

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL

AND

IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports

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[DEMETRIADES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS HJIANDEOU,

Applicant

v

THE EDUCATIONAL SERVICE COMMITTEE,

Respondents

(Case No 7/80)

Reasoning of an administrative act—It may be extracted from or supplemented by the material in the relevant administrative record

Constitutional Law—Equality—Constitution, Art 28—There is no equality in illegality

- 5 On the 29 11 79 the respondents considered the application of the applicant for his emplacement to the post of Technical Assistant on salary scale B 12, based on the assertion that his qualification namely a Higher National Diploma in Mechanical Engineering of the Polytechnic of Central London was equivalent to a B Sc degree in Engineering and decided that such quali

fication was so equivalent On the 22 12 79 the respondents informed the applicant that after re-examining their said decision, they had reached the conclusion that the said qualification was not equivalent to a B Sc degree and, therefore, applicant's claim for emplacement as aforesaid had to be rejected

As a result the applicant filed the present recourse based on the following grounds, namely lack of due reasoning, discrimination and excess of power in that the power to create new posts and to make or amend schemes of service belong to the Council of Ministers

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Held, dismissing the recourse (1) The decisions of the administration must be duly reasoned, but the reasoning may be - as it is in the present case - extracted from or supplemented by the material in the relevant administrative record

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(2) The applicant did not put forward any instances substantiating his complaint for discrimination, but even if there were instances, where the same as the applicant's qualification was treated as satisfying the requirement of the scheme of service, the applicant would not have succeeded on this ground as there is no equality in illegality

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(3) The respondents had neither created any post nor did they amend or make any scheme of service and, therefore, the third complaint of the applicant is unfounded

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Recourse dismissed with costs

Cases referred to

Choraitis v The Republic (1984) 3 C L R 1067,

Savva v The Council of Ministers, (1984) 3 C L R 285,

Theodondou v The Republic (1984) 3 C L R 146,

Voyiazianos v The Republic (1967) 3 C L R 239,

Ioannides v The Republic (1973) 3 C L R 117,

Shamassian v The Republic (1973) 3 C L R 341

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Recourse.

Recourse against the decision of the respondents whereby they revoked their previous decision to treat applicant's qualifications as equivalent to B.Sc in Engineering.

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N Clendes, for the applicant

N Charalambous, Senior Counsel of the Republic, for the respondent

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Cur. adv. vult.

DEMETRIADES J. read the following judgment. In the present case the applicant challenges the decision of the respondent Edu-

ational Service Committee, which was communicated to him on the 22nd December, 1979, and by means of which the respondents revoked their previous decision to treat the applicant's qualifications as equivalent to B.Sc. in Engineering.

5 As a result of their said decision the respondents rejected the applicant's application to be emplaced in the post of Technical Assistant.

The facts of the case are, briefly, the following:

10 The applicant is a Trainer in Engineering at the Nicosia Technical School and he is the holder of a Higher National Diploma in Mechanical Engineering of the Polytechnic of Central London. Soon after he obtained his aforesaid qualification, the applicant applied for his emplacement to the post of Technical Assistant, on salary scale B12, instead of on salary scale B10, on which he was
15 emplaced when he was appointed in 1976. His request was based on the assertion that his qualification was equivalent to a B.Sc. degree in Engineering which, in accordance with the relevant scheme of service, was a qualification required for appointment to the post.

20 On the 27th November, 1979, the respondents considered the application of the applicant and after taking into account the material placed before them, as well as the views of the Evaluation Committee as they appear, inter alia, in Note 4 of his personal file (P.M.P.6288), reached the conclusion that the qualifications of the
25 applicant were equivalent to the B.Sc. degree.

However, as at the time there were no vacancies of Technical Assistants, the respondents decided to examine the case of the emplacement of the applicant to the said post whenever there would be a vacancy in such post.

30 The decision of the respondents was communicated to the applicant by their letter dated the 29th November, 1979, but on the 22nd December, 1979, the respondents, by another letter, informed the applicant that after re-examining their said decision in the light of material placed before them and the views of the Evaluation
35 Committee, they had reached the conclusion that his qualifications were not equivalent to a B.Sc. degree; that their decision of the 29th November, 1979, was revoked and that his claim for emplacement to the post of Technical Assistant was rejected.

Counsel for the applicant submitted that the sub judice decision is not duly reasoned and that absence of due reasoning is a ground by itself for invalidating an administrative decision.

It is a cardinal principle of administrative law that the decisions of the administration must be duly reasoned, but it has also been held judicially that the reasoning of an administrative decision may be extracted from or supplemented by the material contained in the relevant administrative records (see, inter alia, in this respect, *Choraitis v. The Republic*, (1984) 3 C.L.R. 1067, 1076, *Savva v. The Council of Ministers*, (1984) 3 C.L.R. 285, 297, and *Theodoridou v. The Republic*, (1984) 3 C.L.R. 146, 153).

Considering the material contained in the personal file of the applicant, which is Exhibit No.1 before me, and, in particular, the views expressed by the Evaluation Committee (which is Note No.4 in the said file), which are based on the letter of the Officer of the Higher and Further Education Branch 2 of the Department of Education and Science of U.K., to the effect that the qualifications of the applicant could not be considered as equivalent to a University degree - qualifications which were required for his emplacement on scale B12 - I find that the respondents, after they re-examined the case of the applicant, were right in deciding to revoke their previous decision and refuse his request for his emplacement on salary scale B12.

It has been further argued that the sub judice decision was taken contrary to Article 28 of the Constitution, as the respondent Committee, by deciding first that the qualification of the Higher National Diploma was equivalent to a B.Sc. degree in Engineering, had created a class of persons eligible for the post of Technical Assistant, whereas, by their subsequent revocation they had created a discrimination against the applicant.

Apart from the fact that no specific instances, for purposes of comparison, are referred to by counsel for the applicant, substantiating his allegation, even if it is accepted that there may be instances in which persons with the same qualifications of the applicant were wrongly treated as satisfying the requirements of the relevant scheme of service, the applicant could not have succeeded on this ground because, as it is well established, there could not be equality in illegality (see, in this respect, *Voytazianos v. The Republic*, (1967) 3 C.L.R. 239, 234, *Ioannides v. The Republic*, (1973) 3

C.L.R. 117, 122, and *Shamassian v. The Republic*, (1973) :
C.L.R. 341, 352).

The applicant further complained that the respondents acted in
excess or abuse of their powers as the power relating to the crea
5 tion of new posts and to the making and amending of schemes o
service concerning existing and new posts is vested in the Council
of Ministers.

I find this argument as wholly unfounded because by their sul
judice decision the respondents had neither created any post, no
10 did they amend or make any scheme of service. The respondent
were, in my view, perfectly entitled, after they had discovered that
due to a mistake, they had treated the applicant's qualifications as
equivalent to a B.Sc. degree, to revoke their unlawful decision
and, inevitably, thereafter, to reject the applicant's request for his
15 emplacement on salary scale B12, because he did not possess the
qualifications required under the relevant scheme of service for
the post.

In view of all the aforesaid, the present recourse of the applican
cannot succeed and it is dismissed with costs.

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*Recourse dismissed
with costs.*