

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTHIMOS PAPADOPOULOS,

Applicant,

and

ANTHIMOS
PAPADOPOULOS
v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

THE REPUBLIC OF CYPRUS, THROUGH

THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 389/69).

Secondary Education—Recourse challenging the validity of an appointment to post of Secondary Education Inspector, Grade 'A' (Theological Teaching)—First entry post—Advertisement of vacancy—Selection of best candidate—Discretionary powers of respondent Committee, properly exercised—On the basis of the qualifications and service records of applicant and the interested party it was in no way inconsistent with the proper exercise of the relevant discretionary powers of the Committee to prefer the interested party.

Vacancy—Advertisement of vacancy—Regularity of.

Schemes of Service—Secondary Education Inspector, Grade 'A'—Made under the Masters of Communal Secondary Education Schools Law, 1963 (Greek Communal Chamber Law 10/63)—They continue to be in force after the repeal of said Law 10/63 by the Public Educational Service Law, 1969 (Law 10/69)—See Proviso to section 76(1) of the said Law 10/69.

Secondary Education Inspector Grade 'A'—See supra.

Public Officers—Appointments—Discretionary powers properly exercised—Selection of best candidate—Vacancy—Advertisement of vacancy—Regularity of—See supra, passim.

The facts sufficiently appear in the judgment of the Court, dismissing this recourse whereby the applicant challenged the validity of the appointment by the respondent Educational Service Committee of the Interested Party to the post of Secondary Education Inspector, Grade 'A'.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Secondary Education Inspector, Grade 'A' (Theological Teaching) in preference and instead of the applicant.

L. Papaphilipou, for the applicant.

G. Tornaritis, for the respondent.

E. Efsthathiou, for the interested party.

Cur. adv. vult.

The following judgment was delivered by :—

TRIANTAFYLIDIS, P. : In this case the applicant who, at the material time, was a secondary education Headmaster, grade 'B' challenges the validity of the appointment to the post of secondary education Inspector, grade 'A' (Theological Teaching), of the interested party, who at the material time was a master at the Paedagogical Academy.

The decision for this appointment was taken by the respondent Committee at a meeting on the 7th November, 1969.

The validity of such appointment has been challenged, mainly, on the following grounds :—

(a) That it was not reasonably open to the Committee to select for appointment the interested party instead of the applicant :

The post concerned is a first-entry post ; the vacancy was advertised and the Committee had to choose the most suitable candidate ; on the basis of the qualifications and service records of the applicant and of the interested party, which appear in their personal files and were taken into account by the Committee, I have no difficulty in holding that it was in no way inconsistent with the proper exercise of the relevant discretionary powers of the Committee to prefer the interested party.

(b) That the advertisement for the vacancy was irregular because there was mentioned therein a salary scale other than the salary scale stated in the relevant scheme of service, which had been made by the Council of Ministers :

Between the making of the scheme by the Council and the advertisement of the vacancy there intervened a revision

of salaries and the salary scale stated in the advertisement was the new revised salary scale for the post in question. I see nothing wrong in adopting such a course. On the contrary, it would have been wrong to advertise a vacancy in a post and to refer to a salary scale which is no longer in force in relation to such post.

(c) That though the scheme of service relates generally to secondary education Inspectors, Grade 'A' and requires the possession of an academical qualification related to the subject in which a candidate has specialized (Πανεπιστημιακὸν δίπλωμα ἢ τίτλος ἢ πτυχίον ἰσοδυνάμου Ἀνωτάτης Σχολῆς εἰς τὸ θέμα τῆς εἰδικότητός του), the advertisement was not framed in such general terms but it was irregularly stated therein that the vacancy was for an Inspector for Theological Teaching :

In my view it was not irregular to specify in the advertisement the specialization in relation to which there existed a vacancy for a secondary education Inspector, Grade 'A' ; such a course was, indeed, necessary in order to avoid uncertainty which might lead to applications by candidates specialized in other fields.

(d) That there were irregularly omitted from the advertisement the last two lines of the first paragraph of the part of the scheme of service which refers to the required qualifications :

By these two lines, which in the scheme of service follow immediately after the already quoted passage relating to the required academical qualification, it is provided that the said qualification ought to be of such a level as to entitle a candidate to become, under the relevant Law, a master Grade 'A'.

After the date on which the scheme of service was made, and before the date on which the vacancy in question was advertised, there was enacted the Public Educational Service Law, 1969 (10/69) which repealed the Law referred to in the aforesaid two lines—(the Masters of Communal Secondary Education Schools Law, 1963, Greek Communal Chamber Law, 10/63)—and, therefore, it would not be proper to include such lines in the advertisement because they related to a legal situation which was no longer in existence.

(e) That the relevant scheme of service, which was made before Law 10/69, did not continue in force after the enactment of Law 10/69 ; a new scheme of service for the post

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in question had to be made in the exercise of the relevant powers vested in the Council of Ministers by virtue of section 24 of Law 10/69 :

The scheme of service was, in my opinion, an administrative act of the Council of Ministers which continued to be in force, by virtue of the proviso to section 76 (1) of Law 10/69, until the Council would replace it by a new one made in the exercise of its powers under section 24 of the same Law ; it is clear from the wording of the said proviso that it was intended to ensure the continuance in force of all the existing at the time of the enactment of Law 10/69 relevant Regulations, administrative acts and administrative directions so as to avoid causing chaos in the educational service pending the making of new provisions by Regulations or otherwise under Law 10/69.

In the light of all the foregoing I have reached the conclusion that no ground exists warranting my interference with the appointment of the interested party and, thus, this recourse has to be dismissed.

I am not making any order as to the costs.

*Application dismissed.
No order as to costs.*