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SOFOCLIS
LAZAROU

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SOFOCLIS LAZAROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 361/72).

Transfers—Public and Educational Officers—Kinds of transfers—Disciplinary and other transfers—Distinction—Test to be applied in drawing the line—To ascertain the essential nature and the predominant purpose of the particular transfers—Nothing of a disciplinary nature in the transfer complained of in the present case—Its predominant purpose was to meet the exigencies of the service and, also, to satisfy the applicant's Headmaster's request for a transfer to a place with favourable for his health climatic conditions—See further infra.

Transfers—Transfer made in the light of the exigencies of the service, namely the educational needs in the case of transfer of educational officers—Principles of administrative law applicable—Personal and family reasons—Should also be considered and given due weight—The respondent Committee acted in the instant case in accordance with the principles of administrative law governing the matter and has given due weight to the personal needs of the applicant by a duly reasoned decision. (See Yiallourides v. The Republic (1969) 3 C.L.R. 379; Carayiannis v. The Republic (1969) 3 C.L.R. 341).

Collective organs—Meeting of the respondent Committee to consider transfers of Educational Officers—Member thereof abstaining from voting at the request of the applicant in the present recourse—Not disqualified from being present at the deliberations of the Committee—Cf.

Section 8(3) of the Public Educational Service Law, 1969 (Law 10/69).

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Transfers—Public Officers—Educational Officers—Principles applicable etc.—See supra, passim.

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The applicant in this recourse, a Headmaster in the Secondary Education, complains against his transfer from the Gymnasium at Polemi to the third Gymnasium at Morphou. On March 17, 1972, he submitted an application for his transfer from Polemi to a town, his place of choice being Ktima (Paphos). In support of his application, the applicant submitted a medical report whereby it was recommended that he should avoid residing at places of high altitude (apparently such as Polemi). It is to be noted that Morphou (*supra*) where the applicant was transferred is only few feet above sea level.

Rejecting the argument put forward by counsel for the applicant that the *sub judice* transfer was of a disciplinary nature or, in any event, that there was a reasonable doubt whether or not it was of such a nature, the learned Judge of the Supreme Court, dismissing the recourse :

Held, (1). As stated in *Kalisperas* and *The Republic*, 3 R.S.C.C. 146, at p. 151, letter E :-

“It is, of course, possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases, it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases is to ascertain the essential nature and the predominant purpose of the particular transfer.”

- (2) Looking at the facts of the present case and applying the test hereinabove set out I have no doubt that the essential nature and predominant purpose of the particular transfer of the applicant was, on the one hand to satisfy his request for a transfer to a place with favourable for his health climatic conditions and, on the other hand, to face the situation created by the return of the Headmaster Mr. Loizides from his educational leave abroad, and there was nothing of a disciplinary nature in such transfer.

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(3)(a) It has been stated by this Court in a number of cases that in considering a transfer in the light of the exigencies of the service, namely, in this case the educational needs, personal and family reasons should also be examined and taken into consideration; and due weight given to them. (See *Yiallourides v. The Republic* (1969) 3 C.L.R. 379; *Carayiannis v. The Republic* (1969) 3 C.L.R. 341).

(b) Therefore, the examination of the applicant's application for transfer was part of the exercise of the duties of the respondent Committee, and in my view, they acted within the principles of Administrative Law, as set out in the afore-said decisions, having given due weight to the personal needs of the applicant by a duly reasoned decision.

(4) It was further argued by counsel for the applicant that once Mr. Pavlides (a member of the respondent Committee) had accepted the applicant's request to abstain from voting, he disqualified himself and he ought not to attend the meeting. In my view, Mr. Pavlides, though, it appears, was not bound in any way to do so, he had gone out of his way to meet applicant's request to abstain from voting; but that did not disqualify him from being present at the deliberation of the Committee, which in any event had dealt with a number of transfers of headmasters on that day.

Recourse dismissed.

No order as to costs.

Cases referred to :

Kalisperas and The Republic, 3 R.S.C.C. 146, at p. 151;

Yiallourides v. The Republic (1969) 3 C.L.R. 379;

Carayiannis v. The Republic (1969) 3 C.L.R. 341.

Recourse.

Recourse against the decision of the respondent Educational Service Committee to transfer the applicant from

Polemi Gymnasium to the 3rd Gymnasium of Morphou.

L. Papaphilippou with *I. Typographos*, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant was first appointed as a schoolmaster of secondary education on the 1st September, 1955 and served for a year at the Paphos Gymnasium. The next year he worked at Evrychou, at the Solea Gymnasium. From the 1st September, 1957 to the 31st August, 1962, he served again at Paphos Gymnasium. Then for a year he worked at the Pancyprrian Gymnasium in Nicosia. During the years 1963 - 1965 he was in Athens on a two-year scholarship; upon his return he was promoted to Assistant Headmaster; he was posted at Ayios Amvrosios Gymnasium for two years, performing the duties of Headmaster of the said school. During the years 1967 - 1970 he served at Limassol. On the 1st September, 1970 he was promoted to a Headmaster in the secondary education and posted at Lefkara. On the 1st September, 1971, he was transferred to Polemi Gymnasium as Headmaster. This was on account of Mr. Loizides, the Headmaster of that school, going on educational leave abroad.

As it has been argued that he has been most of his years of service in rural centres, I cannot but observe that of his seventeen years of service, five of them were spent in rural centres, ten of them in schools in towns and two years in Athens on scholarship from the Greek Communal Chamber.

On the 17th March, 1972 the applicant submitted an application, asking for his transfer from Polemi on two grounds. The first ground was one of health. In support thereof, a medical certificate from Dr. F. Nicolaou dated the 16th March, 1972, was attached thereto, to the effect that he was suffering from autosclerosis for which he had undergone an operation in the right ear two years earlier. It was this doctor's opinion that frequent attacks of cold were damaging to his hearing, especially to the operated

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ear and for that reason it was recommended to avoid residing at places of high altitude. It may be pointed out that this certificate is identical to one dated the 2nd March, 1971 by Dr. Kourris, which had been submitted with another application, that time for transfer from Lefkara Gymnasium.

The second ground invoked for the transfer, was that he had served at nine different schools, he had been tired and disappointed from the frequent transfers and he wanted to be at last posted in a town, his place of choice being Ktima.

However, before this application was dealt with by the respondent Committee, the applicant was reported for an alleged disciplinary offence. Mr. A. Prodromou was appointed by the appropriate authority to act as an investigating officer under the provisions of paragraph (1) of Part A of the Second Schedule to the Public Educational Service Law, 1969 (Law 10 of 1969). The matters were duly investigated and Mr. Prodromou submitted his report to the appropriate authority (blue 135 - 148, *exhibit 10*).

Mr. Koutsakos, the Inspector-General of secondary schools at the time, forwarded the said report and the applicant's personal file to the Director-General of the Ministry of Education for the attention of Mr. Ierides, the Administrative Officer of the Ministry. Mr. Ierides is the author of minute 16(2) (in *exhibit 10*) where it is stated that he agrees with Mr. Prodromou that behind that report there were political motives and that on the material gathered, it did not seem possible to base thereon disciplinary proceedings against the applicant; on the contrary, it seemed that there were serious educational reasons which dictated the transfer of Mr. Lazarou, the applicant, and schoolmasters Nearchou and Constantinou from the Polemi Gymnasium. The Director-General, in minute 17; dated the 9th August, 1972 said that the possibilities of transfer for educational reasons would be examined. The file was sent then to the respondent Committee for their information. The Chairman of the respondent Committee by minute 19, asked the appropriate authority to make a concrete and reasoned submission for

transfer. Mr. Koutsakos on the 30th August, 1972 (minute 20), replied by saying —

“The appropriate authority simply made it a point for examining the possibilities of transfer for educational reasons after the exchange of views with you (the Chairman) and the examination of the whole subject within the context of all educational needs, transfer at least for the time being does not appear possible.”

From the minutes of the respondent Committee (*exhibit 2*) it appears that the transfers of headmasters were considered on the 31st August, 1972 under the heading “Transfers of Headmasters”. Paragraph (f) thereof, reads as follows :-

“Lazarou Sofoclis

The Committee having in mind —

- (i) that Mr. I. Loizides, Headmaster of Polemi Gymnasium returned from his educational leave.
- (ii) That it is not possible, owing to the absence of vacancies to satisfy the application of Mr. Lazarou for transfer to Paphos.
- (iii) The submitted medical certificate in accordance with which Mr. Lazarou ‘should avoid residing in places of high altitude’, finds that the most appropriate and satisfying for the aforesaid headmaster post is that of the 3rd Gymnasium of Morphou (Ex D.E.E.S. Morphou).

Therefore, it decides by majority to transfer him as from the 4th September, 1972 from the Gymnasium of Polemi to the 3rd Gymnasium, Morphou. Mr. Telemachos Kanthos did not agree with the aforesaid decision and Mr. Pavlides did not vote, having stated that he did not wish to be involved in the said matter, in view of the wish expressed to him to that effect by the Headmaster concerned.”

The first contention of counsel for the applicant was that the transfer was clearly a disciplinary one and that

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in any case on the authority of *Kalisperas* and *The Republic*, 3 R.S.C.C. page 146, in case of doubt as to the nature of the transfer, such doubt ought to be resolved by treating the transfer as being disciplinary.

On the other hand, on the part of the respondent, it was argued that the transfer of the applicant was not of a disciplinary nature, but it was made on account of his application for transfer, to which reference has already been made and the fact that Mr. Loizides returned from his leave abroad and only one of them could remain at Polemi.

As stated in *Kalisperas* case (*supra*) at page 151, letter E —

“It is, of course, possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases, it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases is to ascertain the essential nature and predominant purpose of the particular transfer.”

In support of the proposition that the applicant's transfer was a disciplinary measure, extensive reference was made to the reports of the investigation, as well as to the suggestion of Mr. Ierides, appearing in minute 16(2) herein-above set out, that the applicant and two other educationalists, Nearchou and Constantinou, whose conduct was also investigated by Mr. Prodromou, might be transferred on educational grounds, coupled with the subsequent transfer of the applicant and Mr. Nearchou. The answer on this point of counsel for the respondent Committee was that the transfer of Nearchou took place on the 8th July, 1972, that is to say, long before Mr. Ierides wrote that minute. As a matter of fact, Nearchou had himself applied for a transfer as far back as the 16th March, 1972 (*exhibit* 11), giving therein Paphos as his place of choice. In my view, the transfer of Nearchou to the place of his choice could not by any stretch of imagination be considered as a disciplinary transfer.

In any event, the transfer of the applicant was in no way effected by any suggestion from the Educational Authorities, as it appears from minutes 19 and 20 in

exhibit 10 hereinabove set out. It was a transfer made at the instance of the respondent Committee. The wording of the decision is indicative of this. Though Mr. Koutsakos, the Inspector General of Secondary Education was present at the meeting of the respondent Committee, he does not appear to have suggested the transfer.

Looking at the facts of the present case and applying the test hereinabove set out, I have no doubt that the essential nature and predominant purpose of the particular transfer, subject matter of these proceedings, was, on the one hand to satisfy the applicant's request for a transfer to a place with favourable for his health climatic conditions and, on the other hand, to face the situation created by the return of Mr. Loizides from his educational leave abroad, in the light of the exigencies of the service, and there was nothing of disciplinary nature in it. It is correct to say that all the material relevant to the investigation of the alleged disciplinary offences was in the file of the applicant when the aforesaid transfer was considered, but similar material was also in the file of the applicant in the past, and that did not prevent the respondent Committee from promoting the applicant.

It was further contended on the part of the applicant that the respondent Committee acted on a misconception of both law and fact, because they acted on the assumption that Mr. Loizides was still a Headmaster of Polemi Gymnasium. This, was argued, was contrary to law, as there could not be two Directors simultaneously posted at the same place and also contrary to fact, as in fact such a situation could not exist.

It is the case for the respondent Committee that it is a permanently followed practice that an educational officer who goes abroad for educational leave, is deemed to be posted at the school which he was before he left and on his return, unless an act of transfer is made, he is treated by the respondent Committee as being posted at the last held post. Evidence in this respect was heard and I have no doubt that this has been the practice.

Under section 5 of the Public Educational Service Law, 1969, Law 10 of 1969, the postings and transfers of educational officers are within the competence of the respondent Committee. The exercise of these powers is a matter of administrative discretion. The permanently

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followed practice referred to, contains the exercise of discretionary powers in a certain way on certain matters. In effect, no new posting or transfer of an officer who returns from educational leave abroad is required as the respondent Committee in the light of its established practice considers itself as having exercised its discretion in favour of treating him as posted at the last held by him post. The exercise of this administrative practice for a long time inevitably creates certain consequences in the law of administrative acts. In the present case these consequences are that the officer is treated by the organ competent for that purpose as holding the post last held by him. Had they decided not to follow their said practice, they would have to give reasons for so doing. There was, therefore, neither a misconception of law, nor a misconception of fact on this point.

It has been stated by this Court in a number of cases that in considering a transfer in the light of the exigencies of the service, namely, in this case the educational needs, personal and family reasons should be examined and taken into consideration and due weight given to them. (See *Yiallourides v. The Republic* (1969) 3 C.L.R. 379 and *Carayiannis v. The Republic* (1969) 3 C.L.R. 341).

The examination, therefore, of the applicant's application for transfer, was part of the exercise of the duties of the respondent Committee, and in my view, they acted within the principles of Administrative Law, as set out in the aforesaid decisions, having given due weight to the personal needs of the applicant by a duly reasoned decision. Had they failed to examine his application the applicant undoubtedly would have had a cause for complaint for such an omission by the respondent Committee.

The last point argued by counsel for the applicant stems from the fact that Mr. Pavlides, a member of the respondent Committee abstained from voting on account of a request to that effect made to him by the applicant. It was urged, that once Mr. Pavlides had accepted the applicant's request, he disqualified himself and he ought not to attend the meeting. In my view, Mr. Pavlides, though, it appears, was not bound in any way to do so, he had gone out of his way to meet applicant's request;

that, did not disqualify him from being present at the deliberation of the Committee which in any event had dealt with a number of transfers of Headmasters on that day.

There is nothing in the Public Educational Service Law, 1969, excluding a member of the Committee, that for any reason abstains from participating in the discussions and from voting on a particular issue, from being present at such a meeting. In accordance with section 8(3) of the said Law, there is coram, when the Chairman and two other members are present at a meeting or if the Chairman is not present, four other members are present and in either case, no decision is valid unless taken by three votes.

It is obvious that there has been due compliance with the aforesaid section. The Chairman was present, and there were three votes in favour of the decision, Mr. Kanthos against and Mr. Pavlides abstaining.

In all the circumstances of the case I have reached the conclusion that this recourse should and is hereby dismissed with no order as to costs.

*Application dismissed.
No order as to costs.*

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