

1986 December 1

[A. LOIZOU, DEMETRIADES, LORIS, STYLIANIDES, KOURRIS, JJ.]

GEORGHIOS ALEXANDROU AND OTHERS,

*Appellants-Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

- 1. THE EDUCATIONAL SERVICE COMMISSION,
- 2. THE MINISTER OF FINANCE,
- 3. THE MINISTER OF EDUCATION,
- 4. THE COUNCIL OF MINISTERS,

*Respondents.*

*(Revisional Jurisdiction Appeal No. 383).*

*Legitimate interest—Acceptance of an act or decision—Free and voluntary—Deprives acceptor of legitimate interest to challenge by a recourse such act or decision.*

*Legitimate interest—Act or decision issued in accordance with applicant's application or brought about or caused by him —Applicant lacks legitimate interest to challenge such act or decision.* 5

At a meeting held at the Ministry of Finance on 23.4.1981 an agreement was reached for the retrospective appointment of 53 teachers, who had been serving on secondment since 1979 to various schools of secondary education, to the post of schoolmaster on the combined scale A5-A7. 10

As a result the 53 teachers were offered by the Educational Service Commission a retrospective appointment as from 1.1.79. All the said teachers accepted the appointment without reservation. 15

In January, 1983 the applicants, who were among the said 53 teachers, submitted an application for their em- placement on scale A11. The application was turned down and, as a result, the applicant filed a recourse to this 20

Court. The trial Judge dismissed the recourse. Hence the present appeal.

5                      *Held, dismissing the appeal:* (1) Free and unreserved acceptance of an administrative act or decision deprives the acceptor of a legitimate interest entitling him to make a recourse against such act or decision. Moreover, there does not exist a legitimate interest to challenge an act or decision, which was issued on the application of the applicant or which was brought about or caused by him.

10                      (2) In this case the appellants accepted their appointment on the combined scales A5 - A7 without any reservation. It follows that they were deprived of legitimate interest to challenge the sub judge decision.

15    *Appeal dismissed.*  
    *No order as to costs.*

Cases referred to:

- Tomboli v. CY.T.A.* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;
- Piperis v. The Republic* (1967) 3 C.L.R. 295;
- 20                      *Ioannou and Others v. The Republic* (1968) 3 C.L.R. 146;
- Ioannou v. Grain Commission* (1968) 3 C.L.R. 612;
- Markou v. The Republic* (1968) 3 C.L.R. 267;
- Ioannides v. The Republic* (1979) 3 C.L.R. 679;
- 25                      *Sarkis v. The Improvement Board of Paralimni* (1986) 3 C.L.R. 2457.

**Appeal.**

30                      Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 20th February, 1984 (Revisional Jurisdiction Case No. 126/83)\* whereby appellants' recourse against the refusal of the respondents

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\* Reported in (1984) 3 C.L.R. 15.

to acknowledge appellants' eligibility to ascend to scale A11 was dismissed.

*A. S. Angelides*, for the appellants.

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

*Cur. adv. vult.* 5

A. LOIZOU J. read the following judgment of the Court. For the purpose of facing the needs of the Secondary Education Schools in teaching staff for the teaching of the lesson of Practical Knowledge, the Ministry of Education proceeded in 1969 with the secondment of a number of experienced elementary school teachers to various schools of Secondary Education. The secondments were effected after a selection and the total number of those seconded was fifty-three. 10

At a meeting which was held at the Ministry of Finance on the 23rd April, 1981, an agreement was reached regulating the status and the salary structure of the said fifty-three elementary school teachers who since 1969 have been serving on such secondment. This agreement provided, inter alia, for the retrospective appointment with effect from 1st January 1979, of the said fifty-three elementary school teachers to the post of school master (καθηγητή) on the combined scales A5 and A7, which is combined with the post of school master scale A8. Those educational officers who were in the service on the 30th March, 1981, which is the date of publication of the Public Educational Service (Increase of Salaries Restructuring and Placement of Certain Posts in United Salary Scales) Law, 1981 (Law 12/81) and are promoted to the post of school master on scale A8 will be emplaced on a personal basis on scale A9. For the purpose of emplacement and re-adjustment of the salaries of the affected educational officers the provisions of Law 12/1981 will apply. The agreement further provided for the creation by stages of twenty-eight additional posts of school master on scale A10 for the purpose of promotion of the said fifty-three officers who will be appointed to the post of school master by virtue of this agreement. Provided that in case a number of the said teachers does not accept appointment to the post of school master, the number of 35

additional posts of school master on scale A10 will be reduced so that the same proportion that is 1:0.9 will be maintained.

5 The above agreement was approved by the Council of Ministers by its Decision No. 20.363 dated 14th May, 1981.

10 By a decision taken on 29th September 1981 the Educational Service Commission after taking into consideration a letter of the Ministry of Education for the filling of fifty-three posts of School Master Practical Knowledge and "having in mind the Decision of the Council of Ministers No. 20.363 and dated 14th May, 1981, decided to offer a permanent appointment to the post of School Master Practical Knowledge, retrospectively from 1st January 1979  
15 to the following elementary school teachers." And there follow the names of the aforesaid fifty-three elementary school teachers. All the said teachers accepted the appointment without any reservation whatsoever.

20 By letter dated 20th January, 1983, learned counsel for the appellants submitted a claim to the respondent Commission on behalf of a number of the above fifty-three officers for their emplacement on scale A 11. The respondent Commission rejected the claim and the appellants challenged such rejection by means of a recourse. The learned trial  
25 Judge dismissed the recourse on the ground that once applicants accepted the offer to join secondary education on scale A5 - A7, without qualification and without attaching any conditions to their acceptance or making any reservation of rights, they were precluded, because of their un-  
30 reserved acceptance, from questioning the said offer.

Though by the above conclusion of the learned trial Judge the recourse was disposed he nevertheless proceeded to deal with the merits of the recourse and to dismiss it on the merits as well. Hence this appeal.

35 Now there is no doubt that all appellants accepted without any reservation or qualification the appointment to the

post of school master on scales A5 - A7 and we will consider hereinafter the effect of such acceptance.

The legal position pertaining to such situation appears eloquently in a number of cases by this Court, inter alia, *Tomboli v. C.Y.T.A.* (1980) 3 C.L.R. 266 which was upheld on appeal by the Full Bench of this Court, its judgment reported under the same name in (1982) 3 C.L.R. 149, in which reference is also made to *Piperis v. The Republic* (1967) 3 C.L.R. p. 295 at p. 298; *Ioannou and Others v. The Republic* (1968) 3 C.L.R. 146 at p. 153; *Costas Ioannou v. The Grain Commission* (1968) 3 C.L.R. 612 at p. 617; *Markou v. The Republic* (1968) 3 C.L.R. 267 at p. 276 and the judgment of the Full Bench in *Ioannides v. The Republic* (1979) 3 C.L.R. 679 regarding the express reservation of rights.

These cases along with other are authorities for the proposition that free and unreserved acceptance of an administrative act or decision deprives the acceptor of a legitimate interest entitling him to make an administrative recourse against such act or decision.

Whilst on this point we may also refer to the related one that there does not exist also a legitimate interest to challenge an administrative act or decision which issued on the application of the applicant or which was brought about or caused by him (see *Katheleen Mary Sarkis v. The Improvement Board of Paralimni* Recourse No. 428/84 judgment delivered on the 11th November, 1986, not yet reported)\*.

In this case, since the appellants accepted the appointment in question without any reservation, they have been deprived, because of such acceptance of a legitimate interest entitling them to make an administrative recourse under Article 146 of the Constitution for the annulment of such act or decision and the judgment of the learned trial Judge who dismissed the recourse on this ground, cannot be faulted.

\* Reported in (1986) 3 C.L.R. 2457.

The appeal therefore, fails and in view of this conclusion we need not deal with the remaining grounds of appeal.

5 In the result the appeal is dismissed, with no order as to costs.

*Appeal dismissed with no order as to costs.*