

(1988)

1988 June 24

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEDA PILAVAKI,

Applicant,

v.

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

Respondents.

(Case No. 751/86).

Educational Officers—Transfers—Ordinary transfers—In virtue of Reg. 24(c) of the relevant regulations such transfers should be announced on the 2nd half of May in each particular year and take effect as from the beginning of the next year—Sub judice transfer announced in September—It has to be annulled.

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

Sub judice decision annulled.

No order as to costs.

Cases referred to:

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Kotsoni v. Educational Service Commission (1986) 3 C.L.R. 2394;

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

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

Evangelatos v. The Republic (1988) 3 C.L.R. 529;

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

Recourse.

5 Recourse against the decision of the respondents to transfer applicant from Nicosia to Larnaca:

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

A. *Vassiliades*, for the respondent.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. The applicant challenges the decision of respondent No. 1 dated the 22nd September, 1986, to transfer the applicant from Nicosia to Larnaca.

15 The applicant is a teacher of Arts and was serving in 1986 in Nicosia when she was transferred by a decision of respondent No. 1 dated the 22nd September, 1986, to Larnaca as from the 25th September, 1986. The applicant objected to her aforesaid transfer, but her objection was dismissed on the 16th October, 1986, hence the present recourse.

20 Counsel for applicant based his written address on the grounds that the sub judice decision is contrary to the Law; is based on Regulations which are ultra vires the Law; it was taken under a procedure which is unknown to the law or which had been annulled on the basis of Article 146.4 of the Constitution; and that it is contrary to the Regulations on which it was based.

25 Counsel for applicant in expounding on his legal grounds argued that Regulation 14(2) which determines the place of residence of educationalists for the past is ultra vires the Law; in so far as it is retrospective. He also argued that respondent No. 1 was never granted the power to evaluate any of the criteria for

transfers set out in Regulation 23(1). Such power was previously conferred to the Council of Ministers on the basis of Regulation 23(2) which has been declared by the Courts as ultra vires the Law, but it was never conferred on respondent No. 1. Counsel also argued that Regulation 24(3) is also vulnerable since it makes reference to Regulation 23, paragraph (2) of which has been declared as ultra vires the Law. It is his submission that respondent No. 1 in evaluating the criteria set out in Regulation 23(1) acted outside the Law and unlawfully. He argued further that the sub judice decision does not comply with the time limits set down by the Regulations and that the transfer of the applicant, which was effected in September, was in fact an ordinary transfer and not an extraordinary one and as such it could not have been effected in September.

It is a fact that the sub judice transfer was effected in September, at a time when only extraordinary transfers are made, as provided by the Regulations. There is no mention in the sub judice decision under which Regulation it was made, but it is made clear from the contents of the decision that it was not an extraordinary but an ordinary transfer under Regulation 20 for the purpose of satisfying justified claims for transfer by other educational officers. That the transfer was an ordinary one has been admitted by counsel for the respondents when the case was fixed for clarifications.

Ordinary transfers, according to the Regulations (see Regulation 24(6)) should be announced in the 2nd half of May in each particular year and should take effect as from the beginning of the next school-year. Also, by Regulation 25 extraordinary transfers are effected in September. Since the sub judice transfer is not an extraordinary one it should have been effected in May. Moreover, paragraph 4 of the 1985 amending Regulations states that the time limits set out in those Regulations will be indicative for the first year of their application. (*See, also, the case of Kotsoni v. The Educational Service Commission* (1986) 3 C.L.R. 2394, at p.2402). This means, in my view, that they should be strictly adhered to in other years. In this case it was the 2nd year of their

5 application and they should had been adhered to. (See also the cases of *Georghiades v. The Republic* (1987) 3 C.L.R. 343; *Payiasi v. The Republic* (1987) 3 C.L.R. 1585, *Evangelatos v. The Republic* (1988) 3 C.L.R. 529 in which it was held that ordinary transfers cannot be effected under the disguise of extraordinary transfers. In the case of *Georghiades v. The Republic* (supra) we read the following, at p.346:

10 "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 basis.

15 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 for 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 decision taken 20 thereunder, including the transfer of the applicant. Consequently, the sub judge decision must be annulled."

On the basis of the above I find that the sub judge decision has to be annulled.

25 As to the remaining grounds these have been dealt with and dismissed by me in the case of *Theophanous v. The Republic* (1987) 3 C.L.R. 1574 and I see no reason to repeat them, especially in view of my finding as above.

30 In the result this recourse succeeds and the sub judge decision is hereby annulled with no order for costs.

Sub judge decision annulled.
No order as to costs.