

1988 March 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS ATTAS AND OTHERS, .

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent

(Cases Nos 549/85, 623/85, 696/85)

Public Officers—Appointments—Qualifications—Material date on which candidates must possess them—Pericleous and others v The Republic (1984) 3 C L R 577 cited with approval

Public Officers—Appointments—Scheme of service—Interpretation and application of—Judicial control—Principles applicable

Public Officers—Appointments—Scheme of service—Application to the facts of the case in question—The need for prior due inquiry into all material considerations

Due inquiry—Application of scheme of service relating to a post in the public service—Should be preceded by due inquiry into all material considerations

The applicants challenge the appointment of the interested party to the post of Inspector B, Elementary Education, for Gymnastics

Their main complaint is that the interested party was not eligible for appointment. The relevant scheme of service reads as follows

"3 Educational service for at least two years in the post of Headmaster A' in Elementary Education and/or a total educational service of

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21 years out of which the last 5 years in the teaching of special lessons."

The question in this case is whether the interested party had "the last five years" of his service "in the teaching of special lessons."

5 It is an undisputed fact that the interested party was on study leave to Australia from 1.2.80 up to 20.11.80 where he was attending special lessons in Gymnastics; he returned to Cyprus on 20.11.80 and continued his educational service here; throughout the period of 20.11.80 up to the material date i.e. 16.3.85 he was admittedly teaching the special lesson of Gymnastics.

10 However, counsel for the respondent maintained that the interested party was so engaged in the teaching of the special lesson of Gymnastics during the period 1978-1979 and 1979 up to 1.2.80 when he left for Australia.

15 From the material placed before the Court it emanated that this allegation was not known to the Commission. In fact the Commission by letter dated 21.3.85 inquired of the qualifications of the interested party and of other candidates (but not of applicant in recourse 696/85). In reply the Director of Elementary Education simply stated that they were qualified.

20 As far as applicant in case 696/85 is concerned, he was invited to an interview, but then he was treated as not eligible for appointment.

The Court, after referring to the principles relating to the Judicial control of the interpretation and application of the scheme of service,

25 Held, *annulling the sub judice decision*: (1) The application of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations.

(2) In this case the Commission failed to carry a due inquiry into the qualifications of the interested party; moreover, they failed to carry such an inquiry as to the qualifications of the applicant in case 696/85.

Sub judice decision annulled.

No order as to costs.

30 *Cases referred to:*

Republic v. Pericleous and Others (1984) 3 C.L.R. 577;

Papapetrou v. The Republic, 2 R.S.C.C. 61;

Petsas v. The Republic, 3 R.S.C.C. 60;

Georgiades v. The Republic (1967) 3 C.L.R. 653.

Recourses.

Recourses against the decision of the respondent to appoint the interested party to the post of Inspector B' Elementary Education, for Gymnastics, in preference and instead of the applicants. 5

A. S. Angelides, for applicants in cases Nos. 549/85 and 696/85.

Chr. Triantafyllides, for applicant in Case No. 623/85.

R. Vrahimi-Petridou (Mrs.), for the respondent. 10

E. Efstathiou, for the interested party.

Cur. adv. vult.

LORIS J. read the following judgment. All applicants in the above intituled recourses, which were heard together, as presenting common factual and legal issues, impugn the decision of the respondent Educational Service Commission dated 16.5.85, published in the Official Gazette of the Republic on 14.6.85, whereby the interested party, namely Andreas Theodorou, was appointed to the post of Inspector B', Elementary Education, for Gymnastics, in preference to and instead of the applicants. 15
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The main complaint of all applicants in the above intituled recourses is that the interested party in all recourses was not eligible for appointment in the aforesaid post, which is a first entry and promotion post according to the relevant scheme of service appearing in Appendix 1 attached to the opposition, as allegedly he did not fulfil at the material date, the requirements of the scheme of service to which I shall be referring later on in the present judgment. 25

5 The material date in question is, according to the judgment of the Full Bench of this Court in *Republic v. Pericleous & Others* (1984) 3 C.L.R. 577 at p. 586) "... the date at which a candidate must possess the required qualifications, in the case of a First Entry and First Entry and Promotion Post, is the last date of the period prescribed in the advertisement for the vacancy by which applications have to be submitted..."

10 In the instant cases the last date of the period prescribed in the relevant advertisement in the Official Gazette of the Republic for the vacancy in question, by which application had to be submitted, was the 16th of March 1985.

The relevant part of the scheme of service is paragraph 3 thereof which reads:

15 "3. Εκπαιδευτική υπηρεσία τουλάχιστον δύο ετών στην θέση Διευθυντή Α' Σχολείων Δημοτικής Εκπαίδευσης ή/ και συνολική εκπαιδευτική υπηρεσία 21 ετών από τα οποία τα 5 τελευταία στην διδασκαλία ειδικών μαθημάτων."

(English Translation):

20 "3. Educational Service for at least two years in the post of Headmaster A' in Elementary Education and/or a total educational service of 21 years out of which the last 5 years in the teaching of special lessons."

25 It is common ground that at the material date the interested party had no educational service for at least two years in the post of Headmaster A' in Elementary Education; and it is an undisputed fact that the interested party had at the material date educational service of 21 years. What is challenged is that the interested party
30 did not have "the last 5 years" of his educational service, "in the teaching of special lessons".

It is an undisputed fact that the interested party was on study

leave to Australia from 1.2.80 up to 20.11.80 where he was attending special lessons in Gymnastics; he returned to Cyprus on 20.11.80 and continued his educational service here; throughout the period of 20.11.80 up to the material date i.e. 16.3.85 he was admittedly teaching the special lesson of Gymnastics. 5

Applicants maintain, and mathematical calculations support their view, that the period between 20.11.80 and 16.3.85 is definitely less than 5 years.

Learned counsel for respondent maintains in her written address relying on the documents appended thereto, that the interested party was teaching the special lesson of Gymnastics, whilst in the Educational Service, prior to 1.2.80 as well, when the interested party left on study leave to Australia; She maintains that the interested party was so engaged in the teaching of the special lesson of Gymnastics during the period 1978-1979 and 1979 up to 1.2.80 when he left for Australia. 10
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Learned counsel for applicants maintain that the interested party attended special lessons on Gymnastics during his study leave in Australia and submit that he could not teach Gymnastics prior to getting qualified in such special lesson. Furthermore they allege that what has been put forward by learned Counsel for the E.S.C. in her written address with regard to the period prior to the 1.2.80 was unknown to the E.S.C., who did not carry out due inquiry towards that direction before reaching at the sub-judice decision, and as a result they have acted under a misconception as to material facts when construing the relevant scheme of service in connection with the interested party and eventually reaching at the sub-judice decision. 20
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Before examining the submissions of both sides on this issue, I consider it pertinent to deal briefly with the legal aspect on this topic. 30

As early as 1961 it was laid down by the then Supreme Constitutional Court in *Papapetrou and the Republic*, 2 R.S.C.C. 61 at p. 69 " that in deciding whether or not the Public Service Com-

mission in a given case has conformed with the relevant scheme of service the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question".

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In *Petsas and the Republic*, 3 R.S.C.C. 60 at p. 63 the Court affirming the approach adopted in *Papapetrou* case (supra) added: "Likewise, in determining whether a certain applicant in fact possesses the relevant qualifications the Commission is given a discretion, and this Court can only examine whether the Commission, on the material before it, could reasonably have come to a particular conclusion."

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With the above principles of the Law in mind, I shall proceed to examine the material before the respondent E.S.C. and the nature and extent of its inquiry with a view to ascertaining the material facts pertaining to the qualifications of the candidates and in particular to those of the interested party.

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Having carefully considered the material before me, I have come to the conclusion that the appendices attached to the written address of learned counsel for the respondent were not before the E.S.C. when examining these cases. The contents of the appendices do not appear in the personal files of the applicants and the interested party; and presumably that was the reason why the respondent E.S.C. decided on 21.3.85 to address, and in fact did address, to the Director of Elementary Education, a letter inquiring whether applicants in recourses: 549/86 and 623/85 and the interested party in all cases had the qualifications envisaged by the relevant scheme of service.

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In this connection I shall confine myself at this stage in laying emphasis to the fact that the E.S.C. did not include applicant in case No. 696/85 in their said query, addressed to the Director of Elementary Education; I shall be reverting later on in the present judgment on this matter.

The Director of Elementary Education in his reply dated 26.3.85 (vide Appendix A attached to the written address of the respondent) stated simply that applicants in cases 549/85 and 623/85 as well as the interested party namely Andreas Theodorou "have educational service in teaching the special subject in Gymnastics, for the last five years and they therefore fulfil the relevant provision of the scheme of service".

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It must be noted here that the reply of the Director does not mention anything about the absence of the interested party from Cyprus during the period of 1.2.80 - 20.11.80.

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What happened next clearly appears from the minutes of the respondent E.S.C.

On 3.4.85 the Commission on being informed of the contents of the letter of the Director of Elementary Education dated 26.3.85 decided to call all the applicants and the interested party to personal interview on 6.4.85.

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On 6.4.85 applicants in all 3 cases and the interested party are being interviewed by the E.S.C.

The respondent E.S.C. meets again on 30.4.85 and 3.5.85 studying the personal files and the confidential reports of the candidates, and finally on 16.5.85 reaches at the sub-judice decision without any further inquiry into the matter.

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It is clear from the above that the Respondent E.S.C. after receiving the aforesaid letter of the Director dated 26.3.85, which was partly incorrect as regards the interested party, did not carry out any further inquiry into the matter.

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But the application by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations (*Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653 at p. 668).

The respondent commission failed to carry out due inquiry as to the qualifications of the interested party. They failed to exercise their discretion. This transpires from the material before me.

5 But the failure of the respondent E.S.C. to carry out due inquiry was not only confined to the interested party. It is extended to applicant in case No. 696/85 as well. As I have already stated earlier on in the present judgment the E.S.C. did not include applicant in case No. 696/85 in their letter of 21.3.85 inquiring of the Director of the Elementary Education as to the qualifications of the candidates.

10 This omission is not unequivocal; it may mean that they knew that he was not qualified and there was no need to inquire; or it may mean that they were so sure that he was qualified, so they considered it unnecessary to mix his name in the inquiry about the remaining candidates.

15 The subsequent conduct of the respondent, notably to invite applicant in case No. 696/85 as well to personal interview, indicates that they were of the view that he was qualified. Yet on 16.5.85 without holding any further inquiry, they decided that he was not eligible for appointment as he did not fulfil the requirements of the scheme of service.

20 Concluding I hold the view that the respondent E.S.C. has not conducted the sufficiently necessary inquiry into a most material aspect of the case it was examining, notably the task to ensure that the interested party was eligible under the relevant scheme of service for appointment to the post in question; the lack of due inquiry resulted in exercising its discretion in a defective manner; thus the sub-judice decision in virtue of which the interested party was appointed to the post in question, was wrong in Law having been reached at in excess and in abuse of powers and has to be annulled.

30 Having held as above, I consider it unnecessary to deal with any other grounds on which the validity of the sub-judice deci-

sion in being challenged.

In the result all above intituled recourses succeed and the sub-judice decision is hereby annulled. Let there be no order as to costs.

Sub judice decision annulled. 5
No order as to costs.