

1987 October 8

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIA PAYIASI,

Applicant,

v

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

Respondents

(Case No. 650/86).

Educational Officers — Transfers — The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations — Theofanous v. The Republic (1987) 3 C.L.R. 1574 adopted.

5 *Educational Officers — Transfers — The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotion and Related Matters) (Amendment) Regulations — Effecting a normal transfer (Reg 20(a)) under the disguise of an extraordinary transfer — Ground of annulment — Georghiades v. The Republic (1987) 3 C.L.R. 343 adopted.*

10 *Subsidiary legislation — Retrospectivity of — Theofanous v. The Republic (1987) 3 C.L.R. 1574 adopted.*

Natural Justice — No one can be a Judge in his own cause — Theofanous v. Republic (1987) 3 C.L.R. 1574 adopted.

15 The applicant challenges the decision of the Educational Service Commission to transfer her from Limassol to Lamaca, and to dismiss her objections to such transfer.

20 The applicant relied in support of her case on five main grounds. The first four grounds are the same as the grounds put forward by the applicant in *Theofanous v. The Republic* (1987) 3 C.L.R. 1574. The fifth is that the procedure followed for the sub judice transfer was not the proper one bearing in mind the fact that this was in fact an extraordinary transfer, under Regulation 25(1)(a).

The Court dismissed the first four grounds for the same reasons as those expounded in Theofanous case, supra and

Held, further, annulling the sub judge decision, that in the light of the minutes of the respondent Commission, there can be no doubt that in this case the Commission effected a transfer on the basis of Reg 20(a) under the disguise and pretext of an extraordinary transfer In the light of the decision in *Georghiades v. The Republic* (1987) 3 C L R 343 the sub judge decision has to be annulled

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*Sub judge decision annulled
No order as to costs*

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Cases referred to

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

Theofanous v The Republic (1987) 3 C L R 1574,

Georghiades v The Republic (1987) 3 C L R 343

Recourse.

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Recourse against the decision of the respondent to transfer applicant from Limassol to Lamaca.

A. S. *Angelides*, for the applicant.

A. *Vassiliades*, for the respondents.

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. The applicant challenges the decision of the Educational Service Commission to transfer her from Limassol to Lamaca, and to dismiss her objections to such transfer

The applicant is a Secondary School teacher and was serving at the material time prior to the sub judge decision, at the Sixth Limassol Gymnasium.

Consequent to the judgment of this Court in the case of *Aristides v. The Republic* (1986) 3 C L.R. 466, whereby Regulation 23(2) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972-1985, was declared ultra vires the law, the E.S.C. met in April and May, 1986 in order to consider the position regarding the evaluation of the criteria set out in Reg. 23(1). As a result a formula was evolved for the numerical

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evaluation of the said criteria, on the basis of which a table was compiled of the educationalists subject to transfer, in accordance with Regulation 24(3) in which the name of the applicant was included.

- 5 On 10th February, 1986, the applicant filled in a form in accordance with Regulation 24(2), stating that she did not wish to be transferred on account of health reasons of herself and members of her family. Her case was referred to the Medical Board, in accordance with Regulation 22(a) which advised that the
10 health reasons advanced by her did not justify her non-transfer.

The respondent E.S.C. decided, at its meeting of 4.9.1986, to transfer the applicant from Limassol to Lamaca. The applicant objected to her transfer by letter setting out the reasons in support of her objection. At its meeting of 11.9.1986 the E.S.C. dismissed
15 her objection on the ground that her transfer away from her place of residence was made on the basis of her order on the list of educationalists subject to transfer away from home and the prerequisites of Regulations 22(a) or 22(b) did not exist.

As a result the applicant filed the present recourse.

- 20 The legal grounds advanced by counsel for applicant are the same as those raised in the case of *Theophanous v. Republic* (Case No. 577/86) in which judgment was delivered by me on the 6th October, 1987,* and are briefly the following:-

25 (a) The numerical system adopted by the E.S.C. for evaluating the criteria set out in Regulation 23(1) and determining the transferability of educational officers has no sanction in Law and is therefore ultra vires the law and hinders the proper exercise by the E.S.C. of its discretionary power.

30 (b) Regulation 14(2) referring to the determination of the place of residence of educationalists violates against the rule of non retrospectivity.

(c) The objection of the applicant was decided by the same organ which took the original decision.

35 (d) The applicant was not afforded the right to be heard in support of her objection.

* Reported in (1987) 3 C.L.R. 1574.

The above grounds have been decided by me in the case of *Theophanous* (supra) in which I have held that Regulation 14(2) and the numerical evaluation by the E.S.C. of the criteria set out in Regulation 23(1) are not ultra vires the law and that there has been no violation of the rules of natural justice.

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I adopt fully what I have said in the above case regarding the above grounds and have nothing more to add.

In this respect these grounds are, therefore, dismissed.

There is, however, an additional ground which is raised in the present recourse, more specifically, that the procedure followed for the sub judice transfer was not the proper one bearing in mind the fact that this was an extraordinary transfer, under Regulation 25(1)(a).

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The minutes of the meeting of the respondent Commission, in which the sub judice transfer was decided, read, in this respect, as follows:

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«Transfers.

After the completion of the consideration of the objections (see min. 3/9/86) which have been submitted by educational officers of Secondary Education for their transfer the Commission having in mind:-

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(a) the provisions of the Regulations concerning educational officers, 1972 to 1985 as well as the decision of the Educational Service Commission dated 10/5/86 on the basis of which the lists of applicants and those subject to transfer were compiled,

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(b) the educational needs as they have been conveyed by the Ministry of Education in its document No. 520/86 dated 28/8/86,

(c) the application for transfer as well as the forms filled in by the educational officers subject to transfer

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the Commission decides the following extraordinary transfers of educational officers of Secondary Education as from 10/9/86:

A.

B. The following are transferred away from their home residence in accordance with the provisions of Reg. 20(a) on the

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basis of their serial order on the list of those subject to transfer (Reg. 24(4)):

ASSISTANT HEADMASTERS

5 Payiasi-Savvidou Maria 6th Gymn. L/ssol Mak. C' Gymn. L/ca.

Also in the minutes of 11/9/1986, where the objection of the applicant was dismissed, we read the following:-

«The Commission having in mind-

10 (a) the provisions of the Educational Officers Regulations 1972 to 1985,

(b) its decision dated 10/5/86 on the basis of which the lists of the applicants and those subject to transfer was compiled,

15 (c) the educational needs as they have been conveyed by a document of the Ministry of Education No. 520/86 dated 28/8/86

and after studying the objections for transfer which have been made by educational officers of Secondary Education after the extraordinary transfers (see min. 4/9/86) decides as follows:-

20 (a)

(b)

25 (c) The objections of the following are dismissed since their transfer away from residence was made on the basis of their serial order on the list of those subject to transfer away from residence and the prerequisites of Regulations 22(a) and 22(b) do not exist.»

The name of the applicant then appears.

30 Having considered carefully the contents of the various minutes of the meetings of the respondent Commission, especially the extracts cited above, there is no doubt in my mind that the E.S.C. effected in fact a normal transfer on the basis of Regulation 20(a) under the disguise and pretext of extraordinary transfer. Useful

reference in this respect may also be made to the case of *Georghios Georghiades and the Republic* (Case No. 598/86 in which judgment was delivered on 11.4.1987, still unreported)* by which a similar decision of the E.S.C. also dated 4.9.1986, concerning the transfer of another educationalist was challenged. 5
Pikis J. said the following in this respect:-

«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 of 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 decisions taken thereunder, including the transfer of the applicant. Consequently, the sub judge decision must be annulled.» 10 15

I, therefore, find, for the reasons stated above, that this recourse should succeed on this ground.

In the result this recourse succeeds and the sub judge decision is set aside with no order for costs. 20

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

* Reported in (1987) 3 C.L.R. 343