

1988 March 15

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS EVANGELATOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 875/87).

Educational Officers—Transfers—Extra-ordinary transfers—The Educational Officers (Postings, Moves and Transfers) Regulations, 1987, Regs. 15, 13(3)(a) and 12—The nature of the provisions of Reg. 12 are mandatory—The priority list has to be strictly followed—An extra-ordinary transfer should, in any event, be of a short duration.

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Having been promoted to the post of Assistant Headmaster Secondary Education, the applicant was transferred to Limassol in virtue of Reg. 8(1) of the aforesaid Regulations as from 1.9.87.

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However, on 9.10.87 the Commission decided to transfer the applicant to Agros. This transfer was made under Reg. 15(1)* of the same Regulations. This regulation governs extra-ordinary transfers.

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It must be noted that: (a) The applicant was on the basis of his units under Reg. 12(2) last but one in the priority list specified in Reg. 12, and (b) the circumstances were such as to indicate that the said transfer to Agros would not be for a short duration.

Held, *annulling the sub judice decision*: (1) Under Reg. 15 extra-ordinary transfers should be effected on the basis of the priority list speci-

*Quoted at p. 533 post.

fied in Reg. 12. The wording of Reg. 12(1) is mandatory. It matters not that the difference in the units between persons in the list is minimal. As the sub judice transfer was made in contravention of the list, it has to be annulled.

(2) Though the wording of Reg. 15 is not the same as that of Reg. 25 (2) of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amending) Regulations, 1985 (71/85), the object of Reg. 15 is the same as that of Reg. 25(2) and, consequently, in the light of the case law concerning the interpretation of Reg. 25(2) an extra-ordinary transfer under Reg. 15 should be of short duration. As the sub judice transfer is not of such duration, it has to be annulled for this reason too. 5 10

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Georgiades v. The Republic (1987) 3 C.L.R. 343; 15

Miltiades v. The Republic (1987) 3 C.L.R. 772;

Payiasi v. The Republic (1987) 3 C.L.R. 1585.

Recourse.

Recourse against the decision of the respondent to transfer applicant from Limassol to Agros Gymnasium. 20

A. S. Angelides, for the applicant.

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicant was at the material time a secondary educational Schoolmaster serving at Mitsis School Lemythou. Following his promotion to the post of Assistant Headmaster the respondent Educational Service Commission, by means of its decision dated the 5th August 25

1987 (Exhibit 2), - decided to transfer him to Limassol from Mitsis School Lemythou with effect from 1st September 1987. The relevant decision reads:

5 "The Commission taking into consideration the provisions of the Educational Officers (Postings, Moves and Transfers) Regulations, 1987 and on the basis of the priority, of those affected, in the relevant lists, it decides that the following Schoolmasters who have been promoted to the post of Assistant Schoolmaster of Secondary Education Schools be transferred outside their seat in accordance with the provisions of 10 Reg. 8(1). The Commission takes into consideration the needs of the schools in Assistant Headmasters as same have been dispatched by the Ministry of Education by means of document No. 520/87 dated 20th June, 1987.

15 Mr. Evangelatos Andreas - the applicant - who was serving at Mitsis School Lemythou is transferred from 1st September 1987, to his seat at Limassol on the basis of the prejudice units he has."

20 On the 9th October 1987, the Commission took the following decision. (See B.):

"Secondary Education.

1. Transfers.

25 The Commission having in mind the Educational Officers (Postings, Moves and Transfers) Regulations, 1987 and the list of applicants and those liable to transfer which have been prepared with the assistance of the Data Processing and Computer Service on the basis of the Unit Computation of the criteria (see Minutes of 11th July 1987), decides to make the following extra - ordinary (έκτακτες) transfers of Schoolmasters for the filling of educational needs with effect from 10th October 30 1987.....

Assistant Headmaster Evangelatos Andreas - the applicant - who has been promoted to the post of Assistant Headmaster with effect from the 1st September 1987 is transferred by virtue of Regulation 8(1) from Limassol to Agros. The transfer of Mr. Evangelatos is decided on the basis of the prejudice units he has and by taking into consideration that at Agros Gymnasium the Headmaster is a Schoolmaster of Commercial Subjects and the Assistant Headmaster is a Schoolmaster of mathematics and so it is advisable to post an Assistant Headmaster who is a Philologist."

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As against this transfer which was effected by means of the above decision the applicant submitted an objection, both personally and through his counsel. The Commission dealt with the objection at its meeting of 15th October 1987 (Appendix C), and its relevant decision reads:

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"The Commission takes cognizance of the objection of Assistant Headmaster Mr. Andreas Evangelatos as well as his objection which was submitted through his counsel, and having considered the matter, decides as follows:

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The transfer of Mr. Evangelatos was decided (see Minutes of 9th October 1987) on the basis of Regulation 15 of the Educational Officers (Postings, Moves and Transfers) Regulations 1987 for the filling of educational needs. Mr. Evangelatos was liable to be transferred outside his seat on the basis of Regulation 8(1) given that he has been promoted to the post of Assistant Headmaster with effect from 1st September 1987 and in his case they do not come into play the prerequisites of Regulation 11(1) of the above Regulations for his non-transfer outside his seat.

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In view of the above his objection is dismissed."

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As a result the applicant filed the present recourse on the 29th October 1987, whereby he challenges both the decision to transfer him as above and the decision to dismiss his objection.

Since we have it clearly stated in the aforequoted decision of 15th October 1987, that the sub judice transfer was effected by virtue of Regulation 15(1) of the Educational Officers (Postings, Moves and Transfers) Regulations, 1987, (hereinafter to be referred to as "the Regulations of 1987") it is considered advisable to quote Regulation 15. It reads:

"15(1) The Commission by means of a reasoned decision may make extra-ordinary transfers of educational officers in the following instances:

(a) In the course of the school year when the transfer is considered absolutely indispensable in the interest of the service;

(b) For the filling of needs which emanated after the finalization of the ordinary transfers.

(2) The Commission effects the extra-ordinary transfers referred in sub-paragraph (b) of paragraph (1) of this Regulation on the basis of the priority which is specified in Regulation 12 and the list which is prepared in accordance with sub-paragraph (a) of paragraph (3) of Regulation 13."

Now subparagraph (a) of paragraph (3) of Regulation 13 of the "Regulations of 1987" which is referred to in the aforequoted Regulation 15(2) reads:

"3. The Commission considers the applications and the forms and within the second fortnight of April prepares.

(a) A list of the educational officers who are liable to be transferred under Regulation 9 according to post and seat and in the case of secondary education schoolmasters according to the specialization, on the basis of the priority specified in Regulation 12."

Regulation 12 referred to above so far as relevant provides:

"12(1) The Commission in effecting transfers in accordance with Regulations 8, 9 and 10 and wherever it is expressly provided in these Regulations shall follow a priority list which will be determined by the following criteria,.....,

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(2) The weight of each of the criteria referred to in paragraph (1) of this Regulation is determined by the Commission in advance by virtue of a policy decision and by means of Unit Computation of the criteria."

Under the unit Computation of the criteria, as provided in the aforequoted Regulation 12(2), in respect of eleven Assistant Headmasters - four with Limassol as their seat and seven with Nicosia as their seat - applicant had 33.6 units, another Assistant Headmaster had 35.6 units and the remaining nine had less units than the applicant.

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Under Regulation 15(2) extraordinary transfers had to be effected on the basis of the priority list which is specified by Regulation 12, and the respondent Commission was bound to act in accordance with such priority list. Since therefore under such priority list the applicant was the last but one, out of eleven educationalists who was liable to be transferred the respondents by transferring him acted contrary to the express provisions of Regulations 15(2) and 12 and for this reason the sub judice decision must be annulled as being contrary to Law, namely the above Regulations.

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I cannot in this respect accept the contention of learned counsel for the respondents to the effect that for minimal difference in units there should not be sacrificed the educational needs and educational benefit. This is so because the wording of Regulation 12 (1) is in my opinion, mandatory. Had the legislator intended it to be otherwise it would have said so by express words.

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Moreover, the sub judice decision must be annulled for another reason. By reading the sub judice decision it is clear that appli-

cant's transfer was not made to last for a short duration.

Regarding the nature of an extra - ordinary transfer Pikiis J. , stated the following in the case of *Georghiadis v. The Republic* (1987) 3 C.L.R. 343 at p. 346:-

5 "Such transfers should necessarily be of short duration last-
ing 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
10 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 ba-
sis.

15 Examination of the reasoning of the sub judge decision per-
suades 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 be-
20 ginning of the year to continue the process of transfers envis-
aged 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 decisions taken
there under, including the transfer of the applicant. Conse-
25 quently, the sub judge decision must be annulled."

Regulation 25, which is quoted above, is Regulation 25 of the
Educational officers (Teaching Personnel) (Appointments, Post-
ing, Transfers, Promotions and Related Matters) (Amending)
Regulations of 1985 (not. 71/85). It reads as follows:

30 "The Commission by means of a reasoned decision may
make extraordinary transfers of educational officers in the fo-
llowing instances:-

(a) During the month of September and before the com-

mencement of the lessons if extraordinary and unforeseen educational needs so dictate."

The *Georghiades case* was followed by Kourris J. , in *Miltiades v. The Republic* (1987) 3 C.L.R. 772 and by Savvides J. in *Payiasi v. The Republic*, (1987) 3 C.L.R. 1585.

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Though Regulation 15(1) of the 1987 Regulations and the above Regulation 25 of the 1985 are not similarly worded their object as emanating from their wording is the same; and thus the principle enunciated by Pikis J. , in the *Georghiades case* applies in this case too. Therefore the sub judice decision must be annulled for the reasons stated in the *Georghiades case* namely because the respondents laboured under a misconception as to the relative ambit and extent of their powers.

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In the result the recourse succeeds but in the circumstances there will be no order as to costs.

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