

1988 April 25

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARGARITA KIMITRI,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF EDUCATION,

*Respondent.*

*(Case No. 561/86).*

*Discretion of the administration—Judicial control of its exercise—Principles applicable.*

5 The applicant, who is a teacher, was posted with the Educational Mission in England. One of the conditions of service provided for a subsistence allowance for not more than 15 days to be granted to the teachers concerned for their first days in London, on the approval of the Director-General of the Ministry.

10 As the applicant's application was turned down on the ground that when she arrived in England her husband had already rented a house for which she received a rent allowance, the applicant filed this recourse.

Held, dismissing the recourse: (1) The respondent in reaching the sub justice decision took into consideration the fact that the allowance in question is granted in order to cover mainly any immediate accommodation expenses of the teachers concerned for their first days in England.

15 (2) The subsistence allowance, which comes under the heading of transfer expenses, is the only one that is not granted as of right but is dependent on the approval of the Director-General of the Ministry of Education, the respondent in the recourse.

*Recourse dismissed.  
No order as to costs.*

**Recourse.**

Recourse against the refusal of the respondent to grant to applicant 15 day's subsistence allowance as a member of the Educational Mission of Cyprus in England.

*A. Andreou*, for the applicant.

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*St. Theodoulou*, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant challenges the decision of the respondent, communicated to her by letter dated the 16th June, 1986, whereby her application for the grant to her of 15 day's subsistence allowance as a member of the Educational Mission of Cyprus in England, was dismissed. 10

The applicant, who is a teacher, was informed by letter dated 15th May, 1985, that she was selected to participate in the Educational Mission in England as from the 1st September, 1985, in accordance with the conditions attached to the letter. One of those conditions (paragraph 6.4.4. of the conditions which are attached as appendix 'C' to the application) provides for a subsistence allowance for not more than 15 days to be granted to the teachers concerned for their first days in London, on the approval of the Director-General of the Ministry. 15 20

The applicant, together with four other teachers, claimed by letter dated 2nd October, 1985, addressed to the Minister of Finance, the payment of the subsistence allowance to her, in accordance with the aforesaid conditions of service. 25

The Director of the Public Administration and Personnel Service replied by letter dated the 4th December, 1985, that the matter was under consideration, and any decision would be communicated to the persons interested. Since no decision was  
5 communicated to them by May, 1986, the applicant, together with two of the other teachers who originally applied for the allowance in question, addressed another letter to the Minister of Finance, requesting a reply on the matter.

The Director of the Public Administration and Personnel Service replied by letter dated 3rd June, 1986, that the matter was  
10 considered in cooperation with the Ministry of Education, as a result of which a provision was included in the conditions of service of the teachers concerned to the effect that in the cases of married couples who are both members of the Educational Mis-  
15 sion, double the 75% of the approved subsistence allowance will be paid to them twice, under certain conditions and after the approval of the Director-General of the Ministry of Education. The letter ended by informing the applicant and the other teachers that the Ministry of Education will consider their cases and communi-  
20 cate with them.

Finally the respondent, after considering the matter, replied by letter dated the 16th June 1986, that the applicant is not entitled to the allowance claimed because her husband, who is also a member of the Educational Mission was receiving rent allowance since  
25 the 1st September, 1985, and the applicant joined her husband and assumed duties on the 15th September, 1985, that is when there was already, a rented house.

Counsel for the applicant based his arguments on the ground that the sub judge decision is wrong in that the respondent in  
30 reaching its decision wrongly interpreted the term "subsistence allowance" in paragraph 6.4.4. of the conditions as having the same meaning as the terms "rent allowance" in paragraph 6.3 of the conditions and submitted that the two terms refer to two distinct and separate allowances and should not be confused.

Counsel for the respondent argued that the granting of subsistence allowance is, according to the conditions of service, within the discretion of the Director-General of the Ministry, and the sub-judice decision was reasonably open to him having regard to the circumstances of the case. He contended that the allowance in question is granted for a limited number of days in order to cover immediate temporary needs of the teachers concerned until they settle down and the most basic need intended to be covered by it is housing. Counsel submitted that the applicant, at the time of her arrival to London had no housing problem, since her husband had already rented a house and was receiving rent allowance, and was not, therefore in need of the subsistence allowance.

The whole issue in the present case is whether the sub-judice decision was reasonably open to the respondent.

The remuneration and other allowances of teachers, members of the Educational Mission in England, comes under paragraph 6 of the conditions of service. Thus paragraph 6.1 refers to their monthly salary, paragraph 6.2 to the expatriation allowance, 6.3 to the rent allowance and 6.4 to transfer expenses. Paragraph 6.4 covers air tickets, expenses for air charged for extra weight, packing and insurance expenses and subsistence allowance which comes under paragraph 6.4.4.

The subsistence allowance, which comes under the heading of transfer expenses is the only one that is not granted as of right is depended on the approval of the Director - General of the Ministry of Education, the respondent in the recourse.

It has been all along the stand of this Court that it will not interfere with a decision of an administrative organ in the exercise of its discretionary powers provided such powers are legally and reasonably exercised.

The respondent in reaching the sub-judice decision took into consideration the fact that the allowance in question is granted in

order to cover mainly any immediate accommodation expenses of the teachers concerned for their first days in England and dismissed the claim of the applicant on the ground that her husband had already rented a house by the time she assumed her duties for  
5 which he received a rent allowance and was not thus in need of any immediate temporary accommodation.

I find that, in the circumstances, the sub judice decision was reasonably open to the respondent and no cause has been shown for its annulment.

10 In the result this recourse is dismissed with no order for costs.

*Recourse dismissed.  
No order as to costs.*