

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IOULIANI CHRISTODOULIDOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF EDUCATION AND ANOTHER,

Respondents.

(Case No. 98/67).

1968
Feb. 3

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IOULIANI
CHRISTODOULIDOU
v.
REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

Schoolteachers—Elementary Education—Appointments—Refusal to appoint Applicant as elementary schoolteacher—Wrong legal basis of relevant decision—Which was taken on the mistaken assumption that the Regulations governing the grading of the work of “schoolmasters” in the Secondary Education were made applicable to “schoolteachers” in the Elementary Education too—It follows that the decision complained of was taken under a misconception and has to be annulled—The Schoolteachers of Elementary Communal Schools Law, 1963 (Greek Communal Law No. 7 of 1963) sections 32 and 34(2).

Administrative Law—Decision taken under a misconception of law amounts to a decision without proper legal basis—Such decision is, therefore, null and void and has to be annulled—See, also, above.

Appointments—Schoolteachers—Non-appointment of Applicant as elementary schoolteacher—See above.

Elementary Education—See above.

Secondary Education—See above.

Education—Elementary Education—See above.

In this recourse the Applicant complains against a decision of the Educational Service Committee in the Ministry of Education whereby she was refused appointment as a schoolteacher in the elementary education. The reasons given for this decision are, in substance, that the Com-

1968
Feb. 3

—
IOULIANI
CHRISTODOULIDOU
v.
REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

mittee took the view that no appointment could be offered to the Applicant because her past service, during one of the material past school-years, was not satisfactory, as required under section 34(2) of the Schoolteachers of Elementary Communal Schools Law, 1963 (Greek Communal Law No. 7 of 1963); such view is stated in *Exhibit 1* to have been based on the Regulations governing, *inter alia*, the grading of the work of schoolteachers (διδασκάλων). It is common ground that the Regulations on which the Committee relied are, *in fact*, the Regulations governing the grading of the work of "schoolmasters" (καθηγητῶν) in the Secondary Education, which were adopted by the Selection and Administration Committee of the Greek Communal Chamber on the 17th May, 1962. It was thought, as it appears from the material before the Court, that the Committee of Administration of the Greek Communal Chamber (as the Committee of Selection and Administration of the Greek Communal Chamber came to be known later) had decided on the 8th August, 1963, that an earlier decision thereof of the 21st January, 1963, concerning the characterization of the work of "schoolmasters", was made applicable, also, to "schoolteachers", and that, as a result, the aforesaid Regulations grading the work of the "schoolmasters" were "obviously" applicable to "schoolteachers" too (see minutes of the meeting of the 9th August, 1963, exhibit 2, of the Appointments Committee, the predecessor of the aforesaid Educational Service Committee).

During the present proceedings, however, it has transpired that the aforementioned decision of the 21st January, 1963, was in fact a decision of the Committee of Administration taken on the 17th January, 1963, (see exhibit 7), but no decision of such Committee dated the 8th August, 1963, and rendering either the decision of the 17th January, 1963, or the aforesaid Regulations applicable to "schoolteachers", existed.

Under section 32 of the aforesaid Law No. 7 of 1963, the grading of the work of "schoolteachers" is to be governed by Regulations made by the Committee of Administration; no such Regulations appear ever to have been made, independently of the said Regulations made in relation to schoolmasters.

In granting the application and annulling the decision complained of, the Court:-

Held, (1). It follows from the facts before me that the Educational Service Committee, in view of the aforementioned minutes of the Appointments Committee for the 9th August, 1963, *exhibit 2, supra*, was misled into thinking that the Regulations governing the grading of the work of "schoolmasters" had been rendered applicable to a schoolteacher, too, such as the Applicant—by decision of the Committee of Administration of the Greek Communal Chamber—and it proceeded to apply them accordingly in reaching its *sub judice* decision.

(2) In view however of section 32 of the Law No. 7 of 1963 (*supra*) and in the absence of a decision of the Committee of Administration to that effect, the said Regulations were not applicable at the material time to the Applicant.

(3) The Educational Service Committee, thus, has acted in the matter without proper legal basis and under the misconception that it was bound by the specific criteria laid down in the aforesaid Regulations; therefore, its decision subject matter of these proceedings has to be annulled. The matter has now to be reconsidered in its correct context.

*Sub judice decision annulled ;
£20 costs in Applicant's favour.*

Cases referred to:

Christodoulidou and the Republic (1966) 3 C.L.R. 887.

Recourse.

Recourse against a decision of the Educational Service Committee in the Ministry of Education by virtue of which Applicant was refused appointment as a schoolteacher.

D. Papachrysostomou, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANAFYLLIDES, J.: In this recourse the Applicant complains, in effect, against a decision of the Educational Service

1968
Feb. 3

—
IOULIANI
CHRISTODOULIDOU
v.
REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

1968

Feb. 3

—

IOULIANI
CHRISTODOULIDOU
v.

REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

Committee in the Ministry of Education (referred to in this judgment as “the Committee”) by virtue of which she was refused appointment as a schoolteacher; such decision was communicated to the Applicant by a letter of the 20th March, 1967 (see *exhibit 1*).

A rather long and complicated history of administrative steps and judicial proceedings has led up to the subject-matter of this recourse; such history is to be found set out in the judgment of this Court in *Christodoulidou and The Republic*, (1966) 3 C.L.R. 887 — a previous recourse by the same Applicant in the same matter — and need not be repeated herein all over again.

After, and as a result of, the said judgment, the Committee reconsidered the case of the Applicant and reached the decision complained of in the present proceedings.

The reasons given for the *sub judice* decision appear to be set out in full in the letter *exhibit 1*, and they are, in substance, that the Committee took the view that no appointment could be offered to the Applicant because her past service, during one of the material past school-years, was not satisfactory, as required under section 34(2) of The Schoolteachers of Elementary Communal Schools Law, 1963 (Greek Communal Law 7/63); such view is stated to have been based on the Regulations governing, *inter alia*, the grading of the work of schoolteachers (διδασκάλων).

It is common ground that the Regulations on which the Committee relied are, *in fact*, the Regulations governing the grading of the work of schoolmasters (καθηγητῶν) — see *exhibit 3* — which were adopted by the Selection and Administration Committee of the Greek Communal Chamber on the 17th May, 1962 (see its decision *exhibit 6*). According to the minutes of a meeting, on the 9th August, 1963, of the Appointments Committee in the Education Office of the Greek Communal Chamber — (such Appointments Committee being the predecessor of the Educational Service Committee in the Ministry of Education) — the said Regulations were taken as being applicable to schoolteachers, too (see *exhibit 2*); it is stated in such minutes that the Appointments Committee was informed, on that occasion, by its Chairman, that the Committee of Administration of the Greek Communal Chamber — (as the Committee of Selection and Administration of the Chamber came to be known later)

— had decided on the previous day, the 8th August, 1963, that an earlier decision thereof, of the 21st January, 1963, concerning the characterization of the work of schoolmasters, was applicable, also, to schoolteachers, and that, as a result the Regulations governing the grading of the work of schoolmasters were “obviously” applicable to schoolteachers, too.

During the present proceedings it has transpired that the aforementioned decision of the 21st January, 1963 was, in fact, a decision of the Administration Committee taken on the 17th January, 1963 (see *exhibit 7*), but no decision of the Administration Committee, dated the 8th August, 1963, and rendering either the decision of the 17th January, 1963, or the relevant Regulations applicable to schoolteachers, existed.

Under section 32 of Greek Communal Law 7/63, the grading of the work of schoolteachers is to be governed by Regulations made by the Committee of Administration; no such Regulations appear ever to have been made, independently of the Regulations (*exhibit 3*) made in relation to schoolmasters.

It follows, therefore, that the Educational Service Committee, in view of the aforementioned minutes of the Appointments Committee, for the 9th August, 1963 (see *exhibit 2*), was misled into thinking that the Regulations governing the grading of the work of schoolmasters had been rendered applicable to a schoolteacher, too, such as the Applicant— by decision of the Administration Committee — and it proceeded to apply them accordingly in reaching its *sub judice* decision; in view, however, of the provisions of section 32 of Greek Communal Law 7/63 and the absence of a decision of the Administration Committee to that effect — (and none was produced as having been taken at any time) — the said Regulations were not applicable at the material time to the Applicant. The Committee, thus, has acted in the matter without proper legal basis and under the misconception that it was bound by the specific criteria laid down in such Regulations; therefore, its decision, which is the subject-matter of these proceedings, has to be annulled.

Counsel for Respondents has submitted that, though the aforesaid Regulations were not put into force regarding schoolteachers, the Educational Service Committee was,

1968
Feb. 3

—
IOULIANI
CHRISTODOULIDOU
v.
REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

1968
Feb. 3

—
IOULIANI
CHRISTODOULIDOU
v.
REPUBLIC
(MINISTER OF
EDUCATION AND
ANOTHER)

nevertheless, entitled to decide to adopt them as a matter of practice.

In the present instance, however, no question of such a course having been followed by the Committee could be said to arise, because the Committee did not, actually, decide to adopt the said Regulations as practice, and it could not have so decided once it was labouring under the wrong impression that they were already legally in force in relation to schoolteachers — in view of what is stated in the minutes of the meeting, on the 9th August, 1963, (*exhibit 2*), of the previously existing Appointments Committee.

Before concluding this judgment I should point out that in the previous recourse, in the same matter, by this Applicant (*Christodoulidou and The Republic, supra*) this question, of whether the Regulations, *exhibit 3*, were applicable to her, was not raised, and, therefore, no opportunity was afforded to decide it. All that was in issue therein was the correct application of the rules for the characterization of the work of schoolmasters, as contained in the aforementioned decision of the Administration Committee of the 17th January, 1963, which at that time were assumed — on the strength of the minutes of the Appointments Committee of the 9th August, 1963 (*exhibit 2*) — to be applicable to schoolteachers, too; and as it has been discovered in the present proceedings this is not so, because no decision to that effect was taken by the said Administration Committee.

In the result the *sub judice* decision is hereby declared to be *null and void* and of no effect whatsoever. The matter has now to be reconsidered in its correct context.

There shall also be an order of costs for £20 in favour of the Applicant.

*Sub judice decision annulled.
£20.- costs in Applicant's favour.*