

(1988)

1988 July 14

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DORA ROSSIDOU,

Applicant,

v

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

Respondents.

(Case No. 651/86).

Educational Officers—Transfers—Ordinary transfers—Should be effected during the second half of May of each year and should take effect as from the beginning of the next schoolyear (Reg. 24(6) of the relevant Regulations)—As the sub judice transfer is an ordinary one and was taken in September, 1986, it has to be annulled.

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The fact of this case sufficiently appear in the judgment of the Court.

Sub judice decision annulled.

Costs against respondents.

Cases referred to:

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

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Pilavaki v. The Republic (1988) 3 C.L.R. 1260;

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

Recourse.

5 Recourse against the decision of the respondents to include applicant in the list of educationalists subject to transfer and transfer her partly to Pedhoulas.

A. S. Angelides, for applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

10 SAVVIDES, J. read the following judgment. The applicant prays for a declaration that the decision of the respondents to include the applicant in the list of educationalists subject to transfer and transfer her partly to Pedhoulas is null void and of no legal effect.

15 The applicant is a teacher of domestic science in the Secondary Education and was first appointed in 1960. In 1986 she was serving in the Gymnasium of Strovolos A, where she was posted since 1974. In February, 1986, she filled in a form stating that she did not wish to be transferred for family reasons.

20 Respondent 1, at its meeting of 12th September, 1986, decided to transfer the applicant partly to Pedhoulas Gymnasium "in accordance with the provisions of Regulation 20(a) on the basis of the order on the list of those subject to transfer (Reg. 24(4))".

25 The applicant objected to the above decision on grounds of health, and attached to her objection a certificate from her doctor. Respondent 1 at its meeting of the 22nd September, 1986, reject-

ed her objection. The applicant objected again on grounds of health and her case was referred to the Medical Board for its opinion. Respondent 1 met again on the 11th October, 1986, and having reconsidered her objection in the light of the opinion of the Medical Board, rejected it again. As a result the present recourse was filed.

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The grounds of law raised in the present case are that the sub judge decision is contrary to the Law and the Regulations, that the Regulations on which it is based are ultra vires the Law, and that the procedure followed is not a proper one.

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In expounding on his legal grounds counsel for applicant argued that Regulation 14(2) of the 1985 Regulations, which determines the place of residence of educationalists is ultra vires the Law in so far as it is retrospective. He also argued that respondent 1 was never granted the power to evaluate the criteria for transfer set out in Regulation 23(1) and respondent 1 in evaluating such criteria acted outside the Law. It was also the submission of counsel that the sub judge 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.

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The transfer of the applicant was effected in September, at a time when only extraordinary transfers can be effected, as provided by the Regulations. It is made clear from the contents of the sub judge decision that the transfer of the applicant was made under the provisions of Regulation 20(a) on the basis of the order of priority for transfer as provided by Regulation 24(4). This is an ordinary transfer, the procedure for which is contemplated by Regulation 24 of the 1985 Regulations, setting down certain time limits. Thus ordinary transfers should, in accordance with the provision of Regulation 24(6), be announced in the second half of May in each particular year and should take effect as from the following September. Only extraordinary transfers can be effected in September when extraordinary and unforeseen educational

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needs call for them. The sub judice transfer being an ordinary one, should have been effected in May and not in September. I take this view because of paragraph 4 of the 1985 amending Regulations which makes the time limits set out in the Regulations as indicative for the first year of their application, which means, in my view, that they should be strictly adhered to in other years. (See the case of *Kotsoni v. The Educational Service Commission* (1986) 3 C.L.R. 2394, at p.2402).

The same issue was considered by me in the recent case of *Leda Pilavaki v. The Republic* (1988) 3 C.L.R. 1260 in which I followed the cases of *Georghiades v. The Republic* (1987) 3 C.L.R. 343; *Payiasi v. The Republic* (1987) 3 C.L.R. 1585 and *Evangelatos v. The Republic* (1988) 3 C.L.R. 529. In those cases it was held that ordinary transfers cannot be effected under the disguise of extraordinary transfers. In this respect I may cite a passage from the case of *Georghiades v. The Republic (supra)* at p. 346:

"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.

Examination of the reasoning of the sub judice 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 thereunder, including the transfer of the applicant."

On the basis of the above I find that the sub judice decision must be annulled.

In view of my finding I find it unnecessary to deal with the remaining grounds, which, in any way, have been dealt with and dismissed by me in the case of *Theophanous v. Republic* (1987) 3 C.L.R. 1574.

In the result the recourse succeeds and the sub judice decision is hereby annulled with no costs. 5

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