. Republic* (1973) 3 C.L.R. 82;
Elia v. Educational Service Committee (1974) 3 C.L.R. 73 at p.77;
Kyriakides v. Republic (1976) 3 C.L.R. 364 at p.373.

Recourse.

Recourse against the omission of the respondent to transfer the applicant from Larnaca to Nicosia and against the decision to transfer the interested party from Larnaca to Nicosia.

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

Cur. adv. vult.

25 PIKIS J. read the following judgment. The applicant, a secondary school teacher, challenges the omission of the Educational Service Commission to transfer her from Larnaca to Nicosia and disputes the validity of their decision to transfer to Nicosia a colleague of hers, Eleni Efthymiou, the interested party, from Larnaca to Nicosia. In the statement of facts accompanying the application, the decision complained of is identified by reference to a publication in the daily press of 10.10.1982, announcing the transfer of the interested party from Larnaca to Nicosia. The applicant and the interested party were teachers of domestic science at the Dianellios Technical School, Larnaca, giving instruction on cutting and sewing. The interested party was, as a result of the impugned decision,

only partially transferred to Nicosia and assigned duties at the B' Technical School for four hours a week.

At the outset of the hearing of the case, I inquired of counsel for the applicant whether the decision complained of affected any party other than that named in the application as interested party. He answered that the issues raised affected two other fellow-teachers of the applicant as well, namely Anastassia Louca and Phrosso Tourva. Thereupon, I directed, in virtue of the powers vested in the Supreme Court by r.8 of the Supreme Constitutional Court Rules, as amended and made applicable to proceedings before the Supreme Court after the enactment of the Administration of Justice (Miscellaneous Provisions) Law - 33/64 that, notice of the application be served upon the aforesaid two persons. The directions of the Court for the service of the proceedings upon a party appearing prima facie to be interested in the outcome of the proceedings, do not render such a party ipso facto a party to the proceedings in the sense of an interested party. The Court cannot, in the absence of the decision attacked, pronounce with any certainty upon its implications or the consequences likely to arise in the event of its annulment. It is a counsel of caution to direct service of the proceedings upon a party who may conceivably be affected by the outcome of the proceedings. However, when the facts become known, as they became in this case, in due course, by the production of the relevant records, the Court can rule with confidence whether a party is likely to be affected by the outcome of the recourse, in which case he properly ranks as an interested party.

The application is essentially two-pronged: The first prayer is directed against a continuing omission of the respondents to carry out a duty owing to the applicant, i.e. to transfer her. By its very nature, this remedy is confined to an omission as distinct from a decision involving the transfer of anyone else. The aforementioned educationalists were transferred in virtue of a decision of the respondents dated 22.9.1982. Therefore, the outcome of this part of the recourse can have no conceivable effect upon the rights in the service of Anastassia Louca and Phrosso Tourva, as defined after their transfer. Nor can any liability attach to any educationalist for omissions of the respondents to carry out duties allegedly owing to a fellow-educationalist.

The second prayer is directed against a positive act: The decision of the respondents to transfer Eleni Efthymiou instead of or in preference to applicant. The decision is elliptically identified by reference to a press publication. The decision
5 here complained of, as it crystallised after the production of the relevant records was taken on 9.10.1982; therefore, by necessary implication the only decision challenged in virtue of prayer 2, as identified in the statement of facts accompanying the prayer, is that of 9.10.1982. The decision to transfer
10 Mrs. Louca and Mrs. Tourva was taken on another occasion and constitutes a separate and distinct decision from that taken on 9.10.1982.

The last prayer is a subsidiary one, charging the respondents again with an omission to take a positive decision on her
15 application and is, in essence, associated with the first prayer of the application.

In proceedings under Article 146.1, as indeed in any other proceedings, the issues raised for adjudication must be defined clearly and succinctly. This rule is of especial significance
20 in proceedings under Article 146, in view of the stringent time-bar of 75 days laid down by Article 146.3. To uphold the submission that we should review the decision affecting Mrs. Louca and Mrs. Tourva—a decision other than that challenged in the application—would be tantamount to acknowledging a right
25 to the applicant to have reviewed judicially all acts directly or indirectly affecting her, that took place within 75 days prior to the institution of the proceedings. That is not the position. The Court can only take cognizance of an act, decision or omission specified in the prayer, judged in combination with the
30 statement of facts, setting forth the factual background thereto. In my judgment, the recourse, so far as it is directed against a positive act of the respondents, is confined to their decision of 9.10.1982, deciding the transfer of the interested party from Larnaca to Nicosia. Consequently, I shall not examine any
35 aspect of the decision of the respondents entailing the transfer of Mrs. Louca and Mrs. Tourva, though it must be said that the case against them was argued, on account of the different factual substratum, with less vigour compared to the case made against the interested party.

1. *The Facts Relevant to the applicant and the interested party:*

The applicant and the interested party were first appointed in the educational service as teachers of domestic science, in 1978 and 1979, respectively. They were both appointed in the permanent establishment on a probationary basis on 1.9. 1982. They are both married with two children each, residing with their families at Nicosia. Both were posted from the first day of their appointment at the Dianellios Technical School, Larnaca. 5

In February, 1982, the applicant as well as the interested party, applied to be transferred to Nicosia. Their reasons in support of their application were somewhat different. Applicant wished to be transferred mainly for family reasons. Another legitimate reason for her transfer, indirectly arising from her application, was the office of her husband and posting at Nicosia. Her husband is a District Judge, serving at Nicosia, a factor acknowledged by the Public Educational Service Regulations issued on 10.11.1972, as militating for transfer, so that husband and wife, members of the Public Service, be posted at the same town. The interested party based her application, in addition to family reasons, on the complications on her health caused by daily travelling. A medical certificate attached thereto, confirms she has problems with her spine that are compounded by daily travelling. Other facts bearing on her application, emerging from her file and noted by the respondents, relate to her plight and that of her family, as a result of the events of 1974. She was, together with her family, displaced from their home in the Kyrenia district, amidst grief for the fate of many of her relations who are missing persons. *I say, relevant facts for, given the realities of Cyprus, it is perfectly legitimate to take into account, especially in evaluating hardship, the implications of displacement and the likelihood of inflicting further hardship upon persons badly tried by the events of 1974.* 10
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2. *The Submissions made:*

Counsel for the applicant submitted that the respondents effected the transfer in question, in breach of the provisions of r. 14(1) of the aforesaid Public Education Service Regulations, in two respects: 35

Firstly, they acted in abuse of their powers by ignoring the certification of educational needs by the Director of Technical Education that included the transfer of the applicant in satisfaction thereof and, secondly, by omitting to give reasons for departing therefrom. If I understood it correctly, the first leg of the submission with regard to r.14(1), is that on a consideration of its provisions, the power of the respondents with regard to transfers, is confined to confirming the recommendations of the Director. This submission is not borne out by the wording of r.14(1) and is in conflict with the provisions of s.39 of the Public Education Service Law—10/69, exclusively vesting powers to transfer educationalists upon the respondents.

In the submission of counsel for the respondents, the Director of Educational Service had no power whatever to make a recommendation about transfer of teachers, his power being solely confined to verifying existing vacancies. I am unable to uphold this proposition on a consideration of “educational needs”, as defined by r.13 of the aforesaid Regulations. The concept of educational needs, in this context, includes the amenity of teachers to serve at particular places and schools.

The question that must be resolved in these proceedings, with relevance to r.14(1) is, whether the decision is vulnerable to be set aside, because of failure on the part of the respondents to indicate their reasons for departing from the decision of the Director. The arguments raised on behalf of the respondents with regard to r.21(2), are still weaker. As I perceive them, they involve the proposition that, applications for transfer by educationalists submitted under r.18, must be specifically decided, divorced from the context of general or supplementary transfers effected in furtherance to the powers vested in the respondents by r.21. In my view, this is an arbitrary construction of the regulations and totally devoid of substance. There is nothing in the regulations suggesting that a duty is cast upon the respondents to decide individually applications for transfer. Far from it, the regulations, viewed as a whole and, the time at which educationalists are required to make applications for transfer, in February, suggest that the object of r.18 is to pave the ground, by revealing the wishes of educationalists as to

transfer, with a view to the exercise of the powers of the respondents under r.21.

With this appreciation of the law, the remedy under prayer 1 cannot but fail for, it is founded on an alleged omission on the part of the respondents to carry out a duty cast upon them by law to decide specifically and individually applications for transfer by educationalists. The duty of the respondents was to take into consideration the wish of the applicant for transfer. There is no suggestion that they omitted to carry out this duty. Her application was before the respondents, as well as the recommendations of the Director, earlier referred to:

The third prayer for relief cannot be divorced from the substance of the case and is untenable. It need concern us no further.

In the statement of facts, reference is made to representations made by applicant, subsequent to her application for transfer. Nothing is said about any objection or any failure on the part of the respondents to reply thereto, nor was reference made to any written objection of the applicant necessitating a reply by the respondents.

There is only one issue of substance that must be resolved, earlier identified. That is, whether it was incumbent upon the respondents to reason specifically departure from the recommendations of the Director for the transfer of the applicant.

3. *Transfers, amenity to review them:*

It is settled that transfers are, par excellence, the province of the body responsible in law for the manning of a service. Positioning of officers at the appropriate place is a complex subject that requires evaluation of the needs of the service, coordination of its activities and appreciation of particular needs, of schools in this case and, individual circumstances of those in the service. It is authoritatively settled that limited jurisdiction vests in the Court to review decisions pertaining to transfer. The jurisdiction is limited to ensuring that the body making the transfer has not exceeded the outer limits

of its discretion. That is, that it has not taken into account matters extraneous to the task or ignored considerations relevant to the exercise of its discretion, in this case laid down in r.13, defining educational needs. (See, inter alia, *Sofoclis Lazarou v. Republic (Educational Service Committee)* (1973) 3 C.L.R. 82; *Elia v. Educational Service Committee* (1974) 3 C.L.R. 73, 77; and *Kyriakides v. The Republic* (1976) 3 C.L.R. 364, 373). In the present case, there is no suggestion that the respondents omitted from consideration any factor relevant to their task or took into account any irrelevant matter. They had before them the report of the Director and applications of educationalists for transfer. It is not competent for this Court to review the manner of the exercise of their discretion within the limits of their jurisdiction outlined above. It was a matter of evaluation by the respondents of educational needs, how to fill the vacancy at the B' Technical School at Nicosia and whom to transfer thereto.

The legal framework within which they operate with regard to transfers, is separate and distinct from that applicable to appointments and promotions. In that area, the knowledge and expertise of a departmental head are factors that merit distinct consideration; any departure therefrom must be specifically reasoned and weighty reasons must be advanced, outweighing in importance the value attaching to recommendations of a departmental head. No comparable obligation is cast upon the Educational Service Committee with regard to transfers. They are the arbiters in law of who should be transferred. So long as they take into account all relevant considerations, as they have done in this case, the Court cannot review the exercise of their discretion for the reasons already given. They were under no obligation to give reasons for transferring the interested party instead of the applicant. In any event, the competing claims of the applicant and interested party to transfer, were so finely balanced that a wide margin of discretion would normally vest in the Commission to do as they thought best in the circumstances.

The recourse fails.

Parenthetically, I may note that the wish of the applicant to be transferred to Nicosia is, in the light of her family circum-

stances, reasonable; one may expect that respondents will seize upon an early opportunity to satisfy it.

In the result, the recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed. No order 5
as to costs.*