

(1987)

1987 June 29

[KOURRIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS MILTIADOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 607/86).

Educational Officers — Transfers — The Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amending) Regulations 71/85 — Reg. 25(1) — Ambit of — Georghiades v. The Republic (1987) 3 C.L.R. 343 adopted and followed.

By means of the sub judice decision dated 12.9.1986 the respondent Commission decided to transfer the applicant, a secondary school teacher of Gymnastics, from Polemi Gymnasium to Panayia Gymnasium. The transfer was made in exercise of the powers conferred on the respondent Commission by Reg. 25(1)* of the aforesaid Regulations.

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Held, *annulling the sub judice decision*: (1) As it was held by Pikiis, J. in *Georghiades v. The Republic* (1987) 3 C.L.R. 343, the ambit of Regulation 25(1) is confined to the conferment of power to gauge gaps in the Service and thereby afford a breathing space to bridge them on a more lasting basis; Reg. 25 is not intended to by-pass the ordinary procedure for transfers

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(2) As the facts of the present case are similar to the facts in *Georghiades'*, *supra*, the sub judice decision would be annulled on the ground that the Commission laboured under a misconception as to the nature, ambit and extent of their powers.

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Sub judice decision annulled.

No order as to costs.

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Cases referred to:

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

* The relevant part of this Regulation is quoted at pp 773-774 post

Recourse.

Recourse against the decision of the respondent to transfer applicant from Polemi Gymnasium to Panayia Gymnasium.

K. Papaloizou, for the applicant.

5 *P. Clerides*, for the respondent.

Cur. adv. vult.

10 KOURRIS J. read the following judgment. The applicant, by the present recourse, challenges the decision of the Educational Service Commission to transfer him from Polemi Gymnasium to Panayia Gymnasium.

15 By a decision of the Educational Service Commission dated 6/6/86, the applicant was transferred as from 16th September, 1986, from Paphos Gymnasiums to Panayia Gymnasium. Upon taking notice of the aforesaid transfer, the applicant objected to the respondent and they upheld his objection and by their decision dated 4th September, 1986, transferred the applicant from Panayia Gymnasium to Polemi Gymnasium.

20 On 12/9/1986 the respondent Commission took a decision by which they transferred the applicant from Polemi Gymnasium to Panayia Gymnasium for three days a week and to Paphos Gymnasiums for another three days a week.

25 The applicant, who is a Gymnastics, Secondary School Teacher, feeling aggrieved about this transfer, filed the present recourse maintaining that the sub judice decision is null and void and illegal and was taken in excess and/or abuse of power.

30 It is common ground that the decision for the transfer was taken under Regulation 25 of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amending) Regulations of 1985 (No. 71/85) Official Gazette, Supplement No. 3, p. 201.

Regulation 25, so far as is relevant for the present proceedings, reads as follows:-

35 «Η Επιτροπή, με αιτιολογημένη απόφασή της, μπορεί να προβαίνει σε έκτακτες μεταθέσεις Εκπαιδευτικών Λειτουργών στις ακόλουθες περιπτώσεις:-

α) Κατά τον μηνά Σεπτέμβριο και πριν από την έναρξη

των μαθημάτων, εάν έκτακτες και απρόβλεπτες εκπαι-
 δευτικές ανάγκες το επιβάλλουν.»

(«The Commission may by a reasoned decision effect
 exceptional transfers of Educational Officers in the following
 cases:-

a) In the month of September and before the beginning of
 lessons, if exceptional and unforeseeable educational needs
 make it necessary»).

Thus, it appears that Regulation 25(1)(a) empowers the
 Educational Service Commission to transfer exceptionally
 Educationalists in the month of September, provided such course
 is taken by unforeseeable needs of the Service and further
 provided the decision authorising the transfer is duly reasoned.

The respondents decided to transfer the applicant to Panayia
 Gymnasium on 12/9/1986 in exercise of these powers.

The applicant lodged objection to his transfer by virtue of
 Regulation 25(2) but the respondents failed to reply up to the filing
 of the present recourse which was on the 2nd October, 1986.

It should be pointed out that only Regulation 25 empowers the
 Educational Service Commission to make transfers at the
 commencement of the Academic year.

The subject matter of the impugned decision was not the
 satisfaction of the ordinary needs of the Secondary Education or
 the adjustment of such needs with the wishes of those in the
 Service. The decision purported to meet the extraordinary needs
 of Education earlier unforeseeable, made within the framework of
 the powers vested in the respondents by Regulation 25.

With due respect, I agree with what Pikis, J., said in his judgment
 in the case of *Georghios Georghiades of Paphos, v. The Republic*,
 Recourse No. 598/86, dated 11/4/1987* as to the object of the
 transfers under Regulation 25, which is as follows:-

«Such transfers should necessarily be of such duration
 lasting no longer than necessary to enable the parties to meet
 the needs of education on a more lasting basis within the

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

5 context of the powers vested in them by the Regulations preceding Regulation 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 the breathing space to bridge them on a more lasting basis.»

The facts of the present case are similar to the facts of Georghiades case (supra) and with due respect I adopt what Pikiis J., said in his judgment at p. 3:-

10 «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 Regulation 25. They did not address themselves to meet gaps in the
15 service on a temporary basis but extended their enquiry 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
20 applicant. Consequently, the sub judge decision must be annulled.»

Likewise, on the facts of the present case, I am satisfied that the respondent Commission in transferring the applicant from Polemi
25 Gymnasium to Panayia Gymnasium, laboured under a misconception as to the nature, ambit and extent of their powers and consequently, the sub judge decision is hereby annulled.

In the circumstances the sub judge decision is annulled, pursuant to the provisions of Article 146.4. (b) of the Constitution, with no order as to costs.

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Sub judge decision annulled. No order as to costs.