

1987 September 4

[DEMETRIADES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS TSOUNTAS AND OTHERS,

Applicants.

v.

1. THE MINISTRY OF EDUCATION.
2. THE REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY-GENERAL.

Respondents.

(Case No. 122/83).

Constitutional Law — Omission to reply — Constitution, Art. 29 — Application submitted to an organ, not having competency in the matter — Such organ is not bound to take a decision.

5 *Legitimate interest — Omission to reply — Failure of applicants to satisfy Court that the prerequisites for a positive reply by the administration to their application were satisfied — Recourse dismissed.*

10 Notwithstanding repeal of Law 7/63, elementary school teachers, who had acquired post-graduate degrees in subjects related to education from a school approved by the Director of Education, continued to receive an annual bonus of C£96. - as a matter of practice

On 5.1 83 the applicants, who are elementary school teachers, possessing a University Diploma in Public Law and Political Sciences, applied to the first respondent for the grant to them of the aforesaid bonus.

15 By letter dated 29.1 83 the applicants were informed that the Council of Ministers decided to postpone the taking of a decision until they were given opportunity to examine the matter globally. In reply to a letter dated 7.2.83 written by applicants, the Director-General of the Ministry of Education informed the applicants by letter dated 17.2 83 that the Ministry intended to raise again the matter.

20 As a result the present recourse for a declaration that the refusal of the respondents to reply to applicants' claim either positively or negatively is null and void and of no effect whatsoever was filed.

Held *dismissing the recourse* (1) The first respondent was not bound to take a decision within 30 days as provided by Art 29 of the Constitution because after the repeal of Law 7/63 he did not possess competency to authorise the payments applied for

(2) The applicants do not possess a legitimate interest because they failed to satisfy the Court that their degree was obtained from an approved school or that it was related to Education 5

(3) The reply dated 17 2 83 was in the circumstances a sufficient response to applicants request dated 7 2 83

Recourse dismissed Costs against applicants 10

Recourse.

Recourse against the refusal of the respondents to reply to applicants claim for an annual bonus of £96 - as they possessed or acquired a post-graduate certificate 15

P Angelides, for the applicants

R Vrahimi - Petridou (Mrs), for the respondents

Cur adv vult

DEMETRIADES J read the following judgment The Elementary Communal School Teachers Law, 1963 (Law 7/63) of the Communal Chamber, section 14 of which provided that an elementary school teacher who possessed or acquired a post-graduate certificate from a school approved by the Director of the Education Office was entitled to an annual bonus of C£96 -, was repealed by the Public Educational Service Law, 1969 (Law 10/69) However, after the repeal of Law 7/63 and the establishment of the Ministry of Education, the teachers who had acquired post-graduate certificates in subjects related to education continued to receive this bonus as a matter of practice 20
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All applicants are elementary school teachers possessing a University Diploma in Public Law and Political Sciences and on the 5th January, 1983, through their advocate, applied to the first respondent for the grant to them of the said annual bonus. As the first respondent had no power to decide on the application of the applicants, it was decided that the matter be referred to the Council of Ministers which, when the matter came before it, decided to postpone taking a decision in order - as the contents of 30
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a letter dated the 29th January, 1983, sent to the applicants by the Director-General of the Ministry of Education stated - that the Council of Ministers were given the opportunity to examine the matter globally for all persons serving in the education service and the public service.

On the 17th February, 1983, the Director-General of the Ministry of Education, in reply to a letter addressed to him on the 7th February, 1983 (copy of which is not before me) informed counsel for the applicants that the Ministry of Education intended to raise again the matter and inform counsel of any development.

After receiving the first respondent's letter of the 17th February, 1983, the applicants filed the present recourse by which they complained that the refusal of the respondents to reply to their claim either positively or negatively is null and void and of no effect whatsoever.

The applicants base their recourse on the following legal grounds:

(a) That the refusal and/or failure of the respondents to reply either positively or negatively to their claim is unconstitutional and unlawful as it offends the provisions of Article 29 of the Constitution.

(b) The supposed reply of the respondents is -

- (i) unreasonable and
- (ii) not duly reasoned.

Having heard the arguments of counsel for the parties, I find that the issues that call for decision in the present case are the following:

(a) Whether the first respondent was bound to take a decision on the applicants' application within 30 days as provided by Article 29 of the Constitution, and

(b) whether, in the light of the facts of the case, the applicants have a legitimate interest in pursuing the present recourse.

The answer to both issues raised in these proceedings is in the negative in that-

(a) the Minister of Education, after the repeal of Law 7/63 by Law 10/69, did not possess the power to authorise payment of

bonuses to teachers possessing or acquiring post-graduate degrees from schools approved by him.

(b) Assuming that the practice followed by the Minister of Education to pay the bonus to teachers who were possessing and/or had acquired a post-graduate degree related to education ought to have been applied in the case of the applicants, they have failed (i) to satisfy me that their degree was obtained from an approved by the Minister School and (ii) that it was a degree related to education. In fact, I can see no relationship between a degree related to education - in this case of education that has to do with children of the age of 5 to 12 years old - with one in Public Law and Political Sciences.

In any event, considering all the facts of the case, I find that the reply of the respondents, dated the 17th February, 1983, was sufficient response to the request of the applicants made on the 7th February, 1983.

In the result, this recourse fails. Applicants to pay the costs.

*Recourse dismissed
with costs against applicants.*