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[TRIANTAFYLIDIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
PANTELIS SKOURIDES,

PANTELIS
SKOURIDES
v.
THE ATTORNEY-
GENERAL OF
THE REPUBLIC
(MINISTRY OF
EDUCATION)

Applicant

and

THE ATTORNEY-GENERAL OF THE REPUBLIC,
THROUGH THE MINISTRY OF EDUCATION,

Respondent

(Case No 92/65)

Elementary Education—School-teachers—Date of birth—Decision of the Review Committee rejecting Applicant's contention regarding his date of birth—Strong doubt that the said decision was taken under a misconception of fact—Decision, therefore, annulled as being the product of a defective exercise of the relevant discretion, contrary to law and in excess and abuse of powers—Date of birth—Onus on the public officer to satisfy by positive evidence the appropriate authorities that the correction sought regarding his date of birth ought to have been made

Date of birth—School-teachers—Public officers—Correction of date of birth sought by public officers—Onus on them to satisfy the appropriate authorities by positive evidence that such correction ought to have been made—See also above

School-teachers—Elementary Education—Date of birth—Correction sought—See above

Birth—Date of birth—Correction—Onus—See above

Administrative Law—Discretion of administrative authorities—Defective exercise thereof—Vitiates the relevant decision being the product of such defective exercise—Which decision is, thus, contrary to law and in excess and abuse of powers—Decision taken under a misconception of fact—Null and void for the reasons aforesaid—See also, above under Elementary Education

Discretion—Defective exercise of by the administrative authorities—See above

Decision—Administrative decision taken under a misconception of fact—Product of a defective exercise of the relevant discretion—Decision contrary to law and in excess and abuse of powers—See above under Elementary Education—Administrative Law

Abuse and excess of powers—See above.

Excess and abuse of powers—See above.

Administrative Courts—Factual situation—Powers of the Court in relation thereto—Choice either of clearing up the factual situation or of annulling the sub judice decision and allowing this to be done by the appropriate administrative authorities—The second course followed in the present case.

Courts—Administrative Courts—Factual situation—Choice between two courses—See immediately above.

By this recourse the Applicant—a school-teacher in the Greek Communal Elementary Education Schools—complains against the decision of the Review Committee (Ἀναθεωρητικὴ Ἐπιτροπὴ), which was functioning at the material time in the Greek Education Office, under the Communal Chamber : by virtue of that decision the said Committee rejected the contention of the Applicant that his correct date of birth, for official records purposes—and in relation, also, to his retirement from service—was the 27th November, 1906 and not the 27th July, 1903.

The Committee, in rejecting the contention of the Applicant that his date of birth was the 27th November, 1906, relied strongly on the fact that in the church records it is stated that a child was born to his parents, on the 27th November, 1906, named "Vassilios" (and not "Pantelis" which is the Applicant's name)—and, of course, if the Applicant did have in fact a brother named "Vassilios", who was born on the said date, then his contention would be baseless ; so, this must have influenced originally the Complaints Committee and then the said Review Committee decisively against the Applicant. But if the Applicant—as he contends—never had a brother named "Vassilios", then this is a matter which might support, and definitely not detract from, the credibility of the Applicant's version that was in fact *he*—afterwards named "Pantelis"—who was born on the 27th November, 1906. Therefore, until this matter is cleared up with sufficient certainty—that which was not done—there is bound to exist a strong doubt as to whether or not the decision complained of has not been taken under a misconception of fact.

In granting the application and annulling the *sub judice* decision, the Court :

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Held, (1). I have approached this case fully bearing in mind that the Applicant had to satisfy by positive evidence (see *Ieromonachos and The Republic*, 4 R.S.C.C. 82) the Review Committee that the correction sought regarding his date of birth ought to have been made, and that it is not for this Court to decide about the correct date of birth of the Applicant. This Court has to leave the *sub judice* decision of the Review Committee stand, if such decision was reasonably open to the Committee on the material before it ; provided, however, that such material does not contain, or has not led to, any misconception of fact.

(2) (a) I must say at once that, to say the least, a strong doubt has arisen in my mind to the effect that in the circumstances of the present case the Review Committee may indeed have acted under a misconception of fact.

(b) Until it is cleared up, with sufficient certainty, whether the Applicant ever had a brother named "Vassilios", and, if indeed he had no such brother, what has become of the child born to his parents on the 27th November, 1906—(could he have been the Applicant himself, who eventually was named "Pantelis" as he alleges ?)—there is bound to exist strong doubt as to whether or not the *sub judice* decision has not been based on a misconception of fact.

(3) (a) This Court has the choice of either clearing up the factual situation itself or of annulling the *sub judice* decision and allowing this to be done by the appropriate authorities (see *Photiades and Co. and The Republic* 1964 C.L.R. 102 at p. 115). I have decided to follow the second course, in view of the nature of this case.

(b) Thus, the *sub judice* decision of the Review Committee is hereby declared null and void and of no effect whatsoever, as being the product of a defective exercise of the relevant discretion, contrary to law and in excess and abuse of powers.

(c) I do not want to leave the impression that I minimize the importance of the factors that the Applicant, in the past, had stated his date of birth to be, first, in 1903 and, then, in 1904, or that such factors are not considerations weighing a lot against the Applicant. But it is necessary to give to the said factors their due weight after examining all relevant material on the basis of facts correctly ascertained and sufficiently established by proper proof.

*Decision complained of annulled.
No order as to costs.*

Cases referred to :

Ieromonachos and The Republic, 4 R.S.C.C. 82 :

Phodiades and Co. and The Republic 1964 C.L.R. 102 at p. 115.

Recourse.

Recourse against the decision of the Review Committee, functioning at the material time in the Greek Education Office, under the Greek Communal Chamber, by virtue of which Applicant's contention that his correct date of birth for official records purposes—and in relation, also, to his retirement—was the 27th November, 1906, was rejected.

L. Clerides for the Applicant.

G. Tornaritis for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: By this recourse the Applicant complains against a decision of the Review Committee (Αναθεωρητική Επιτροπή), which was functioning at the material time in the Greek Education Office, under the Greek Communal Chamber; by virtue of such decision the said Committee rejected the contention of the Applicant that his correct date of birth, for official records purposes—and in relation, also, to his retirement—was the 27th November, 1906.

The said decision was communicated to the Applicant by letter dated 19th February, 1965 (see *exhibit* 1); the actual text of the decision is to be found in the relevant file of the Review Committee (see *exhibit* 7); a comparison of the decision with the aforesaid letter of the 19th February, 1965, shows that what was communicated to the Applicant were in fact the full contents of such decision.

The history of events which led to the *sub judice* decision is as follows:—

It is common ground that originally the Applicant had produced a certificate of birth stating his date of birth to be the 27th July, 1903; thus, this date was entered, for official records purposes, as being the date of birth of the Applicant.

On the 23rd November, 1924, the Applicant filled in a questionnaire as a school-teacher (see blue 64 in his official personal

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file, *exhibit 5*) in which he stated his date of birth as the 9th August, 1904; this took place during the first month of his service as a school-teacher.

In October, 1955, he wrote an undated letter to the then Education Office of the British Colonial Government, on the subject of his retirement, and he stated therein as his date of birth the 27th July, 1903, and as his date of retirement, at the age of 60 years, the 27th July, 1963 (see blue 201 in *exhibit 5*).

On the 16th June, 1962, the Applicant was informed by the Greek Education Office (hereinafter to be referred to as the "Education Office") that he was due to retire on the 1st September, 1963. (see blue 237 in *exhibit 5*)

On the 20th September, 1962, the Applicant wrote back enclosing a certificate of birth, No. 36366, issued by the District Officer Nicosia (see blues 239 and 238 in *exhibit 5*) which was dated the 14th September, 1962, and showed the date of birth of the Applicant to be the 27th November, 1906; it was stated in such certificate that it was based on information extracted from the Registers of Birth in the District Office and on an affidavit "for alteration of name" which was produced in 1962.

As it appears from the material before the Court (see para. 1 of *exhibit 2*) it seems that there was an entry about the birth of a child to the parents of the Applicant on the 28th July, 1906, but the name of the child had not been entered, so the affidavit produced, as above, did not alter any existing name, but merely filled in the relevant gap in the entry by putting there the name "Pantelis", i.e. the christian name of the Applicant.

On the 4th October, 1962, the Applicant addressed a further letter to the Education Office (see blue 242 in *exhibit 5*) stating that he had a brother named Pantelis too, who was born on the 27th July, 1903, and who died on the 28th September, 1903, after he had been baptized on the same date. He enclosed an affidavit dated the 28th September, 1962, in which he had sworn to the truth of the above allegation; also, a certificate, dated the 25th September, 1962, which had been issued by the priest of Chryssalimotissa Church, in Nicosia, and in which it was stated that it was shown by the Church records that Pantelis Skourides was born on the 27th July, 1903, was baptized on the 28th September, 1903, and had died on the same day

On the 19th October, 1962, it was pointed out to the Applicant by letter of the Education Office (see blue 244 in *exhibit 5*) that on the 23rd November, 1924 he had made a signed statement

to the effect that his date of birth was the 9th August, 1904, (see blue 64 in *exhibit 5*) and that a birth certificate issued by the District Officer, No. 17953, which had been produced by Applicant to the Education Authorities, showed his date of birth to be the 27th July, 1903, and as a result that date was entered in the official records as his date of birth. It was added that later birth certificates, issued on the basis of affidavits by the Applicant, could not be taken into account by the Education Office.

On the 4th January, 1963, the Applicant complained, to the Complaints Committee—then functioning in the Education Office—against the decision conveyed to him on the 19th October, 1962, as above. (see blue 253 in *exhibit 5*).

Applicant was, then, requested, on the 11th January, 1963, by the Education Office (see blue 248 in *exhibit 5*) to produce a copy of his graduation certificate from the Teachers' College and he replied on the 17th January, 1963, (see blue 249 in *exhibit 5*) that such certificate had been lost.

On the 4th February, 1963, counsel for the Applicant wrote to the Education Office (see blue 252 in *exhibit 5*) stating that no copy of the aforementioned graduation certificate,—as had been requested—could be produced, but all that had been traced in the relevant records was that in 1921–1922 the Applicant was a student of the Teachers' College and was then aged 17 years. It was added in the letter of counsel that after Applicant's brother Pantelis had died in 1903, the name Pantelis was given to the Applicant when he was born later; and that on the British Nationality Certificate and in all passports issued to the Applicant it was stated that he was born in 1906.

The Complaints Committee considered the matter at its meeting of the 8th February, 1963. Its reasoned decision is to be found in the relevant file (see *exhibit 6*) and has also been produced as a separate exhibit (see *exhibit 2*).

In its said decision the Complaints Committee stated, *inter alia*, that it had considered the allegations of the Applicant and that it had inspected the British Nationality Certificate issued to the Applicant (see *exhibit 3*) as well as two passports of the Applicant (one of which is *exhibit 4*) and that in all these his year of birth was stated to be 1906. The Committee rejected, however, the allegations of the Applicant; stating, *inter alia*, as part of its reasoning, that the church records showed the

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name of the child born to the parents of the Applicant on the 27th November, 1906, to be "Vassilios", whereas the name of the child born on the 27th July, 1903, was recorded as "Pantelis". It concluded by finding that the date of birth of the Applicant was the 27th July, 1903.

On the 25th June, 1963, the Applicant filed a recourse, No. 113/63, against the above decision of the Complaints Committee, which was withdrawn on the 27th September, 1964, upon an undertaking for a reconsideration of the matter; such reconsideration took place before the Review Committee, which had been set up in the meantime in the Education Office.

In the relevant decision (see *exhibit 7*) of the Review Committee (where the aforesaid recourse is described, mistakenly, as "No. 183/63") it is stated, *inter alia*, that the Review Committee heard the evidence of witnesses adduced by the Applicant to prove that he was born on the 27th November, 1906, but it was not satisfied on the material before it that he had adduced positive evidence to support his case. The Committee stated that having taken into consideration all the material placed before it for the occasion, as well as in relation to the previous application of the Applicant (before the Complaints Committee), it had decided to dismiss the Applicant's application.

As stated earlier, the decision of the Review Committee was communicated to the Applicant by letter dated the 19th February, 1965, and this recourse was filed on the 7th May, 1965; in the Application it is alleged that the Applicant received the letter of the 19th February, on the 23rd February, 1965, and as this does not appear to be disputed by the Respondent the recourse cannot be held to be out of time, as it would have been had the Applicant come to know of the decision of the Review Committee earlier, before the 21st February, 1965.

In the motion for relief in this recourse there is, also, an alternative claim against an omission to correct the date of birth of the Applicant; but this claim has not been pressed by counsel for the Applicant at the hearing and it is, therefore, deemed to have been abandoned.

In the body of the Application it is stated that on the 27th April, 1965,—after the filing of the recourse—counsel for the Applicant wrote a letter to the Education Office, in the Ministry of Education, stating that he had new material evidence to produce in the matter and seeking further consideration thereof.

As from the motion for relief in the recourse it is clear that the Applicant in this recourse attacks only the decision of the Review Committee, in February, 1965. I cannot take notice of this subsequent development in deciding this Case. Actually to enable consideration of new material by the appropriate authorities, and in view of the possibility of an out-of-court arrangement of the matter, the present recourse had to be adjourned more than once but in the end nothing seems to have come out of all this and the recourse was heard on the 10th March, 1967.

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The first submission of counsel for the Applicant has been that the Review Committee has failed to pay due regard to official documents such as the certificate of British Nationality and the passport of the Applicant; as it is clear that the Review Committee had in mind all the material produced in support of the earlier application of the Applicant to the Complaints Committee, and as the said official documents were before the said Committee, it follows that the Review Committee knew of them and weighed their significance, and, thus, this submission of counsel for the Applicant cannot be held to be well-founded.

Counsel for the Applicant explained, next, that the Applicant never had a brother named Vassilios; it was intended at first to name the Applicant Vassilios, but later they gave him the name of his dead brother, Pantelis. Thus, he argued the Complaints Committee, and consequently the Review Committee, which took into account the material before the Complaints Committee, based their decisions on a misconception of fact, namely, that it was a brother of Applicant, Vassilios, and not the Applicant, who was born on the 27th November, 1906.

I have approached this Case fully bearing in mind that the Applicant had to satisfy by positive evidence (see *Ieromonachos* and *The Republic*, 4 R.S.C.C., p. 82) the Review Committee that the correction sought regarding his date of birth ought to have been made, and that it is not for this Court to decide about the correct date of birth of the Applicant. This Court has to leave the *sub judice* decision of the Review Committee stand, if such decision was reasonably open to the Committee on the material before it; provided, however, that such material does not contain, or has not led to, any misconception of fact.

I must say at once, that, to say the least, a strong doubt has arisen in my mind, to the effect that the Review Committee

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may indeed have acted under a misconception of fact. Such doubt has arisen as follows:—

As stated earlier, counsel for Applicant stated that the Applicant never had a brother named Vassilios; and as this did not appear to be disputed by counsel for Respondent no evidence was called for on this point.

The Complaints Committee, in rejecting the contention of the Applicant that his date of birth was the 27th November, 1906, relied strongly on the fact that in the church records it is stated that a child was born to his parents, on the 27th November, 1906, named "Vassilios"—and, of course, if the Applicant did have a brother named Vassilios, who was born on the said date, then the Applicant's contention would be baseless; so, this must have influenced the Complaints Committee decisively against the Applicant. But if the Applicant never had a brother named Vassilios, then this is a matter which might support, and definitely not detract from, the credibility of the version of the Applicant that it was in fact *he* who has been born on the 27th November, 1906.

There is no doubt that the Review Committee in reaching its *sub judice* decision took into account the material before the Complaints Committee (see *exhibit 1, inter alia*); and, as part of such material, it must have taken into account the fact, stated in the decision of the Complaints Committee, that there existed in the church records an entry showing that the name of the child who was born on the 27th November, 1906, was "Vassilios".

Until it is cleared up, with sufficient certainty, whether the Applicant ever had a brother named Vassilios, and, if indeed he had no such brother, what has become of the child born to his parents on the 27th November, 1906—(could he have been the Applicant himself, who eventually was named Pantelis after his late brother, as he alleges?)—there is bound to exist strong doubt as to whether or not the *sub judice* decision has not been based on a misconception of fact.

This Court had the choice of either clearing up the factual situation itself or of annulling the *sub judice* decision and allowing this to be done by the appropriate authorities (see *Photiades & Co.* and *The Republic*, 1964 C.L.R. 102 at p. 115). I have decided to follow the second course, in view of the nature of this Case.

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Thus, the decision of the Review Committee, as communicated to the Applicant by means of *exhibit 1*, is hereby declared to be null and void and of no effect whatsoever, as being the product of a defective exercise of the relevant discretion, contrary to law and in excess and abuse of powers.

Furthermore, another reason for annulling the *sub judice* decision, are the contents of its last paragraph, wherein it is stated (see *exhibit 1*) that a witness had said, "to the surprise of the Applicant" that four well-known persons were classmates of his and of the Applicant at the elementary school; this statement seems to have been taken by the Review Committee as having delivered the final blow to the case of Applicant; yet it does not appear that the dates of birth of the said four persons were ascertained, and they are not recorded in the reasoning of the Committee; it seems that the members of the Committee used their own knowledge of the matter. This clearly amounts to a defective way of dealing with the matter before the Committee, rendering its resultant decision contrary to law and in excess and abuse of powers.

I do not want to leave the impression that I minimize the importance of the factors that the Applicant, in the past, had stated his date of birth to be, first, in 1903 and, then, in 1904, or that such factors are not considerations weighing a lot against the Applicant. But it is necessary to give to the said factors their due weight after examining all the relevant material on the basis of facts correctly ascertained and sufficiently established by proper proof.

For all the above reasons this recourse accordingly succeeds; but in the circumstances I have decided to make no order as to costs.

*Decision complained of annulled.
No order as to costs.*