

1988 June 8

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MATHEOS MATHEOU,

*Applicant,*

v.

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

*Respondents.*

and

AS AMENDED BY ORDER OF THE COURT DATED 9TH DECEMBER,  
1987

GEORGHIOS M. MATHEOU,

*Applicant,*

v.

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

*Respondents.*

(Case No. 714/87).

*Misconception of fact—Transfer of Educational Officers—Placing applicant on list of those liable to be transferred on the assumption that his residence was in Limassol, whereas it was in Plataniskia village—Sub judice decision has to be annulled.*

The facts of this case appear sufficiently from the judgment of the Court. 5

*Sub judice decision annulled.  
Costs against respondents.*

### Recourse.

Recourse against the decision of the respondents to include applicant in the list of educationalists subject to transfer and to transfer him from Limassol to Larnaca. 10

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

*R. Petridou (Mrs)*, for the respondents.

*Cur. adv. vult.* 15

SAVVIDES J. read the following judgment. The applicant challenges the decision of the respondents to include the applicant in the list of educationalists subject to transfer and transfer him from Limassol to Larnaca.

The applicant comes from Kyrenia. He is a teacher of philology in the secondary education and was serving until 1974 at Kyrenia. In 1974 as a result of the Turkish invasion he left Cyprus on leave and worked abroad. In 1980 he returned to Cyprus and was posted at Limassol where he served until the time of the sub judice decision. 20  
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The applicant was placed, some time in 1987, on the list of educationalists subject to transfer in accordance with certain criteria set down by respondent No. 1, and was in fact transferred from Limassol to Larnaca by a decision of respondent No. 1 dated 12th August, 1987, for the purpose of satisfying justified claims of 30

other educationalists. As a result he filed the present recourse. An objection against his transfer was rejected by a decision of respondent No. 1 dated 10th September, 1987.

5 Counsel for applicant argued by his written address that the permanent residence of the applicant is in Kyrenia and not in Limassol, as was wrongly considered by the respondents and that, in any event he does not reside in Limassol but in Plataniskia, a Turkish village, where he was given by the government a house temporarily. He also argued that the proviso to Regulation 3(2) of  
10 the 1987 Regulations is *ultra vires* the Law (s. 2 thereof) as far as it provides that the displaced educationalists who served in schools of the Republic during 1974-1976 are considered to have served away from their place of residence during that period alone and not until today. He further contended that Regulation 3  
15 creates unreasonable discrimination between displaced and non displaced educationalists, who can have their permanent residence anywhere they choose. Counsel also submitted that applicant's period of absence should have been considered as service away from home having regard to paragraph (c) of the proviso to the meaning of the word "service" in Regulation 2.  
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Counsel for the respondents argued that the Regulations did not offend against any provision of the law, that no discrimination was created between displaced and non-displaced persons and the sub judice decision was reasonably open to the respondents.  
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I have considered the arguments of counsel very carefully. Counsel for the applicant alleged, amongst others, that the applicant resides at Plataniskia village and not in Limassol and thus his place of residence for the purposes of the law and regulations is considered to be Episkopi which is the nearest place where a school of Secondary Education operates and not Limassol as  
30 wrongly considered by the respondents. Counsel for the respondents did not deny this allegation but stated that the respondents took into consideration, in deciding that the applicant's place of residence is Limassol, the fact that he asked to be posted in Li-  
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massol on his return from England, as well as the fact that he requested twice his transfer from the Technical School in Limassol to a Gymnasium in Limassol, in accordance with Regulation 3(3) of the 1987 Regulations.

The place of residence of a person is a factual issue and not a matter of speculation. In the absence of any contradictory evidence on the part of the respondents I take it as granted that the applicant resides in Plataniskia village and not in Limassol. Plataniskia village, as it appears on the official maps of Cyprus is a village at the north of Pissouri. Having taken into consideration the contents of the meeting of respondent No. 1 dated 11th July, 1987, and especially appendix "A" thereto, which is a classification of schools of Secondary Education, I find that the nearest place to applicant's residence where a school of Secondary Education operates is Episkopi and not Limassol. As a result I find that the respondents, in determining the applicant's place of residence for the purposes of the Law as being Limassol did not conduct a due inquiry into the matter of the applicant's place of residence and in determining his place of residence for the purposes of the Law as being in Limassol were acting under a misconception of fact. The sub judice decision must, therefore, be annulled on this ground.

Having found as above I deem it unnecessary to deal with the question of ultra vires of the Regulation and any other point raised, since the matter of the transferability of the applicant will have to be considered afresh in the light of this judgment.

In the result this recourse succeeds and the sub judice decision is hereby annulled with costs against the respondents.

*Sub judice decision annulled  
with costs against respondents.*