

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS CONSTANTINIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION,

Respondent.

(Case No. 231/65).

Secondary Education — Schoolmasters — Promotions — Decision of the Educational Service Committee, Ministry of Education, refusing the Applicant promotion as a schoolmaster, grade A, in accordance with the provisions of section 12 (a) of the Masters of Secondary Education Communal Schools Law, 1963 (Law of the Greek Communal Chamber No. 10 of 1963)—Decision not duly reasoned—Annulled as being contrary to law viz. to well established principles of Administrative Law—And, also, as taken in abuse and excess of powers—See, also, herebelow under Administrative Law.

Administrative Law—Administrative decisions—Need for due reasoning of administrative decisions—This is a typical instance of a decision (supra) which, under the well established principles of administrative law, has to be duly reasoned—Especially in view of the following: The said decision, viz. the refusal to promote Applicant as aforesaid (supra), was unfavourable to the subject, i.e. the Applicant; it had been taken by a collective organ, i.e. the Educational Service Committee, supra; and it was in relation to a matter involving alternative possible grounds of non-conformity with the relevant legislation, i.e. section 12 (a) of Law No. 10 of 1963, supra—Therefore, the lack of due reasoning for the sub judice decision renders it a decision contrary to law, viz. the aforesaid principles of Administrative law—And, also, in abuse and excess of powers—See, also, under Administrative Law immediately below—See, also, under Secondary Education above.

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Administrative Law—Administrative decisions—Need for due reasoning—The reasons given must not be obscure and must not leave any informed reader in real and substantial doubt—See, also, under Administrative Law, above; and under Secondary Education above.

Principles of Administrative Law—See above.

Abuse and excess of powers—See above.

Excess of powers—See above.

Administrative decisions—Must be duly reasoned—See above.

Decisions contrary to law within Article 146 of the Constitution—See above.

In this case the Applicant complains against a decision of the Educational Service Committee, in the Ministry of Education, refusing him promotion as a schoolmaster, to grade A in accordance with the provisions of section 12 (a) of the Masters of Secondary Education Communal Schools Law, 1963, (Law of the Greek Communal Chamber No. 10 of 1963). Paragraph (a) of the said section 12 provides that permanent schoolmasters, classified in accordance with their qualifications in grades B or C, may be promoted to the immediately higher grade if, while being in the service, they have obtained, through post-graduate studies, additional special qualifications, by attending for two full academic years a specialized school abroad, approved by the Education Office, Ministry of Education. The Applicant being a permanent schoolmaster, grade B, proceeded to England in 1964–1965 on post-graduate studies, and there he obtained the three qualifications set out in full in the judgment *post*. On his return from abroad the Educational Service Committee dealt with the matter of the Applicant's promotion to grade A and, eventually, decided that the Applicant could not be promoted to grade A as aforesaid as he did not satisfy the requirements of section 12 (a) of the said Law No. 10 of 1963 (*supra*); nothing more was recorded in the minutes of the Committee as to why the Applicant did not satisfy the aforesaid requirements.

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

Held: (1) As under section 12 (a) of Law No. 10 of 1963 (*supra*) there are more than one reasons for which a schoolmaster

may be held to be unqualified for promotion, it follows, necessarily, that stating, simply that the Applicant did not satisfy the requirements of the section, without specifying why this was so, does not provide a clear and complete picture of the reasons for which the Applicant was refused promotion. (*Dicta in Givaudan and Co. v. Minister of Housing* [1966] 3 All E.R. 696, at p. 698, *adopted*).

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(2) We are, thus, faced with a situation in which the *sub judice* decision is not duly reasoned; and the changing line of Respondent at the hearing (*infra*) has indeed resulted in showing how necessary it was for the said decision to have been duly reasoned.

(3) In my view this is a typical instance of a decision which had to be duly reasoned, as it was unfavourable to the subject, the Applicant; it had been taken by a collective organ, the Education Service Committee; and it was in relation to a matter involving alternative possible grounds of non-conformity with the relevant legislation *viz.* section 12 (a) *supra*. (Principles laid down in *Peo and The Board of Cinematograph Films Censors and another* (1965) 3 C.L.R. 27, at p. 37, *applied*).

(4) (a) The lack of due reasoning for the *sub judice* decision renders it, in the circumstances, a decision contrary to law *viz.* the aforesaid well established principles of Administrative Law (see *Peo's case ubi. supra*), and, also, in abuse and excess of powers.

(b) It is, therefore, hereby declared null and void. The whole matter has to be reconsidered and a duly reasoned decision has to be reached, and communicated to the Applicant. Applicant is entitled to part of his costs assessed at £20.

Sub judice decision annulled.
Order as to costs as aforesaid.

Cases referred to:

Givaudan and Co. v. The Minister of Housing [1966] 3 All E.R. 696, at p. 698, *adopted*;

Georghiadou and The Attorney-General [1966] 3 C.L.R. 612;

Peo and The Board of Cinematograph Films Censors and another [1965] 3 C.L.R. 27, at p. 37, *applied*.

Recourse.

Recourse against a decision of the Respondent refusing Applicant promotion, as a schoolmaster, to Grade A, in accordance with the provisions of section 12 (a) of the Masters of Secondary Education Communal Schools Law, 1963 (Greek Communal Law 10/63).

L. Clerides for the Applicant.

Chr. Mitsides and *G. Tornaritis* for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this Case the Applicant complains against a decision of the Educational Service Committee, in the Ministry of Education, refusing him promotion, as a schoolmaster, to grade A, in accordance with the provisions of section 12 (a) of the Masters of Secondary Education Communal Schools Law, 1963 (Greek Communal Law 10/63).

The said decision was communicated to Applicant by letter dated the 23rd October, 1965 (see *exhibit 1 (a)*).

The Applicant, being a schoolmaster, grade B, proceeded to England in 1964-1965, on post-graduate studies, and there he obtained the following qualifications:

- (1) A Diploma of English Studies of the West London College of Commerce.
- (2) The Associateship of the Institute of Linguists, (see *exhibit 3*).
- (3) A Diploma of English Studies of the University of Cambridge, (see *exhibit 2*).

According to the Education Division of the British Council, the last-mentioned qualification is, as a language test, superior to the language requirements for a Bachelor of Arts Pass Degree (see *exhibit 4*).

On the 3rd June, 1965, Applicant was also issued, by the Ministry of Education in Greece, with a certificate to the effect

that he had been classified as a headmaster under Greek educational legislation, (see *exhibit 5*).

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On his return from abroad, the matter of the promotion of Applicant came up before the Educational Service Committee, on the 16th September, 1965, and it was decided, having in mind the three qualifications of the Applicant, which he obtained, as above, in England, that he could not be promoted to grade A as he did not satisfy the requirements of section 12 (a) of Law 10/63; nothing more was recorded in the relevant minutes of the Committee (see *exhibit 8*) as to why the Applicant did not satisfy the said requirements.

He was informed of this decision by letter dated 20th September, 1965, (see *exhibit 1*).

On the same day, the Applicant wrote back to the Committee (see *exhibit 6*) asking for reconsideration of his case.

The matter was reconsidered by the Committee on the 12th October, 1965; this time the Committee re-examined the matter in the light, also, of his classification as a headmaster by the Greek Ministry of Education, as aforesaid. It was decided, once again, that he did not satisfy the requirements of section 12 (a) of Law 10/63; nothing was stated in the relevant minutes (*exhibit 9*) as to why this view was taken.

Applicant was informed accordingly, by letter dated the 23rd October, 1965, (see *exhibit 1 (a)*).

He filed the present recourse on the 1st December, 1965.

On the 7th December, 1965, the case of the Applicant came up again before the Educational Service Committee, after a new application of the Applicant for the purpose; the Committee adhered to its previous view (see its minutes *exhibit 10 (c)*). This last decision is not *sub judice* in these proceedings; but it does not, in any way, carry the matter any further, because it is not by any means a later executory decision revoking, or supervening after, the *sub judice* decision (*exhibit 9*), but merely a confirmatory one.

Paragraph (a) of section 12 of Law 10/63 provides that permanent schoolmasters, classified in accordance with their qualifications in grades B or C, may be promoted to the immediately higher grade if, while being in the service, they

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have obtained, through post-graduate studies, additional special qualifications, by attending for two full academic years at a specialized school abroad, approved by the Education Office.

Paragraphs (b) and (c) of section 12 lay down certain further requirements for promotion, with which we are not concerned here because it is only on paragraph (a) that the Educational Service Committee has relied in the present case.

It is common ground that Applicant's post-graduate studies in England, in 1964-1965, did not last for two full academic years. It is his contention, however, that the Diploma of English Studies of the University of Cambridge is a qualification which normally requires studies of two full academic years and that, therefore, the relevant prerequisite of section 12 (a) has been satisfied; in this connection the Regulations governing the grant of such Diploma have been produced (see *exhibit 7*) and reliance has been placed on the Judgment of this Court in *Georghiadou and The Attorney-General* (1966) 3 C.L.R. 612 by which it has been held, in relation to an analogous provision in section 11 (2) (ii) of Law 10/63, that what matters is not the actual length of studies abroad, but whether the qualification obtained normally requires the prescribed length of studies abroad.

In the Opposition, filed in this Case on the 2nd February, 1966, no reasons are given as to why the Applicant was found not to satisfy the requirements of section 12 (a) of Law 10/63, except what is stated in paragraph 3 of the facts relied upon in such Opposition to the effect that the Applicant did not stay abroad for two years of studies.

At the first hearing of this Case counsel for Respondent stated that Applicant does not come within the ambit of section 12 (a) of Law 10/63 because he did not study abroad for two academic years and, also, because his qualifications have not been recognized, for the purposes of section 12 (a), by the Greek Education Office.

At the continuation of such hearing, on another date, counsel for Respondent—not the one who appeared at the first hearing, but another counsel appearing for him—stated that the Applicant was not promoted to grade A because he had not been classified in grade B on the strength of his qualifications—which were only sufficient for grade C under section 11 of Law 10/63—

but by operation of section 42 of the Law which entitled schoolmasters to remain in the grade in which they were found to be when Law 10/63 was enacted; counsel added that, actually, the Applicant, through his post-graduate studies, had only raised his qualifications to the standard required for grade B, and did not obtain any additional qualifications entitling him to promotion to grade A. He stated, further, that the Applicant had not studied abroad for two academic years and, also, that when he had gone abroad to study in 1964-1965 he undertook to obtain a qualification in paedagogics which he did not eventually obtain.

Thus, a considerable change of front was made by Respondent, regarding the real reasons for the non-promotion of the Applicant. The only reason common to the reasons put forward at the first and second hearings is the one relating to the non-studying abroad for two full academic years.

The full minutes of the Educational Service Committee for the meetings of the 16th September and 12th October, 1965, were produced (see *exhibits 10 (a) and 10 (b)*) but nothing, further, was discovered therein, by way of reasoning for the *sub judice* decision, than what is to be found in *exhibits 8 and 9* (which are extracts from the said minutes).

As under section 12 (a) of Law 10/63 there are more than one reasons for which a schoolmaster may be found to be unqualified for promotion, it follows, necessarily, that stating simply that the Applicant did not satisfy the requirements of section 12 (a), without specifying why this was so, does not provide a clear and complete picture of the reasons for which the Applicant was refused promotion. In a recent Administrative Law case in England, in which there existed a statutory requirement for reasons to be given for a Minister's decision, it was held that such requirement was not satisfied when the reasoning given was obscure and would leave in the mind of an informed reader real and substantial doubt as to the reasons for the decision concerned (see *Givaudan & Co. v. Minister of Housing*, ([1966] 3 All. E.R. p. 696, p. 698). I am of the view that the reasons given for not promoting the Applicant are obscure and would leave any informed reader in real and substantial doubt. We are, thus, faced with a situation in which the *sub judice* decision *exhibit 9* (as well as *exhibit 8* which preceded it)—is not duly reasoned; and the changing line of Respondent at the hearing, as aforesaid,

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has, indeed, resulted in showing how necessary it was for the *sub judice* decision to have been duly reasoned.

Well-established principles of Administrative Law prescribe the need for the due reasoning of administrative decisions, such as the subject-matter of this Case; the matter has been gone into in *PEO and The Board of Cinematograph Firms Censors and another*, (1965) 3 C.L.R. p. 27 at p. 37, and need not be dealt with in this Judgment once again. In my opinion, *exhibit 9* is a typical instance of a decision which had to be duly reasoned, as it was unfavourable to the subject—the Applicant—it had been taken by a collective organ—the Educational Service Committee—and it was in relation to a matter involving alternative possible grounds of non-conformity with the relevant legislation, section 12 (a) of Law 10/63.

The lack of due reasoning for the *sub judice* decision renders it, in the circumstances, a decision contrary to law—*viz.* the aforesaid principles of Administrative Law—and, also, in abuse and excess of powers. It is, therefore, hereby declared to be null and void and of no effect whatsoever. The whole matter has to be reconsidered, and a duly reasoned decision has to be reached, and communicated to the Applicant.

Regarding costs, I think Applicant is entitled to part of his costs which I assess at £20.

*Sub judice decision annulled.
Order for costs as aforesaid.*