

1986 April 12

[TRIANTAFYLIDIS P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPANDREOU,

Applicant,

v

1 THE EDUCATIONAL SERVICE COMMISSION,
2 THE MINISTRY OF EDUCATION,

Respondents.

(Case No 597/84)

Educational Officers — Secondment of an educationalist to the Paedagogical Academy — Refusal by appropriate organs to second applicant on ground of applicant's past unsatisfactory service at the Academy — Sub judice decision could be reasonably and properly based on such a ground — This Court cannot interfere

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Legitimate interest — Omission to reply — Applicant proceeded with the substance of the complaint and did not suffer any detriment by reason of the omission — Precluded from challenging the omission to reply

The applicant, an educationalist, was included in the list of those recommended for secondment to the Paedagogical Academy by the Director of the Department of Secondary Education. The Director of Higher Education did not accept the proposal regarding the applicant, because his service in the past at the Academy had not been satisfactory. This view was endorsed by the Minister of Education.

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Hence the present recourse. It must be noted that the applicant complains as well of an omission by the Ministry to reply to his objection against the secondment of another Educationalist to the Academy. As a matter of fact the Ministry replied after the filing of the recourse.

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Held, dismissing the recourse (1) The matter of applicant's secondment was considered by the appropriate organs and the reason for the refusal was one, on which they could reasonably and properly base their decision.

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(2) As the applicant, by means of this recourse, proceeded with the substance of his complaint that the other educationalist was wrongly seconded and as the failure to reply has not caused the applicant any

detriment, the applicant is precluded from pursuing his complaint as regards the omission to reply

Recourse dismissed

No order as to costs

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Cases referred to:

Papandreou v. Educational Service Commission (1987) 3 C.L.R. 669.

Kynakides v The Republic, 1 R.S.C.C. 66;

Pitsillos v. Municipality of Nicosia (1982) 3 C.L.R. 754;

Pitsillos v. C.B.C. (1981) 3 C.L.R. 614 and on appeal (1982) 3 C.L.R. 208;

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The Republic v Nissiotou (1985) 3 C.L.R. 1335

Recourse.

Recourse against the refusal of the respondents to satisfy applicant's request for secondment to the Paedagogical Academy of Cyprus.

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A.S. Angelides, for the applicant.

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

Cur. adv. vult.

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TRIANAFYLLIDES P. read the following judgment. By means of this recourse the applicant is challenging the refusal of the respondents to satisfy his request for secondment to the Paedagogical Academy of Cyprus and, also, the failure to reply to his objection, lodged on the 8th October 1984, against the secondment to the Academy of another educationalist, G Papadopoulos.

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The present recourse in so far as it was made against the secondment of G. Papadopoulos to the Academy was dismissed by me by means of an interim decision which was given on the 8th June 1985 (*see Papandreou v. The Educational Service Commission*, case No. 597/84, not yet reported)* as, for the reasons stated in such decision, it was found that the applicant had not a legitimate interest entitling him to challenge the secondment of G. Papadopoulos.

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The aforementioned request of the applicant was forwarded to the Director of the Department of Higher Education in the Ministry of Education on the 5th July 1984.

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* Reported in (1987) 3 C.L.R. 669

On the 20th September 1984 the Director of the Department of Secondary Education in the Ministry of Education made proposals for postings of educationalists at the Academy and included therein the applicant

On the 21st September 1984 the Director of Higher Education stated that he could not accept the proposal of the Director of Secondary Education regarding the applicant because the service of the applicant at the Academy in the past had not been satisfactory, and it appears that this view was endorsed by the Minister of Education on the same day (see document No 233 in the personal file of the applicant, 218/1968/3Γ). 5 10

It is clear, therefore, that the matter of the secondment of the applicant to the Paedagogical Academy was duly considered by the appropriate organs in the Ministry of Education and his secondment was not effected for a reason on which they could reasonably and properly base their relevant decision, and, therefore, I cannot interfere judicially with such decision. 15

In so far as the applicant complains against an alleged refusal or failure of the respondent Educational Service Commission to second him to the Paedagogical Academy it has to be observed that the Commission could not take any action in this matter as no proposal to that effect was placed before it by the Ministry of Education 20

The applicant by means of a letter of his counsel, dated the 8th October 1984, objected against the secondment of G Papadopoulos to the Paedagogical Academy. On the 30th October 1984 a reply to this letter was given by the Chairman of the Educational Service Commission, but until the filing of the present recourse, on the 6th November 1984, the Ministry of Education had not replied to the said letter of counsel for the applicant 25 30

As a matter of fact after the filing of this recourse the Director-General of the Ministry of Education replied, on the 15th November 1984, to the aforementioned letter

As the applicant has proceeded, by means of his present recourse, regarding the substance of his complaint that G Papadopoulos was, allegedly, wrongly seconded, instead of him, to the Paedagogical Academy and as the applicant has not established that the failure to reply to his objection to the 35

- secondment of G. Papadopoulos has caused him material detriment, I am of the opinion, in the light of the case-law of this Court, that he is precluded from pursuing also in this recourse his complaint about the failure to reply to his objection (see, inter alia.
- 5** in this respect, *Kyriakides v. The Republic*, 1 R.S.C.C. 66, *Pitsillos v. The Cyprus Broadcasting Corporation*, (1981) 3 C.L.R. 614 (and on appeal (1982) 3 C.L.R. 208), *Pitsillos v. The Municipality of Niccsia*, (1982) 3 C.L.R. 754, and *The Republic v. Nissiotou*, (1985) 3 C.L.R. 1335).
- 10** In the light of all the foregoing the present recourse is dismissed: but with nor order as to its costs.

Recourse dismissed.
No order at to costs.