

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS REVISIONAL JURISDICTION AND IN ITS
REVISIONAL APPELLATE JURISDICTION

[A. LOIZOU, J.]

POPI PAPACHRISTOPHOROU KYRIAKOPOULOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND OTHERS,

Respondents.

(Case No. 297/70).

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Educational Service—Educational officers—“Kathigita” viz. Schoolmasters—Higher and Secondary Education Schoolmasters—No distinction between them—With the exception of the Principal of the Paedagogic Academy, all schoolmasters are persons appointed to a public school of Secondary or Higher Education—And there is no distinction in status between a schoolmaster posted at a school of Higher Education or at a school of Secondary Education—Therefore, Applicant’s transfer or move from the Paedagogic Academy (a school of Higher Education) to the Girls Gymnasium in Pallouriotissa (a school of Secondary Education) could be lawfully made, inasmuch as such transfer or move involves neither a change in the office held by her and the duties attached thereto, nor a change in the place of residence—Section 39(2) of the Public Educational Service Law, 1969 (Law 10/69)—Cf. Communal School of Secondary

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v.

ΡΕΠΥΒΛΙΚΗ
(ΥΠΟΥΡΓΕΙΟ ΕΚΠΑΙ-
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Education Law, 1963 (Greek Communal Chamber Law 10 of 1963) (repealed by the said Law 10/69).

Educational Service—Confidential reports on educational officers—Inspection and evaluation of the work of such officers—Schoolmasters posted at the Paedagogic Academy—The Principal of said Academy is the officer who still has competence to make such reports and inspect and assess the work of the teaching staff of the Academy in question—Proviso to section 76(1) of the Public Educational Service Law, 1969 (Law 10/69).

Educational Service—Adverse confidential reports criticizing a particular educational officer for “failures or negligence or improper behaviour in the performance of his duties”—Have to be communicated to the officer concerned—Section 36(3) of the Public Educational Service Law, 1969 (Law 10/69)—But the confidential report in the instant case being merely a matter of appreciation of the applicant’s abilities does not come within the ambit of said section 36(3)—In any event, even if it did come, non-communication does not constitute a valid reason for annulment of the decision subsequently taken, which in the instant case is the sub judice transfer of the applicant—The above in view of the wording of section 36(3)—Cf. also a number of decisions of the Greek Council of State (infra).

Confidential reports on educational officers—Schoolmasters posted at the Paedagogic Academy—To be prepared by the Principal of that Academy—See supra.

Confidential reports—Adverse—Duty to communicate same to the educational officer concerned—Meaning of such adverse report which has to be so communicated—Section 36(3) of Law 10/69, supra.

Higher and Secondary Education—Schoolmasters—No distinction in status—See supra.

Words and Phrases—“Kathigitai” (“Schoolmasters”) in said Law 10/69, supra—“Failures or negligence or improper behaviour...” in section 36(3) of said same Law.

It was held in this case by the learned Judge of the Supreme Court who tried this recourse under Article 146 of the Constitution that :

- (a) "Kathigitis" ("schoolmaster" or "schoolmistress") as defined in the Public Educational Service Law, 1969 (Law 10/69) is a person appointed to a public school of Secondary or Higher Education. There is no distinction, therefore, in status between a schoolmaster posted at a school of Higher Education (such as the Paedagogic Academy, Nicosia) and a school of Secondary Education (such as the Girls Gymnasium, Pallouriotissa quarter).
- (b) Consequently the appropriate authority was empowered to transfer or move the applicant "schoolmistress" (*supra*) from the Paedagogic Academy to the said Girls Gymnasium under the provisions of section 39(2) of the said Law 10/69, inasmuch as such transfer or move involved neither change in the office held by her and the duties attached thereto, nor a change in the place of residence.
- (c) The Principal of the Paedagogic Academy is still the Officer entrusted with the preparation of confidential reports and the inspection and evaluation of the work of the teaching staff of the said Paedagogic Academy.
- (d) There is no obligation to communicate to a schoolmaster a confidential report concerning his professional abilities. Such report does not come within the ambit of section 36(3) of the aforesaid Law 10/69, which makes it incumbent on the administration to communicate to "a particular educational officer" a confidential report (or part thereof) in which such officer "is criticized for negligence, failures or improper behaviour in the performance of his duties".

The facts of this case are briefly as follows :-

The applicant is "Kathigitria" ("schoolmistress") in the Educational Service of the Republic, duly appointed in October, 1968, to the permanent organic post of schoolmistress Grade A (Paedagogics and English) of the class of public schools, Secondary Education. At the same time she was posted, *inter alia*, at the Paedagogic Academy as schoolmistress for paedagogics. On 27th January, 1970, the Educational Committee placed the applicant at her request in Scale B.12, which is a scale in the organic structure of the Secondary Education.

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On June 5, 1970, the Principal of the Paedagogic Academy submitted to the Head of the Department for Higher and Secondary Education the confidential report for the applicant and stated that in spite of the fact that as a schoolmistress she was able, yet he was recommending her transfer on account of her personality, her weakness to contribute positively to the creation of a paedagogic atmosphere and her inability to co-operate harmoniously with her colleagues. Eventually, in view of the aforesaid recommendation of the Principal of the Paedagogic Academy, the applicant was transferred therefrom to the Girls Gymnasium in Pallouriotissa, but later on she was allotted six hours per week for teaching paedagogics at the Academy, in addition to her work at the Girls said Gymnasium.

The said transfer or move was decided by the appropriate authority under section 39(2) of the Public Education Service Law, 1969 (Law 10/69), as the said transfer did not involve either a change in the office held by the applicant and the duties attached thereto, or a change in the place of residence. The applicant objected to her transfer by letter dated August 25, 1970 and asked to be given details of the report upon which the decision was taken. The Head of the Department for Higher and Secondary Education wrote her a letter in reply informing her that on the basis of the confidential report, prepared by the Principal of the Paedagogic Academy (in which her markings (19½) appear and which were given to her by the same letter) her services during the previous year did not reach the standard expected from a schoolmistress of paedagogics in the Paedagogic Academy.

It has been argued on behalf of the applicant that the Principal of the Paedagogic Academy has no authority to inspect, assess or report on a schoolmaster (or schoolmistress) in the Academy. It was further argued that the contents of the said confidential report were not brought to her knowledge before the *sub judice* decision was reached by the appropriate Authority to transfer or move her from the Paedagogic Academy (a school of Higher Education) to a school of Secondary Education *viz.* to the Girls Gymnasium in Pallouriotissa quarter (*supra*). In any event it was the applicant's contention that the Appropriate Authority has no power to move her as they did.

Dismissing the recourse, the Court :-

Held, (1). Before the Public Educational Service Law, 1969 (Law 10/69) was enacted, the preparation of confidential reports and inspection and evaluation of the work of the teaching staff of the Academy (Paedagogic Academy) was done by its Principal. The position remained unaltered after the enactment of the said Law 10/69 (*supra*) by virtue of the proviso to section 76(1) of that Law.

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(2)(a) Under section 36(3) of the aforesaid Law *viz.* the Public Educational Service Law, 1969 (Law 10/69) "the person making a confidential report on a particular educational officer in which the latter is criticized for negligence, failures or improper behaviour in the performance of his duties, must, on the submission thereof, communicate to the officer concerned, this part of the report. Within

But a perusal of the confidential report in issue in this case has led me to the conclusion that the applicant schoolmistress is not therein criticized for "negligence, failures or improper behaviour in the performance" of her duties. It was merely a matter of appreciation of her abilities which, as such, did not have to be communicated to the applicant.

(b) In any event, even if it had, I would say that the non-communication to the applicant of such part of the confidential report that had to be communicated, if at all, is not a reason to annul a decision subsequently taken. (Cf. section 92 of the (Greek) Code of the Civil Administrative Servants; *see also the decisions of the Greek Council of State Nos. 2345/1962, 1438/1967, 732/1968 and 1213/1969*).

(3)(a) "Kathigitis" ("schoolmaster or schoolmistress") as defined in the aforesaid Law 10/69 (*supra*) is a person appointed to a public school of Secondary and Higher Education. There is no distinction in status between a schoolmaster posted at a school of Higher Education and a schoolmaster posted at a school of Secondary Education. The applicant has been appointed

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as "Kathigitria" ("schoolmistress") Grade A Paedagogics and English for Secondary Education schools. Her position has not been affected by the enactment of the new Law (Law 10/69, *supra*); and under the said Law she can be posted to any school of Higher or Secondary education.

- (b) Consequently, her *sub judice* transfer or move from the Paedagogic Academy—a school of Higher Education—to a secondary school in the same town as the aforesaid Girls Gymnasium in Pallouriotissa quarter, could be lawfully effected under the provisions of section 39(2) of the said Law 10/69 (*supra*) by the Appropriate Authority, inasmuch as it involved neither a change in the office held by her and the duties attached thereto, nor a change in the place of residence.

Recourse dismissed.

No order as to costs.

Cases referred to :

Iro Paschali v. The Republic (1966) 3 C.L.R. 593;

Piperis v. The Republic (1967) 3 C.L.R. 295;

Decisions of the Greek Council of State : Nos. 2345/1962, 1438/1967, 732/1968 and 1213/1969.

Recourse.

Recourse against the decisions of the Respondent to mark Applicant's performance for the year 1969 - 1970 with 19½ marks and to transfer and/or move her from the Paedagogic Academy to Pallouriotissa Girls Gymnasium for the year 1970 - 1971.

L. Papaphilippou, for the applicant.

G. Tornaritis, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J. : By the present recourse the applicant prays for —

A. A declaration that the act and/or decision of the respondents to mark her performance for the year 1969 - 1970 with 19½ marks, is null and void and with no effect whatsoever, and

B. A declaration of the Court that the acts and/or decisions of the respondents to transfer and/or move her for the year 1970 - 1971, is null and void and with no legal effect whatsoever.

The applicant was first appointed in the Elementary Education in 1950. In 1963, whilst already a headmistress Grade A, proceeded to the United States and in 1965 she obtained the B.A. and M.A. degrees in Paedagogics at Ohio State University. During the years 1966 - 1968 she attended a post-graduate course for the purpose of obtaining a doctorate, the main subject being the training of school-teachers.

Upon her return to Cyprus, the applicant submitted her qualifications and applied for appointment in the educational service, referring in particular to a post of schoolmistress for paedagogics in the Paedagogic Academy (*Exhibit 3, blue 1*). On the 23rd September, 1968 she submitted another application (*exhibit 3, blues 3 & 2*). An offer of appointment dated the 7th October, 1968 was forwarded to her and she accepted same on the 16th October, 1968 (*exhibit 3, blues 5, 6 & 7*). By the said instrument she was "offered appointment to the permanent organic post of schoolmistress Grade A (Paedagogics and English) of the class of public schools, Secondary Education, as from the 7th October, 1968, in accordance with the Laws and Regulations in force and under the other terms set out therein". By paragraph (d) thereof, she was posted at the Paedagogic Academy and the Girls Gymnasium of Pallouriotissa. There was no reservation in the applicant's acceptance of appointment to a permanent organic post in the Secondary Education, and this is significant, as it was done obviously voluntarily. (See *Iro Paschali v. The Republic* (1966) 3 C.L.R., p. 593 and *Piperis v. The Republic* (1967) 3 C.L.R. 295).

On the 1st January, 1970 the applicant applied that she be placed in Scale B. 12, as she possessed the required qualifications under the Law. On the 27th January, 1970, the Educational Committee placed the applicant in Scale

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B. 12, relying for the purpose, on the markings for her performance of the Principal of the Paedagogic Academy. Needless to say that Scale B. 12 was a scale in the organic structure of the Secondary Education. It is abundantly clear from the aforesaid, that the applicant was appointed and held a post in the Secondary Education. Her posting at the Paedagogic Academy placed her in no different position from the other schoolmasters of Secondary Education.

On the 5th June, 1970, the Principal of the Paedagogic Academy addressed a letter (*exhibit 2*) to the Head of the Department for Higher and Secondary Education and attached thereto the confidential reports for the staff of the Academy for the year 1969 - 1970. In relation to the applicant, he referred to the General Observations appearing in her confidential report and stated that in spite of the fact that as a schoolmistress she was able, yet he was recommending her transfer from the school on account of her personality, her weakness to contribute positively to the creation of a paedagogic atmosphere and her inability to co-operate harmoniously with her colleagues teaching the same subject. The matter was taken up by the Head of the Department for Higher and Secondary Education (See notes 52 - 61, *exhibit 2*), and ultimately in view of the recommendation of the Principal of the Paedagogic Academy, it was decided that she be transferred therefrom to the Girls Gymnasium in Pallouriotissa as from 1.9.1970 (See *exhibit 3*, blue 25). The matter, however, came up for consideration by the Minister of Education who insisted that she be allotted six hours per week for teaching paedagogics at the Academy, in addition to the work at the Girls Gymnasium of Pallouriotissa, and on the 2nd September, 1970 the applicant was informed of the aforesaid decision by letter (*exhibit 3*, blue 28).

The said transfer or move from the Academy was decided by the appropriate authority under section 39(2) of the Public Education Service Law, 1969 (Law 10/69), as the said transfer did not involve either a change in the office held by her and the duties attached thereto, or a change in the place of residence.

The applicant objected to this transfer—letter dated

25th August, 1970, *exhibit* 3, blue 26—and asked to be given details of the report upon which the decision was taken.

The Head of the Department for Higher and Secondary Education wrote to her a letter (*exhibit* 3, blue 27), informing her that on the basis of the confidential report in which her markings appear and which were given to her, by the same letter, her services during the previous year did not reach the standard expected from a schoolmistress of paedagogics in the Paedagogic Academy. This, in fact, was the first time she was informed of that part of the contents of the said confidential report (*exhibit* 6), which was prepared by the Principal of the Paedagogic Academy, whose post was the only one at the Academy considered as an organic post by section 3(2) of the Schoolmasters of the Communal Schools of Secondary Education Law, 1963, (Greek Communal Chamber Law, 10/63). The responsibilities and duties of the Principal, the Assistant Principal and Schoolmasters of the Paedagogic Academy appear in "General Instructions" dated the 6th December, 1967 issued by the Head of the Department of Higher and Secondary Education (*exhibit* 5). Under paragraph (ig) thereof the Principal "submits to the Ministry confidential reports on the work of the teaching and other members of the staff".

In the said confidential report which I need not repeat here verbatim, on the whole, the applicant is praised for her work. She is given a total of 19½ marks which are made up from the various marks given to her under five headings. Under the column "General Observations" one reads:-

"Conscientious schoolmistress who is well prepared for her lectures. Theoretically interested very much in the school, but in practice her contribution is limited. She has written no article in the Bulletin of paedagogic information which the school published, although, in view of her specialization she should have played a major role in its publication. She is a closed type, obstinate and difficult to co-operate. Communication with her is problematic. Taking into consideration the great importance which the lesson

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taught by her has in the preparation of school teachers and the role which the person teaching this lesson plays in the Paedagogic Academy, I do not think that it is a proper person for the post which she holds."

The mode of evaluation of the work of schoolmasters is the subject of Circular No. 109 of the 24th April, 1967 (*exhibit 1*) issued by the Director of Education and the Head of the Department of Higher and Secondary Education.

Exhibit 1 was, according to Mr. Maratheftis, the Principal of the Paedagogic Academy, posted on the notice-board and discussed with the teaching staff at the time. The applicant knew of its contents. The reason for saying so, was because in April or May, 1970 Secondary School Inspectors were about to visit the Academy so that they would assess the abilities of the teaching staff of the Academy. A number of meetings of the teaching staff of the Academy took place and the advice of the legal adviser of OELMEK, the Secondary Schoolteachers Organization, was obtained. The applicant participated in these discussions and knew about this matter and the advice given about it. It is also borne out from the contents of a letter of the 31st May, 1971 (to be found in *exhibit 3*, blue 61) that the teaching staff of the Academy was not inspected by Secondary School Inspectors from the Ministry, but by the Principal of the Academy.

I have no doubt that the applicant was aware of the fact that confidential reports were prepared and marks were given to the members of the staff of the Academy by the Principal. She already benefited from such marking, as it has already been indicated, in relation to her emplacement in Class B. 12 with the financial advantages derived therefrom.

It has been argued that there is neither a law nor regulation empowering the Principal of the Academy either to inspect, assess or report on schoolmasters in the Academy. Who may report on an officer is not set out in any statutory provision. Section 36(1) of Law 10/69, provides for the preparation of confidential reports on all educational officers and their submission

to the Committee of Educational Service in the prescribed manner and time. When this law was enacted, the preparation of confidential reports and inspection and evaluation of the work of the teaching staff of the Academy was done by its Principal. The schemes of service (*exhibit 5*) included also the preparation of confidential reports. The proviso to section 76(1) of the aforesaid law provides that until the Council of Ministers made such regulations for regulating generally every subject concerning the Educational Committee, the educational service and the educational officers, any regulations or public instruments and the general orders and administrative instructions contained in circulars or otherwise and the existing practice relating to the educational service and educational officers would continue to be applicable in so far as they were not inconsistent with the provisions of the Law.

The preparation of confidential reports was the subject of administrative instructions (*exhibit 5*) and a matter of practice. From *exhibit 3*, blue 19, it appears that according to the existing practice, schoolmasters in the Academy were not inspected by Inspectors of Secondary Education but they were inspected and marked by the Principal of the Academy. In making such a report the Principal followed the same criteria and marked the applicant in accordance with the considerations set out in *exhibit 1*. I find, therefore, that in law the Principal of the Academy was empowered to report on the applicant, as he did in the present case, and this power which existed prior to the coming into operation of Law 10/69, has been saved by the aforesaid proviso and is still valid and in force until as provided by section 76(2)(d) the regulations to be made by the Council of Ministers may provide, *inter alia*, for inspection and marking of educational officers.

It has been one of the complaints of the applicant that the contents of the said confidential report were not brought to her knowledge. Though the Principal of the Academy spoke to her of what ultimately went into her report and he found that he could not convey to her his impressions about her work, it is correct that the report, as such, was not brought to her knowledge before the *sub judice* decision of her transfer was taken.

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Under section 36(3) of Law 10/69, "the person making a confidential report on a particular educational officer in which the latter is criticized for negligence, failures or improper behaviour in the performance of his duties, must, on the submission thereof, communicate to the officer concerned, this part of the report. Within 15 days of the communication to him the educational officer is entitled to require in writing from the competent authority concerned, to strike out or modify this part of the report and the competent authority shall consider the matter and decide thereon."

A perusal of the confidential report in issue in this case has led me to the conclusion that the applicant is not therein criticized for negligence, failures or improper behaviour in the performance of her duties. It was a matter of appreciation of her ability which, as such, did not have to be communicated to the applicant. In any event, even if any part of the report came within the ambit of section 36(3), I would again say that the non-communication to the applicant of such part that had to be communicated was not a reason to annul a decision subsequently taken, in view of the wording of the section which did not provide for the annulment of a decision taken in reliance to such a report. Similar approach has been consistently taken by the Greek Council of State in relation to analogous provisions to be found in section 92 of the Code of the Civil Administrative Servants. It was found that the obligation to communicate to civil servants adverse reports has a consequence only the disciplinary liability of the person responsible for such violation, but not the annulment of the non-communicated report and the annulment of the decision based thereon. (See Decisions of the Greek Council of State, Nos. 2345/62, 1438/67, 732/68 & 1213/69).

The Principal of the Academy, Mr. Maratheftis, gave evidence and stated that what accounted against the applicant was her personality—type of her personality—the pace at which she was working, her insistence on non-important parts of the lesson at the expense of the substantial and also the many complaints from the pupils on account of the manner in which the applicant was teaching, as well as the manner in which she was examining the pupils. There were complaints which might lead to a

strike by the pupils and with difficulty he dissuaded them from doing so in the year 1969 - 1970. He brought all these to her knowledge and repeatedly spoke to her about them but she never paid any attention or listened to him. Communication between them was problematic. I see no reason to interfere with the aforesaid assessment.

Having reached the conclusion that in law the Principal of the Academy was entitled to inspect, assess and report on the work of the applicant, and having found no reason to interfere with his assessment, I have come to the conclusion that the applicant was properly assessed, and relief A. must fail.

I have already outlined the circumstances of applicant's appointment and first posting at the Paedagogic Academy. It is clear that the only legal provision whereby such appointment could be made, was the Schoolmasters of the Communal Schools of Secondary Education Law, 1963 Greek Communal Chamber Law, 10/63. Under the said Law there is no distinction made between schoolmasters of Higher and Secondary Education. The only distinction made in section 3 thereof, is between the organic post of "kathigiton" (schoolmasters) whose number was to be specified every year in the Budget of the Greek Communal Chamber and the organic post of principals which were divided into principals Grade B, Grade A and Principal of the Paedagogic Academy. "Kathigitis" (schoolmaster) was defined in section 2 thereof as meaning the educationalist who was appointed under the Law and served in communal schools of Secondary or Higher Education and included instructors in technical, agricultural and professional schools, as well as Directors and Assistant Directors. Only the Principal of the Paedagogic Academy was left in a class of his own.

When the Public Educational Service Law of 1969 (Law 10/69) was enacted, the whole of Law 10/63 was repealed. Law 10/69 has not changed the position. The definition of "kathigitis" (schoolmaster) has been reproduced verbatim. So, in effect, "kathigitis" (schoolmaster) is a person appointed to a public school of Secondary and Higher Education. There is no distinction between a schoolmaster posted in a school of Higher Education and a school of Secondary Education. It is

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correct that Law 10/69 distinguishes between the various grades or types of education but that distinction cannot be taken as affecting the appointment of schoolmasters (kathigiton) whose appointment is for Secondary and Higher Education. Their posting at any time does not place them in a different class. The applicant's appointment, therefore, in the Secondary Education has not in any way been affected by any provision to be found in Law 10/69. She has been appointed as "kathigitria" (schoolmistress) Grade A, Paedagogics and English for Secondary Education schools. Under the Law she can be posted to any school either of higher or secondary education. If anything could be said about the terms of her appointment, is that emphasis was laid that she was appointed in public schools of Secondary Education. Furthermore, an effort has been made to make it a point in favour of the argument advanced on behalf of the applicant that her appointment was for, *inter alia*, paedagogics a subject that is not taught in secondary schools. This fact, however, does not change the position, as there is for persons possessing the qualifications in paedagogics, scope for work in Secondary Education, such as educational and professional counselling, as stated by Mr. Koutsakos.

Her transfer or move from the Paedagogic Academy to a secondary school in the same town, could, be effected under the provisions of section 39(2) of Law 10/69 by the appropriate authority, inasmuch as it involved neither a change in the office held by her and the duties attached thereto, nor a change in the place of residence. Therefore, I find that it could be lawfully made by the appropriate authority which was competent in the circumstances to arrive at the *sub judice* decision. For the aforesaid reasons, relief B. must fail.

Therefore, the applicant's application is dismissed, but in the circumstances I make no order as to costs.

*Application dismissed.
No order as to costs.*