1984 October 5

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIA SKOURIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS AND/OR
THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(*Case No.* 331/83).

Administrative Law—Administrative acts or decisions—Executory act—Decision rejecting applicant's claim for emplacement on salary scale A8–A10–A11—Substantive evaluation of her claim and definition of her rights under the Law made by such decision—Which was productive of legal consequences, was of an executory character and as such reviewable under Article 146 *of the Constitution.*

Educational Officers—Salary scales—Emplacement on—Holder of post at old scale B6—Respondents rightly concluded that emplacement on new scale A8–A10–A11 presupposed possession of the qualifications necessary under the old scheme for promotion to scale B10—Section 4(b) of the Public Educational Service (Increase of Salaries, Restructuring and Placement of Certain Posts on United Salary Scales) Law, 1981 (*Law No.* 12/81)—*Such Qualifications including one year's post-graduate education at a school specially approved by the Ministry of Education—Applicant's qualifications not obtained at such specially approved school—Decision of respondents rejecting applicant's claim for emplacement on above new scale reasonably open to them in view of the lack of the necessary qualifications by her.*

Constitutional Law—Equal treatment—Right to—Is restricted to rights known to the law and arising thereunder—Deviation from the provisions of the law on one occasion does not create a right on another to claim a similar treatment and does not impose

a duty on the administration to repeat transgression or divergence from the law.

Applicant, a Secondary School Teacher of English, contested the validity of the decision of the respondent Commission, taken on 30.5.1983, whereby her claim to be positioned on scale A8–A10–A11 was refused. At the material time applicant was positioned at the top scale of Scale B6 and would be entitled to be positioned on scale A8–A10–A11, ("the new grade") provided she held the essential qualifications for promotion from the old salary scale B6 to B10. One of the conditions set down by the scheme of service, defining the prerequisites for promotion to old Scale B10 from Scale B6 was one year's post-graduate education at a school specially approved by the Ministry of Education. Though applicant possessed a diploma in the teaching of English as a foreign language, acquired after a year's studies at the University of London, there was nothing before the Court to suggest that this qualification was ever approved by the Ministry of Education as the special qualification envisaged by the scheme of service for posts on Scale B10.

Counsel for the applicant mainly contended that the sub judice decision was contrary to section 4(b) of Law 12/81 and that it, also, infringed the principle of equality before the law and the administration, safeguarded by Article 28 of the Constitution, because two fellow teachers similarly positioned as the applicant were, following the enactment of Law 12/81, emplaced on Scale A8–A10–A11.

Counsel for the respondent opposed the recourse on substantive grounds and, also, raised a preliminary objection that the recourse was not justiciable because it lacked the necessary executory character to make it reviewable under Article 146 of the Constitution.

Held, (1) *on the preliminary objection:*

That examination of the decision of the respondents, embodied in the letter addressed to the applicant on 30.5.1983, clearly suggests that respondents made a substantive evaluation of her claim and purported, by their decision, to define her rights under the law; that it was certainly productive of legal

consequences, in that it defined by necessary administrative action her status in the educational hierarchy under the law; and that, therefore, it was of an executory character and as such reviewable under Article 146 of the Constitution.

Held, (II) *on the merits of the recourse:*

(1) That as a matter of interpretation of the law, the respondents rightly concluded that emplacement on the new grade presupposed, in the case of the applicant, the qualifications necessary under the old scheme for promotion to Scale B10; and that, therefore, they correctly perceived the effect of s.4(b) of Law 12/81.

(2) That there is nothing whatever establishing that the education of the applicant was obtained at a special foreign school specifically approved, for the purpose, by the Ministry of Education; that, therefore, it was at least reasonably open to the respondents to construe the scheme of service in the manner they did, if not unavoidable, having regard to the wording of the scheme of service; that given the construction placed upon the scheme of service, the decision to reject the claim of the applicant was inescapable having regard to the lack of the necessary qualification by the applicant.

(3) That the right to equal treatment in the recognition of legal rights in restricted to rights known to the law and arising thereunder; that it is more than settled that deviation from the provisions of the law on one occasion, neither confers a right on another to claim a similar treatment, nor does it impose a duty on the Administration to repeat transgression or divergence from the law; and that, therefore, if the respondents, on any prior occasion, acted in breach of the provisions of the scheme of service, their action was illegal and, as such, established no precedent to go by; accordingly the recourse must be dismissed.

Application dismissed.

Cases referred to:

Paphitis and Others v. *Republic* (1983) 3 C.L.R. 285;

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

Vakis v. *Republic* (1984) 3 C.L.R. 952;

Ioannides v. *Republic* (1973) 3 C.L.R. 118;

Karayiannis and Others v. *Educational Service Commission* (1979) 3 C.L.R. 371;

Georghiou v. *Republic* (1981) 3 C.L.R. 591.

Recourse.

Recourse against the refusal of the respondents to emplace applicant on Salary Scales A.8–A.10–A.11.

A.S. Angelides, for the applicant.

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

Cur. adv. vult.

PIKIS J. read the following judgment. Applicant, a secondary school teacher of English, contests by this recourse the validity of a decision of the Educational Service Commission, taken on 30.5.1983, whereby her claim to be positioned on Scale A8–A10–A11 was refused. It is her case that the decision is contrary to law, namely s.4(b) of Law 12/81, and ought to be set aside. The rescision of the decision is also sought for infringement of the principle of equality before the law and the Administration, safeguarded by Article 28 of the Constitution. In her contention, two fellow teachers, similarly positioned as herself, were, following the enactment of Law 12/81, emplaced on the aforementioned scale to which applicant claims she had a right to climb to.

The recourse is opposed on formal and substantive grounds. The Court was moved to examine, preliminary to the merits of the case, the justiciability of the recourse, on the contention that the act lacks the necessary executory character to make it reviewable under Article 146. In the submission of the respondents, they did no more than inform her of the position in law, relevant to her case, as they comprehended it. As to the merits, the decision is supported as valid in law, while allegations of unequal treatment are refuted as unfounded.

The Nature of the Act:

Examination of the decision of the respondents, embodied in a letter addressed to the applicant on 30.5.1983, clearly suggests that respondents made a substantive evaluation of her claim and purported, by their decision, to define her rights under the law. It was certainly productive of legal consequences, in that it defined by necessary administrative action her status in

the educational hierarchy under the law. If the respondents misconceived either the law or the facts relevant to the claims of applicant, the only means of redress was by recourse under Article 146.1. The aim of the present proceedings is, in my judgment, to scrutinize the legality and validity of the action taken. It affected the interests of the applicant in a direct manner, making it legitimate for her to have recourse to the Court for review of the action. Hence the preliminary objection is dismissed.

Merits of the Application:

In 1970 the applicant was appointed teacher of English at the secondary education, at Scale B3. Up to that date, she was a teacher of elementary education. She was offered appointment on the strength of her qualifications, consisting of—

(a) Diploma from the Cyprus Paedagogical Academy, and

(b) diploma in the teaching of English as a foreign language, acquired after a year's studies at the University of London.

Without the latter qualification, she would be ineligible for appointment to the position to which she was appointed. The scheme of service for the post, covered by Scale B3, made that abundantly clear. Certainly, she could not be appointed on the basis of her diploma from the Paedagogical Academy.

Law 12/81 introduced structural changes to the hierarchy of secondary education. New grades were created, covered by salary scales that bore no immediate comparison to those abolished or replaced. Section 4(b) made provision for the repositioning of holders of positions on the combined establishment of Scales B3–B6. Applicant was positioned at the top scale of Scale B6 and would be entitled to be positioned on Scale A8–A10–A11, hereafter referred to as the new grade, provided she held the essential qualifications for promotion from the old salary scale B6 to B10. One of the conditions set down by the scheme of service, defining the prerequisites for promotion to old Scale B10 from Scale B6, was one year's postgraduate education at a school specially approved by the Ministry of Education. Counsel for the applicant suggested applicant satisfied this qualification by possessing the afore-

mentioned diploma of the London University for the teaching of English as a foreign language, obtained after one year's studies at a foreign institution. There is nothing before the Court to suggest this qualification was ever approved by the Ministry of Education as the special qualification envisaged by the scheme of service for posts on Scale B10. For the respondents it was submitted, the decision of the Educational Service Commission was inevitable in view of the absence of the qualifications necessary for promotion under the old schemes, to a post on Scale B10—a prerequisite for repositioning at an appropriate scale of the new grade.

Two points arise here, firstly, whether the respondents correctly appreciated the effect of s.4(b) and, secondly, whether the interpretation accorded to the old scheme of service for the post of educationalists at B10 scale, was reasonably open to them. A question ancillary to the second, is whether they correctly applied the scheme to the facts surrounding the qualifications of the applicant. As a matter of interpretation of the law, the respondents rightly concluded that emplacement on the new grade presupposed, in the case of the applicant, the qualifications necessary under the old scheme for promotion to Scale B10*. Therefore, I am of opinion that they correctly perceived the effect of s.4(b)—Law 12/81.

The provisions of the relevant scheme of service for promotion from Scale B6 to B10, of the establishment in force prior to 1981, are very specific. Para. (c) lays down categorically that one year's postgraduate education is essential but not at any school or institution. Only postgraduate education at a school specially approved by a decision of the Ministry of Education would be of a kind qualifying the candidate for promotion to B10. Acquisition of such a qualification would have to be certified by an appropriate certificate of studies. Even if we were to assume that the diploma of the applicant from the University of London could, under any circumstances, qualify as a postgraduate course for the purposes of para. (c) above—a very doubtful proposition—certainly it was not of the kind provided in para. (c). There is nothing whatever establishing that the above education was obtained at a special foreign school

* See, the case of *Paphitis And Others* v. *The Republic* (1983) 3 C.L.R. 285.

specifically approved, for the purpose, by the Ministry of Education. In my judgment, it was at least reasonably open to the respondents to construe the scheme of service in the manner they did, if not unavoidable, having regard to the wording of the scheme of service. Given the construction placed upon the scheme of service, the decision to reject the claim of the applicant was inescapable having regard to the lack of the necessary qualification by the applicant.

The case would have normally ended here but for the complaints of applicant of unequal treatment. Two of her colleagues, namely, Takis Papadopoulos and Andreas Papavassilis, though similarly circumstanced in her contention, they were regarded as possessing the additional qualifications envisaged by the scheme of service for Scale B10 and were treated accordingly.

Schemes of service are legislative instruments that bind the Administration, as well as everyone else, to give effect to them according to the letter and spirit of the law*. Equality before the law, under Article 28, binds the Administration to administer the law uniformly and treat claims for the recognition of legal rights under the law, in a fair and equitable manner. The right to equal treatment in the recognition of legal rights is restricted to rights known to the law and arising thereunder. It is more than settled that deviation from the provisions of the law on one occasion, neither confers a right on another to claim a similar treatment, nor does it impose a duty on the Administration to repeat transgression or divergence from the law**. Consequently, if it was not possible for the Educational Service Commission, by any reasonable interpretation, to accept the qualifications of the applicant as capable of satisfying the requirement of the law, the scheme of service, for Scale B10 that is, arbitrary recognition of similar qualifications on a previous occasion, created no precedent to be followed.

In the two examples cited in support of the claim for equal treatment, it appears that, in the one case—that of Takis Papadopoulos—it was reasonably open to the Educational Service

* See, inter alia, *Pankyprios Syntechnia Dimoslon Ypallilon* v. *Republic* (1978) 3 C.L.R. 27; *Vakis* v. *Republic* (1984) 3 C.L.R. 952.

** See, inter alia, *Ioannides* v. *Republic* (1973) 3 C.L.R. 118; *Karayiannis And Others* v. *Educational Service Commission* (1979) 3 C.L.R. 371; *Georghiou* v. *Republic* (1981) 3 C.L.R. 591.

Commission to treat his qualifications as satisfying the requirements of Scale B10 and rendering him eligible for promotion under Clause B.2 of the pertinent scheme of service. The position is more complicated in the case of Andreas Papavassilis. It appears that since 1977, after becoming the holder of a University degree obtained by correspondence, he became eligible for promotion to Scale B10 under Clause B.2 of the scheme of service. However, he was promoted before that date, as from 1970, at a time when he held similar qualifications to the applicant. Examination of his file reveals two contradictory decisions of the Educational Service Commission. The first was taken on 5.3.1970, to the effect that a diploma from the University of London in the teaching of English as a foreign language did not satisfy the requirements of the special qualification envisaged by Clause B(c) of Scale B10. Shortly afterwards, on 18.4.1970, a decision to the contrary effect was taken and the diploma of Mr. Papavassilis was recognised as satisfying the relevant provision of the scheme of service, notwithstanding the absence of any decision of the Ministry of Education that the school attended was a special school certified as such by the Ministry. I am of opinion, the second decision of the Educational Service Commission in the case of Mr. Papavassilis, was arbitrary unless there existed other facts not disclosed to the Court, of which I am unaware. I must make clear that Mr. Papavassilis had never an opportunity to be heard in the matter, he is not a party to the proceedings and whatever is said here must not be construed as adverse to his position or his career. Reference to his case was solely made for the purposes of examination of allegations of applicant for unequal treatment.

In my judgment, it was not reasonably open under any circumstances to the respondents to treat the qualifications of the applicant as satisfying the requirements of Clause B(c) of the scheme of service for the old Scale B10 and, consequently, she cannot ground a case for equal treatment. If the respondents, on any prior occasion, acted in breach of the provisions of the scheme of service, their action was illegal and, as such, established no precedent to go by.

The recourse is dismissed. Let there be no order as to costs.

Recourse dismissed. No order as to costs.