

1987 March 10

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS STAVROU AND ANOTHER

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondents
(Case No 767/85)

Schemes of Service — Nature of — Publication in the Official Gazette — In the absence of a legislative requirement to that effect, not a condition precedent to their validity

Vested rights — No one has a vested right in the non change of the law — Expectation to acquire a right — Should not be confused with the accrual of the right 5

Constitutional Law — Equality — Constitution, Article 28 — Qualification for appointment of teachers in elementary education — Change in the scheme of service by postulating that only graduates of the Cyprus Paedagogical academy will be eligible for appointment as teachers in elementary education — Does not offend principle of equality 10

The applicants, who were graduates of the Greek Paedagogical Academy, involving a two year cycle of studies, were informed in 1981 that by completing a three-year cycle of studies at the school for the Post Education of Elementary School Teachers in Greece, they would qualify for appointment in the Cyprus Elementary Educational Service Though they completed the course suggested, they were found ineligible for such appointment as in the meantime there was a change in the relevant scheme of service 15

Hence the present recourse, whereby applicants complain that the scheme of service is invalid for lack of publication in the Official Gazette and that by such scheme they were divested of a vested right and that such scheme offended the principle of equality 20

Held, *dismissing the recourse*: (1) In the absence of a legislative requirement, publication of a scheme of service in the Official Gazette is not a condition precedent to its validity.

5 (2) Schemes of service, being legislative instruments, may be changed at the discretion of the authority competent to legislate in the matter. No one has a vested right in the non change of the law. The expectation to acquire a right must not be confused with the accrual of a right (*Republic v. Menelaou (1982)* 3 C.L.R. 419 distinguished).

10 (3) The information given to the applicants in 1981 was accurate in accordance with the state of the law at the time. No one can bind the competent authority not to alter the law.

15 (4) The complaint for discriminatory treatment is unfounded. There is nothing inherently offensive in postulating that only graduates of the Cyprus Paedagogical Academy will be eligible for appointment as elementary school teachers.

Recourse dismissed.
No order as to costs.

Cases referred to:

- 20 *Economides v. The Republic* (1972) 3 C.L.R. 506;
Vakis v. The Republic (1984) 3 C.L.R. 952.
Papadopoulou v. The Republic (1984) 3 C.L.R. 332;
Republic v. Menelaou (1982) 3 C.L.R. 419.

Recourse.

25 Recourse against the decision of the respondents whereby the applicants were declared ineligible for appointment as Elementary Schoolteachers.

A. Panayiotou, for the applicants.

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

Cur. adv. vult.

30 PIKIS J. read the following judgment. The applicants challenge a decision of the Educational Service Commission communicated on 4th July, 1985, whereby they were declared ineligible for appointment as Elementary School-teachers for the

reason that they lacked the qualifications required by the scheme of service. While they do not dispute that they did not possess the qualifications envisaged by the scheme of service, they contest its validity for a number of reasons, formal and substantive. Moreover, they charge the administration with bad faith in that while they encouraged them to believe that acquisition of an additional qualification would entitle them to apply for appointment as elementary school teachers, eventually they were disqualified in virtue of the provisions of the scheme of service approved on 20th May, 1982, then in force.

The circumstances of the applicants were the following:

They were graduates of the Greek Paedagogical Academy, involving a two-year cycle of studies, that qualified them as teachers under Greek law. In 1981 they sought information from the appropriate department of Education about the qualifications needed to qualify for appointment as elementary school teachers in Cyprus. They were informed that by completing a three-year cycle of studies at the school for the Post Education of Elementary School Teachers in Greece, they would qualify for appointment in the Cyprus Elementary Educational Service. The information imparted by the Ministry of Education was no doubt correct, in accordance with the scheme of service then in force. The complaint of the applicants is that though they completed the course suggested, nonetheless they found themselves ineligible for appointment in Cyprus in view of the change in the scheme of service introduced on 20th May, 1982. The new scheme of service purported to divest them of a vested right and as such was inapplicable in their case. Further they contended it was invalid ab initio for lack of publication in the official Gazette. Moreover, it offended, in the submission of the applicants, the principle of equality safeguarded by Art. 28 in that it discriminated against holders of comparable qualifications in Greece.

I find none of the reasons put forward in support of the application for review as justifying interference with the sub judice decision. My reasons are the following:

To begin, it is judicially settled that publication in the official Gazette is not essential for the validity of a scheme of service (1). Consequently, the absence of legislative requirement, publication

(1) *Economides v. Republic* (1982) 3 C.L.R. 506. *Vakis v. Republic* (1984) 3 C.L.R. 952.

- in the Gazette of a scheme of service desirable though it is, it is not a condition precedent to its validity. Secondly, schemes of service being legislative instruments may be changed at the discretion of the authority competent to legislate in the matter, that is, the
- 5 Council of Ministers. No one has a vested right in the non change of the law. Unless the right has crystalized under existing law and vested as such in the beneficiary, no right is acquired in law (1). The expectation to acquire a right must not be confused with the accrual of a right. The decision of the Full Bench in *Republic v.*
- 10 *Menelaou* (2) cited in the address of counsel for the applicants, is distinguishable from the present case. That case decided an amendment to the law leaves unaffected rights acquired through public contracts, that is, contracts entered into pursuant and in accordance with the provisions of the law before its amendment.
- 15 Thirdly, the information given them by the Educational Authorities before the amendment of the scheme of service and the expectations generated thereby, cannot validate their complaint. The information was accurate, in accordance with the state of the law at the time. Further, no one can bind the
- 20 competent authority not to alter the law as it may deem appropriate.

- Lastly, the complaint for discriminatory treatment is unfounded. The authority competent to lay down the schemes of service for any particular public post has a wide discretion to settle the
- 25 qualification needed according to the needs of the service. There is nothing inherently offensive in postulating that only graduates of the Cyprus Paedagogical Academy will be eligible for appointment as elementary school teachers. No doubt the decision was fashioned to the understanding of the Council of
- 30 Ministers of the needs of the Elementary Education in Cyprus.

For all the above reasons the recourse fails. The decision is confirmed in accordance with Art. 146.4(a) of the Constitution. Let there be no order as to costs.

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Recourse dismissed.
No order as to costs.

(1) *Papadopoulou v. Republic* (1984) 3 C.L.R. 332.

(2) (1982) 3 C.L.R. 419.