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[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

EVDOKIA A.
STAVRINOU

EVDOKIA A. STAVRINOU,

v.

Applicant,

THE REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 200/72).

Promotions—Educational Officers—Promotions to the post of Assistant Headmaster, Elementary Education—Applicant's seniority over the interested parties—Duly taken into account—But on the totality of the material before the respondent Educational Service Committee it cannot be said that its relevant discretion was exercised either improperly or wrongly—Recourse dismissed.

Educational Service Committee—Meeting to consider promotions in Elementary Education posts—Presence and participation at such meetings of the Head of Department permitted—And the views of the Inspector-General of Elementary Education can be heard—Sections 4(2) and 35 of the Public Educational Service Law, 1969 (Law No. 10 of 1969).

By this recourse the applicant challenges the validity of the promotions to the post of Assistant Headmaster, Elementary Education, of the interested parties instead of, and in preference to, herself. The learned Judge of the Supreme Court dismissing the recourse held that, notwithstanding applicant's seniority over the interested parties, the respondent Educational Service Committee, on the totality of the material before it, cannot be said to have exercised its relevant discretion improperly or wrongly; he held further that the presence of the Head of Department at the relevant meeting of the respondent Committee was permitted and that the views of the Inspector-General of Elementary Education can be heard.

The facts sufficiently appear in the judgment of the Court.

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Recourse.

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Recourse against the decision of the respondent Educational Service Committee to promote the interested parties to the post of Assistant Headmaster, Elementary Education, in preference and instead of the applicant.

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K. Talarides, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant by her present recourse challenges the validity of the promotions to the post of Assistant Headmaster, Elementary Education, of all interested parties named in the application, except Pandelis Hasapis against whom the recourse was discontinued.

There were more than 900 schoolmasters Grade A who qualified under the relevant schemes of service (*exhibit 1*) for the filling of 85 vacant posts.

The respondent Committee at its meeting of the 10th January, 1972 (see its minutes, *exhibit 7*), after studying the personal files and the confidential reports of all the schoolmasters, Grade A who satisfied the scheme of service and after it took into consideration the merit of the candidates, as it appeared from all the material before it, their qualifications and seniority, decided to select and invite for personal interview all those who satisfied the following criteria, namely —

A. Had completed at least 22 years of service and had an average of 19 marks in the last two confidential reports. B. had at least 18 years of service and an average of 20 marks, C. 14 years of service and an average of 21 marks, and D. ten years of service and an average of at least 21.50 marks.

On the basis of the above, 240 schoolmasters were called for interview, including the applicant.

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After the meeting of the 10th January, 1972, POED, the Teachers Union, asked the schoolmasters not to attend those interviews. It then made representations and met the appropriate Authorities in the Ministry of Education. In addition to the aforesaid meetings and representations, correspondence was exchanged between POED and the respondent Committee (see *exhibits* 13, 14, 15 and *exhibit* 18 which is a newspaper cutting from "ELEFThERIA" of the 18th January, 1972 containing a communiqué of the respondent Committee in reply to one of POED).

I need not go through the contents of all these documents; it is sufficient for the purposes of this recourse, if I refer to the communiqué of the 20th January, 1972 (*exhibit* 11) issued by POED, after its officials had met the Head of the Department of Elementary Education and obtained the necessary clarification regarding the promotions to Assistant Headmasters. By this communiqué all schoolmasters who satisfied the requirements of the scheme of service and wished to be personally interviewed, were informed that they could apply for the purpose to the respondent Committee. In consequence of the aforesaid communiqué, a number of applications were submitted.

The respondent Committee at its meeting of the 5th February, 1972 (see minutes, *exhibit* 8) considered these applications and after it eliminated ten of these applicants on the ground that they did not possess the qualifications regarding at least two years' service in schools of B or C Class or in rural schools preferably B or C Class, it decided to invite the rest amounting to 214 for personal interview. The total number of candidates were split into groups and they were interviewed on eight different days, the respondent Committee devoting about 5½ hours each day (see *exhibits* 10 and 12).

The respondent Committee at its meeting of the 10th May, 1972 considered the question of the filling of the said posts. Present were the Head of the Department of Elementary Education, Mr. Christodoulides. Its minute (*exhibit* 9) reads :-

"The Committee having studied the personal and confidential files of those teachers Class A qualified

under the scheme of service for promotion to the post of Assistant Headmasters (see minutes of 10.1.1972 and 5.2.1972) and having taken into consideration —

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- A. The merit of the candidates as it appears from the confidential reports of the appropriate (οικειός) Inspectors the opinion which the Committee formed by the personal interviews, (see minutes) and generally from all the factors and documents before it.
- B. The qualifications of the candidates,
- C. their seniority,
- D. the views of the General Inspector of Elementary Education and the Inspectors who were present at the interviews, as well as the views of the Head of the Department of Elementary Education, considers the following school teachers as more suitable for promotion to the post of Assistant Headmaster, Elementary Education and as corresponding more fully to the criteria laid down by the scheme of service and the Law. For that purpose it decides.....”

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and the names of the 85 successful candidates are given, among whom the interested parties.

The first argument of learned counsel for the applicant is that the four criteria which were set down by the Committee (*exhibit 7*) for the purpose of selecting and inviting candidates for personal interview, constituted an impersonal and arbitrary classification which failed to take into account the merits, qualifications and seniority of each candidate separately, weigh them separately and so the respondent Committee bound its hands in advance.

To my mind, those criteria were no longer relied upon after the respondent Committee invited for personal interview all candidates that wished to be so interviewed. In any event, the applicant was selected for interview under those criteria and she cannot complain about their arbitrariness. The reasoning for the *sub judice* decision of the respondent Committee and the factors taken into

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consideration by them in selecting the most suitable candidates for promotion, are to be found in the minutes of its meeting of the 10th May, (*exhibit 9*) hereinabove set out. The whole of the career of the candidates was taken into consideration and not merely, as claimed by applicant, the marks in the last two confidential reports.

Connected with the duty to select the best candidate for promotion, is the criticism advanced by counsel for the applicant, on the confidential reports and in particular the fact that they are prepared by different Inspectors who form an opinion as to the merits of each schoolmaster during the short period of two or three visits in each school. In this respect, I need only say that there is nothing to suggest that such confidential reports were exclusively relied upon for the purposes of selecting the best candidate, but as it should have been they form part of the overall picture of the merits of each candidate which the respondent Committee had to weigh as a whole.

Furthermore, it goes without saying, that the confidential reports are prepared in the same manner for all schoolmasters and no differentiation appears to have been made in respect of the confidential reports of the applicant and the interested parties. Moreover, the respondent Committee cannot but be considered as having in mind the manner in which such reports are prepared. Relevant to the issue of the exercise of the respondent Committee's discretion in selecting the most suitable candidate for promotion, are the following facts relating to the career of the applicant and the interested parties :-

Elli Sarandi. Date of first appointment, 1.9.1954. Date of promotion to schoolteacher A, 31.8.1969. Two last marks, 1969 - 1970 : 22.20, 1970 - 1971 : 21.75. Service at schools B and C Class and rural schools, ten years.

Demetrios Hj. Liasis. Date of first appointment, 1.9.1961. Date of promotion to school teacher A, 31.8.1971. Two last marks, 1968 - 1969 : 20.78 (21), 1970 - 1971 : 21.75. Service at schools B and C Class and rural schools, eleven years.

Andreas Sofiopoullos. Date of first appointment, 1.9.1960. Date of promotion to schoolteacher A, 1.9.1970. Two last marks, 1969 - 1970 : 21.56, 1970 - 1971 : 22.50. Service at schools B and C Class and rural schools, three years.

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Andreas Chr. Vassiliou. Date of first appointment, 1.9.1960. Date of promotion to schoolteacher A, 1.9.1970. Two last marks, 1969 - 1970 : 21, 1970 - 1971 : 21.50. Service at schools B and C Class and rural schools, five years.

Stavrianou Evdokia. Date of first appointment, 1.9.1953. Date of promotion to schoolteacher A, 31.8.1969. Two last marks, 1969 - 1970 : 19.11, 1970 - 1971 : 20. Service at schools B and C Class and rural schools, seventeen years.

The aforesaid, however, do not constitute the only material that was before the respondent Committee. There was abundance of material for each candidate in the respective personal files, as well as reports of the various Inspectors relating to particular inspections.

Considering the totality of the material that was before the respondent Committee, the applicant has failed to satisfy me that the relevant discretion of the respondent Committee in promoting the interested parties instead of the applicant, has been improperly or wrongly exercised and that its decision should be set aside as having been taken in abuse or excess of power. The applicant's seniority and longer service, no doubt, were a factor to be taken into account and should prevail where all other factors are more or less equal. In the present case I cannot, however, say that all other factors were more or less equal.

In the circumstances, I find that I am not justified to interfere with the *sub judice* decision. Had I done so, I would have been substituting my own discretion for that of the appropriate Administrative Organ which had such competence in the first place, a course not open to me.

The next argument of counsel for the applicant, is that there is nothing in the Educational Service Law, 1969, Law No. 10 of 1969, and in particular in section

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35 which is the section dealing with promotions, providing for the presence or participation at the meetings of the Educational Service Committee of the Head of the Department of Elementary Education, the only provision being in sub-section (3) of section 35 by which the Committee is expected to have due regard to the confidential reports on the candidates and to the recommendations made in this respect by the appropriate (οἰκειοῦς) Inspector. It has been submitted that since the presence of this officer is not authorized by Law and he should have been taken to have influenced the Committee in reaching the *sub judice* decision, same should be annulled for faulty procedure, that is to say, for faulty composition of the decisive organ.

It has been urged that an additional reason for annulling the decision on this ground, is the fact that the respondent Committee, as it appears from its minutes, took into consideration the views of the Inspector-General of Elementary Education.

In reply to the aforesaid contention, counsel for the respondent Committee has invited the attention of the Court to the provisions of section 4(2) of the Law, Law No. 10 of 1969, and in particular to the proviso thereto.

By virtue of these statutory provisions at the meetings of the Educational Service Committee held for the purpose of exercising its competence under section 5, promotions being one of its duties, the Director of Personnel of the Republic and the appropriate Head of Department of the Ministry of Education, are entitled to be present and express their views but without a right of vote. In dealing with promotions in the Elementary Education, the Head of the Department of the Elementary Education cannot but be considered as the appropriate Head of Department of the Ministry, lawfully authorized to be present and express his views as above. Furthermore, regarding the complaint that the views of the Inspector-General were also heard, one has to go to the definition of the word "Inspector" to be found in section 2 of the Law, which provides that Inspector means the Educational Officer who is exercising the function of supervision of the staff..... and includes the Inspector-General. Therefore, when section 35(3) of the Law speaks of

οικείος επιθεωρητής (appropriate inspector) an Inspector-General of Elementary Education should be deemed as such for the purposes of this section.

Considering the magnitude of the task that the respondent Committee had to perform in selecting 85 candidates out of a total of more than 900, the time devoted for the purpose and the manner in which it was carried out and having in mind that the nature of the reasoning required is always a question of degree depending upon the nature of the decision concerned, I have come to the conclusion that the *sub judice* decision is duly reasoned and in any event its reasoning is fully supplemented from the material in the relevant files.

In the circumstances and for all the above reasons, the present recourse is dismissed but with no order as to costs.

Application dismissed.
No order as to costs.

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