

1984 April 27

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS KARATSI,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION AND/OR
THE DIRECTOR-GENERAL,

2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 370/83).

Administrative Law—Administrative decision—Within competence of Ministerial Committee—Taken by a Minister in consultation with the other members thereof—Is the collective decision of the Committee and is not a decision taken by an organ having no competence in the matter.

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Public Educational Service Law, 1969 (Law 10/1969)—Appropriate Authority thereunder—May act through the Director-General of the Ministry of Education—Specifying length of stay of an educational officer with an educational mission abroad a routine matter which could be dealt by the Director-General.

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Administrative Law—Administrative acts or decisions—Presumption of regularity.

Natural justice—Right to be heard—No comparable duty cast in administrative bodies with regard to purely administrative matters—Public officers—Have a right to be heard in case of transfers if they are effected on disciplinary grounds—Fact that applicant was not heard does not vitiate the transfer for lack of due inquiry.

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Educational officers—Elementary school teacher—Seconded for special duties at the Ministry of Education—And thereafter serving in an Educational mission abroad—Service abroad terminated and

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transferred for duty at an elementary School by the Educational Service Committee—Decision of Committee not contrary to section 38 of the Public Educational Service Law, 1969 (Law 10/69).

5 On the 10th January, 1980, the applicant, an elementary school teacher was, by decision of respondents 2, seconded for special duties at the Ministry of Education. On the 4th August, 1980 by decision* of the Minister of Education, acting as the appropriate Authority, and on the submission of the Head of
10 Elementary Education he was chosen for participation in the Educational mission in England. This arrangement was valid until the 31st August, 1982, but by letter dated the 23rd February, 1983 he was informed that it was extended for one year up to the 31st August, 1983. By a decision taken on the 2nd August,
15 1983 the Council of Ministers appointed a Ministerial Committee in order to submit a report to the Council regarding the Educational mission in England. As there was no time for a meeting of the Ministerial Committee the Minister of Education who was one of the members of such Committee, after consultation with
20 the other members decided** to terminate the participation of the applicant in the above Educational mission who was thereafter by decision of respondent 2 posted at Ipsonas Elementary School. Hence this recourse.

Counsel for the applicant mainly contended:

- 25 (a) That the decision of the respondent Minister to recall him from England has been taken by an organ having no competence in the matter inasmuch as the authority to post educational officers with the mission in England was delegated by the Council of Ministers under its
30 decision of the 2nd August 1983, to a Ministerial Committee.
- (b) That the duration of the stay in England was never specified by a decision of the appropriate organ i.e. of the Minister but only by the Director-General.
- 35 (c) That the applicant was not heard and therefore no due inquiry was carried out before the sub judice decision.

* The decision is quoted at p. 492 post.

** The decision is quoted at p. 493 post.

- (d) That before his transfer to Ipsonas village there should have been a decision of the respondent Commission that his secondment to the Ministry for special duties was brought to an end and that the appropriate Authority should request the Commission to transfer or post him at a school. 5

Held, (1) that the decision to recall the applicant was not that of the Minister of Education alone but of the Committee of Ministers, the respondent Minister having consulted his colleagues before the recalling of the applicant as there was no time to examine the matter at a meeting which was convened but could not take place; that such decision, taken in consultation with the other members of the Ministerial Committee is their collective decision; and that therefore, the decision cannot be claimed to have been taken by an organ having no competence in the matter and if such a decision was at all necessary to be taken by all three of them, it was so taken. 10 15

(2) That the appropriate Authority may under the Public Educational Service Law, 1969, (Law No. 10 of 1969), act through the Director-General, and indeed specifying the length of the stay of an educational officer with the Mission was only a routine matter which could be dealt with by the Director-General; and that, in any event, the applicant accepted that decision and assumed his duties without any reservation. 20

(3) That the personal file of the applicant and his personal circumstances were before the appropriate Authority and on the presumption of regularity it should be so deemed, there being nothing to indicate to the contrary and all relevant facts must have been within the knowledge of the Minister; and that, therefore, his recalling was arrived at after a due inquiry; that, further, and with regard to the right to be heard no comparable duty is cast upon administrative bodies with regard to purely administrative matters; and that the fact that the applicant was not heard on the matter does not in the circumstances vitiate the decision for lack of due inquiry; and that the case Law has recognized to a public officer the right to be heard in cases of transfer if they are effected on disciplinary grounds (*Pillatsis v. Republic* (1968) 3 C.L.R. 707), which is not claimed to be the case here. 25 30 35

(4) That the transfer by the respondent Commission to Ipsona was included in the transfer of educational officers for educational reasons "on account of being supernumerary and or for the balanced distribution of personnel, or on the basis of regulations 16(2)(b) and 16(3)(ii) of the Education Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters), Regulations, 1972; that there was nothing illegal in the act, of recalling of the applicant and consequently his transfer to Ipsona could not be found as being contrary to Law as claimed by him, and there was nothing offending section 38 of the Public Educational Service Law, 1969 (Law No. 10 of 1969) as amended by section 7 of Law 53 of 1979; and that the secondment of the applicant came to an end on account of the subsequent acts that superseded same, some taken at his own request and some accepted by him.

Application dismissed.

Cases referred to:

Five Bus Tour Limited v. Republic (1983) 3 C.L.R. 793;

Kontemniotis v. C.B.C. (1982) 3 C.L.R. 1027;

Pilatsis v. Republic (1968) 3 C.L.R. 707.

Recourse.

Recourse against the decision of the respondents whereby applicants participation in the Educational Mission in England was terminated.

A. S. Angelides, for the applicant.

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

Cur. adv. vult

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks:

- 30 "1. A declaration of the Court that the decision of respondent 1 which is contained in his letter dated 11.8.83 and with which (a) he terminated the participation of the applicant in the Educational Mission in England, (b) ordered the applicant to return and/or be transferred to Cyprus, is 35 null, illegal and without legal effect whatsoever.
2. Declaration of the Court that the transfer and/or posting of the applicant at Ipsona as from 6.9.83 which was de-

cided by respondents 2, after the aforesaid act of respondent 1, is null, illegal and without legal effect”.

The applicant graduated from the Paedagogic Academy in 1973. In September 1975 he was appointed on contract as a teacher until the 1st December, 1976, when he was appointed on probation and he became permanent on the 11th December, 1978. On the 10th January, 1980, by decision of respondents 2, he was seconded for special duties at the Ministry of Education. On the 9th July, 1980, he applied to the Head of Elementary Education expressing his willingness to serve with the Educational Mission in England. On the 4th August, 1980, by decision Appendix ‘C’) of the Minister of Education, acting as the appropriate Authority, and on the submission of the Head of Elementary Education, the applicant was chosen for participation in the Educational Mission in England. This decision together with the terms of his service there was communicated to him by letter dated 7.8.80, (Appendix ‘D’), which reads as follows:-

“I wish to inform you that you have been chosen to participate in the Educational Mission in England. This arrangement will be valid until the 31st August, 1982, and so long as it lasts you will be paid all the emoluments of your post in Cyprus and in addition the allowances which have been approved for the members of the Mission (the cost of travelling from England to Cyprus will be paid by the Government of the Republic of Cyprus). Details for your duties and relevant instructions will be given through the Educational Officer in-charge of the Mission”.

This letter, among others, was copied to the Accountant-General.

By letter dated the 23rd February, 1983, (Appendix ‘E’), the Ministry of Education informed the applicant that it had been decided that the arrangement for his participation in the Educational Mission in England be extended for one year up to the 31st August, 1983, under the same terms.

It is apparent that this letter was written to regularize his stay, including the payment to him of overseas allowances, until the 31st August, 1983, once the original decision for his participation in the Mission had expired on the 31st August, 1982.

By Decesion No. 75 (Blue 144, exhibit 2) dated the 2nd August, 1983, the Council of Ministers and after having been informed by the Minister of Education regarding the problems for educational facilities to the Cypriots in England, as per
5 Submission No. 833/83, (Blues 143-141, exhibit 2), "appointed a Committee consisting of the Ministers of Education, Presidency and Foreign Affairs, in order to study the said suggestions and submit a report to the Council". Arrangements were made on the 8th August, 1983, for a meeting of the Ministerial Com-
10 mittee in order to submit its report to the Council for the taking of a final decision. (Appendix 'F'). On the 11th August, 1983, the following minute of the Minister of Education appears in Appendix 'F':

15 "As there is no time for a meeting of the Ministerial Committee, after consultations with the members it consists of, we may proceed with the recall of five members as we have come to the conclusion, having taken into consideration their years of service with the Educational Mission. England, the difficulties they face for their return to Cyprus.
20 and sufficiency (in one instance). The five to be recalled are: Spyros Christofides, Miltiades Erotocritou, Martha Erotocritou, Savvas Karatsis and Michael Nicolaides.

(Sgd) Stelios Katsellis.
Minister".

25 The contents of this minute were communicated to the applicant as well as to the Accountant-General, the Auditor-General, etc., by letter dated the 11th August, 1983 (Appendix ('G')). The applicant objected to his recall by his letter dated the 29th August, 1983, (Appendix 'H'). to which the Director
30 of Elementary Education replied by his letter dated 30th September, 1983 (Appendix 'I'), by which the applicant is informed that:

35 "(a) The arrangement was subject to review from year to year and is within the exclusive competence of the Ministry of Education to prolong it or to interrupt it.

(b) It has been made clear to you in our letter No. P. 4695 dated 7.8.1980, as well as with our letter under the same number and dated 23.2.1983, that the arrangement was of a duration of one year. In your case the

arrangement started on 1.9.1981 and came to an end on the 31st August, 1982, and was renewed for the period 1.9.1982 to 31.8.1983. Both on the first as well as on the second occasion you have accepted without a reservation. We regret but the reservations you now put forward are out of place and out of time and cannot be examined".

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The applicant complains that the decision of the respondent Minister to recall him from England has been taken by an organ having no competence in the matter inasmuch as the authority to post educational officers with the Mission in England was delegated by the Council of Ministers under its Decision No. 75 of the 2nd August 1983, to a Ministerial Committee.

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It should be pointed out, that the said decision of the Council of Ministers refers to the submission made by the Minister of Education regarding the purpose and the work of the Educational Mission in the United Kingdom and how the overall problem of the education of Cypriots there should be faced and not with the posting or recalling of officers, which was being done by the Minister of Education himself in his capacity as the appropriate Authority acting through the Director-General of his Ministry. However, the decision to recall the applicant was not that of the Minister of Education alone but of the Committee of Ministers, the respondent Minister having consulted his colleagues before the recalling of the applicant as there was no time to examine the matter at a meeting which was convened but could not take place. To my mind such decision, taken in consultation with the other members of the Ministerial Committee is their collective decision. Therefore the decision in question cannot be claimed to have been taken by an organ having no competence in the matter. If such a decision was at all necessary to be taken by all three of them, it was so taken.

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The argument that the duration of the stay in England was never specified by a decision of the appropriate organ, i.e. of the Minister but only by the Director-General, is not correct. The appropriate Authority may, under the Public Education Service Law, 1969, (Law No. 10 of 1969), act through the Director-General, and indeed specifying the length of the stay of an educational officer with the Mission was only a routine

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matter which could be dealt with by the Director-General. In any event, the applicant accepted that decision and assumed his duties without any reservation. That he did so, is apparent from a letter he addressed to the Accounts department of the Ministry of Education, dated the 8th August, 1980, (exhibit 1 —blue 119) where he says:

“I have been selected for participation in the Educational Mission in England from 1st September, 1980, up to 31st August 1982.....”

10 And he asks thereby for certain arrangements to be made regarding his salary. He further made no reservation to the extension of his stay in England until the 31st August 1983, as per the letter of the Director of Elementary Education of the 23rd February 1983, (Appendix “E”), to which he made no
15 protest and in respect of which the time for any recourse under Article 146 of the Constitution has expired.

The applicant further complains that he was not heard and therefore no due inquiry was carried out before the subject decision. No doubt the personal file of the applicant and his
20 personal circumstances were before the appropriate Authority and on the presumption of regularity it should be so deemed. there being nothing to indicate to the contrary and all relevant facts must have been within the knowledge of the Minister. Therefore his recalling was arrived at after a due inquiry.

25 As regards the right of one to be heard, I need only refer to the *Five Bus Tour Limited v. Republic* (1983) 3 C.L.R. 793 where I adopted what Pikis J., said in *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027 to the effect that no comparable duty is cast upon administrative bodies with regard to purely administrative matters. The fact that the applicant was not heard
30 on the matter does not in the circumstances vitiate the decision for lack of due inquiry.

Our Case Law has recognized to a public officer the right to be heard in cases of transfer if they are effected on disciplinary grounds (*Pilatsis v. Republic* (1968) 3 C.L.R. 707), which is not
35 claimed to be the case here.

Moreover one should not lose sight of the fact that the dura-

tion of his stay there was limited until the 31st August 1983, as already seen.

Needless to say that in the circumstances the sub judice decision is also duly reasoned. The applicant further complained that before he was transferred to Ipsonas—a village which is almost a suburb of Limassol town—there should be a decision of the respondent Commission that his secondment to the Ministry for special duties was brought to an end and that the appropriate Authority should request the Commission to transfer or post him at a school.

As already seen the applicant was on the suggestion of the Appropriate Authority seconded for special duties, by decision of the respondent Commission as from the 10th January, 1980, (see exhibit 1, blue 108). It must be, however, taken that his posting with the Educational Mission in England brought an end to his secondment with the Ministry for special duties, who during that time on account obviously of his legal qualifications, was appearing as a representative of the Appropriate Authority at the trial of disciplinary cases by the respondent Commission as from the 10th January 1980 until the 3rd July 1980. (See exhibit 1, blue 117). His transfer by the respondent Commission to Ipsonas as appearing in the relevant minutes (Appendix “J”), was included in the transfer of educational officers for educational reasons “on account of being supernumerary and or for the balanced distribution of personnel, or on the basis of regulations 16(2)(b) and 16(3)(ii)”. Obviously these Regulations referred to are the Education Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters), Regulations, 1972.

To my mind there was nothing illegal in the act, of recalling of the applicant and consequently his transfer to Ipsonas could not be found as being contrary to Law as claimed by him, and there is nothing offending section 38 of the Public Education Service Law, 1969 (Law No. 10 of 1969) as amended by section 7 of Law 53 of 1979. The secondment of the applicant came to an end on account of the subsequent acts that superseded same, some taken at his own request and some accepted by him as already set out in this judgment and in any event impliedly

brought to an end by the respondent Commission taking the subject decision.

For all the above reasons this recourse is dismissed but in the circumstances there will be no order as to costs.

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*Recourse dismissed with no order
as to costs.*