

1987 April 11

(PIKIS J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS GEORGHIADES,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE EDUCATIONAL SERVICE COMMISSION,
2 THE MINISTRY OF EDUCATION,

Respondents

(Case No 598/86)

Acts or decisions in the sense of Art 146 of the Constitution — Justiciability — Does not depend on duration of prejudicial effects, but on nature and direct prejudice occasioned to the subject thereby — Transfer of an educational officer — Re-transfer shortly thereafter — Transfer still justiciable

- 5** *Educational Officers — Transfers — The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amending) Regulations 71/85 — Regulation 25 — Ambit — Misconception by respondents of the nature and extent of their powers thereunder*

10 The applicant, a secondary school teacher, was transferred at the commencement of the academic year in September, 1986 from the Solea Gymnasium to the Gymnasium of Pedhoulas

15 The decision was taken under Reg 25 of the aforesaid Regulations, which empowers the respondent Commission to transfer exceptionally educationalists in the month of September, provided such course is dictated by unforeseeable needs of the service and the decision authorising the transfer is duly reasoned

The complaint of the applicant is not confined to the said transfer, but extends to his non transfer to Paphos for which he applied the previous year, presumably pursuant to Reg 24(1)

20 It must be noted that on 2 10 86 the applicant was re-transferred to Solea A «faint» suggestion was made that the re-transfer put an end to the justiciability of the sub-judice transfer

Held, *annulling the sub-judice decision* (1) The justiciability of an administrative act does not depend on the duration of the prejudicial effect of the administrative action, but on the character of the decision and direct prejudice, if any, occasioned to the subject thereby

(2) Applications for transfer are dealt with, as provided by Reg 24, the latest in May and objections thereto in July To the extent this recourse aims to challenge the failure or omission to transfer the applicant to Paphos it is out of time 5

(3) Reg 25 is not intended to bypass the ordinary procedure for transfers, but it is confined to the conferment of power to gauge gaps in the service and thereby afford a breathing space to bridge them on a more lasting basis 10

(4) In this case the respondents did not address themselves to meeting gaps in the service, but extended their inquiry as if free at the beginning of the academic year to continue the process of transfers envisaged by the preceding regulations In so doing they laboured under a misconception of the nature, ambit and extent of their powers under Reg 25 15

Sub judice decision annulled

No order as to cost

Cases referred to

Anstides v The Republic (1986) 3 C L R 466 20

Recourse.

Recourse against the decision of the respondents to transfer applicant from Solea Gymnasium to Pedhoulas Gymnasium.

A S. Angelides, for the applicant.

P Clerides, for the respondents. 25

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant, a secondary school teacher of philology, was posted with his wife, a fellow teacher, at the Solea Gymnasium. At the commencement of the academic year in September 1986, he was transferred on short notice to the Gymnasium of Pedhoulas. As may be gathered from the time at which the transfer was made and the procedure followed, the decision was taken under Reg. 25 of the regulations governing the transfer of educationalists*. 30

**The Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amending) Regulations 1985 — 1985 Official Gazette, Supplement 3 — 71/85, p 201.*

Regulation 25(1)(a) empowers the Educational Service Commission to transfer exceptionally educationalists in the month of September, provided such course is dictated by unforeseeable needs of the service and further provided the decision authorising

5 the transfer is duly reasoned. Seemingly, in exercise of these powers the respondents on 4th September, 1986, decided to transfer the applicant to Pedhoulas. Within two days of being notified of the decision, that is, within the three-day time limit envisaged by Reg. 25(2), the applicant lodged objection to his transfer for the

10 reasons indicated in his letter raising objection. Two days later his objection was dismissed and his transfer affirmed. We stress that only Reg. 25 confers power on E.S.C. to make transfers at the commencement of the academic year.

Applicant challenged his transfer by the present recourse

15 instituted on 26th September, 1986. Soon after, on 2nd October, 1986, he was re-transferred to Solea whereat he presently serves.

A faint suggestion was made that the re-transfer of the applicant put an end to the justiciability of the complaint raised in the present proceedings. I say «faint» because the contention was not pursued

20 to the end, rightly so, for the justiciability of an administrative act does not depend on the duration of the prejudicial effects of administrative action but on the character of the decision and direct prejudice, if any, occasioned to the subject thereby. Consequently, the subject matter of the recourse is amenable to the revisional

25 jurisdiction of the Supreme Court and as such it must be duly heeded.

As may be surmised from the final address made on behalf of the applicant, his complaint is not confined to the challenge of the decision immediately giving rise to the recourse, but extends to his

30 non transfer to Paphos for which he applied the previous year, presumably pursuant to the provisions of Reg. 24(1). This grievance cannot be heeded for the sub-judice decision does not purport to deal with his application or meet applications of educationalists for transfer within the framework of balancing the needs

35 of the service and the wishes of educationalists. Such applications are dealt with, as provided in Reg. 24, the latest in May and any objections thereto in July of the same year. To the extent the

recourse aims to challenge any such decision, failure or omission it is out of time. The subject-matter of the impugned decision was not the satisfaction of the ordinary needs of secondary education or the adjustment of such needs with the wishes of those in the service. The decision purported to meet the extraordinary needs of education earlier unforeseeable, made within the framework of the powers vested in the respondents by Reg 25. Such transfers should necessarily be of short duration lasting no longer than necessary to enable the parties to meet the needs of education on a more lasting basis within the context of the powers vested in them by the regulations preceding Reg 25. Regulation 25 is not intended to bypass the ordinary procedure for transfers. Its ambit is confined to the conferment of power to gauge gaps in the educational service and thereby afford a breathing space to bridge them on a more lasting basis.

Examination of the reasoning of the sub judge decision persuades me that the respondents did not exercise their power within the limits of their discretion under Reg 25. They did not address themselves to meeting gaps in the service on a temporary basis but extended their inquiry as if free at the beginning of the year to continue the process for transfers envisaged by the preceding regulations. In so doing they laboured under a misconception as to the nature, ambit and extent of their powers, a misconception that vitiated decision taken thereunder, including the transfer of the applicant. Consequently, the sub judge decision must be annulled.

This being my decision, it is unnecessary to examine or debate the amenity of the respondents to quantify numerically the weight that should be given to the various factors specified in Reg 23(1)(a), (b) and (c), governing the exercise of their discretion or consider the implications of the decision in *Anstides v The Republic** on the exercise of the powers of the Educational Service Commission to make transfers. Being satisfied as I am that applicants acted in excess of or outside the context of the powers given them by Reg 25, I contend with annulling the sub judge decision leaving consideration of other issues raised in these proceedings at a future opportune occasion.

**(1986) 3 CLR 466*

The sub judge decision is wholly annulled, pursuant to the provisions of Art. 146.4(b). Let there be no order as to costs.

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*Sub judge decision
annulled. No order
as to costs.*