

[MALACHTOS, J.]

1974
Oct. 26

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS KONNARIS AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMITTEE OF EDUCATIONAL SERVICES,

Respondent.

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

(Case Nos. 361/70 and 380/70).

Educational Officers—Promotions—Promotion to the post of Assistant Headmaster—Factors to be taken into account in cases of promotion of educational officers—Merit, qualifications and seniority—Annual confidential reports—Recommendations by the Inspector concerned—The Public Educational Service Law, 1969 (Law No. 10 of 1969), section 35 (2) and (3) and section 37—Specialization—A factor which is immaterial in cases of promotion—Sub judice promotions annulled because the respondent Educational Service Commission took into account specialization—A factor which was not only taken into account but it went straight into the root of the matter and played a decisive role in favour of the interested parties (viz. the officers so promoted)—The decision complained of in these recourses has, therefore, to be annulled as taken contrary to law and in abuse and excess of powers.

Promotions—Educational Officers—Specialization—A material factor in cases of postings and transfers of educational officers—But never in cases of promotions—See further supra.

Specialization—Promotions—See above.

Discretionary powers vested in the administration—Judicial control—Defective exercise of such powers through the administrative organ concerned taking into account in reaching its decision immaterial factors—This is contrary to law and vitiates the decision reached as aforesaid—And which decision has therefore to be annulled as taken in abuse and excess of powers.

Abuse and excess of powers—See immediately hereabove.

1974
Oct. 26
—
CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

By these recourses under Article 146 of the Constitution the applicants educational officers seek to challenge the promotion to the post of Assistant Headmaster of the interested party, instead of, and in preference to, each one of them. It appears that what influenced most the respondent Commission in taking the decision complained of in these cases was a factor which in law is immaterial *viz.* specialization. Specialization is a material factor only in cases of postings and transfers of educational officers; but never in cases of promotions. This is a classic case of defective exercise of the discretionary powers vested in the administration through the organ concerned reaching its decision by taking into account immaterial factors; a course which in accordance with well settled principles vitiates the decision so reached and renders it liable to be annulled as taken in abuse and excess of powers (See: *Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133).

The facts of these cases—tried together—sufficiently appear in the judgment of the learned Judge whereby he annulled the promotions complained of as having been decided in abuse and excess of powers through the respondent Commission taking into account immaterial factors *viz.* specialization.

Cases referred to:

Michael Theodossiou and The Republic, 2 R.S.C.C. 44;

Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus (1966) 3 C.L.R. 784;

Salih Shukri Saruhan and The Republic, 2 R.S.C.C. 133.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Assistant Headmaster Secondary Education in preference and instead of the applicants.

E. Lemonaris, for the applicants.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

MALACHTOS, J.: By its decision dated 15.9.70, which was published in the Official Gazette of the Republic on the 31.10.70

under Notification No. 1842, the respondent Committee of Educational Service promoted as from 25.9.70 to the permanent post of Assistant Headmaster, Secondary Education, 13 educational officers, and to the temporary post of Assistant Headmaster another 13 educational officers, up to 31.8.71.

According to the relevant schemes of service, *exhibit 1*, the post of Assistant Headmaster Secondary Education, is a promotion post and the required qualifications are:-

1. At least 3 years service on scale B12 in the post of schoolmaster or tutor or service of any duration to the post of technologist on scale B13.
2. At least successful service on the basis of the last two confidential reports
3. Good knowledge of one of the prevailing European languages.
4. Post graduate studies abroad or additional diploma, preferably in pedagogics or subjects concerning administration of schools, is considered as an additional qualification.

Applicant in Recourse 361/70, Christos Konnaris, (hereinafter referred to as applicant No. 1) who was at the material time a teacher of English in the Limassol Second Gymnasium for Girls, filed the present recourse claiming a declaration of the Court that the decision to promote one of the said educational officers to the permanent post of Assistant Headmaster, namely, Vassos Eleftheriades, and another two officers, to the temporary post of Assistant Headmaster, was *null* and *void* and of no legal effect whatsoever.

In the course of the hearing, however, this applicant with the leave of the Court, abandoned the recourse as against the two temporary promotions and pursued his claim only against the promotion of Vassos Eleftheriades.

Applicant in Recourse No. 380/70, Christakis Vassiliou, (hereinafter referred to as applicant No. 2) who was at the material time a teacher of English at the Kykko Gymnasium for Girls in Nicosia, filed the present recourse against the said decision of the respondent Committee as regards ten out of the

1974
Oct. 26

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

thirteen promotions to the permanent post of Assistant Headmaster, namely –

1. Vassos Eleftheriades
2. Stavros Stavrakis
3. Nicolaos Petsas
4. Pieris Pieri
5. Charalambos Makariou
6. Andreas Kangallis
7. Georghios Hji Costis
8. Michael Philippou
9. Georghios Patsalides and
10. Georghios Sepos.

In the course of the hearing the recourse as against interested party No. 10, Georghios Sepos, was withdrawn and applicant pursued his claim as against the remaining nine others.

The two recourses in view of their nature, and since they attack the same administrative act, were heard together. The grounds of law on which both recourses are based, as argued by counsel for applicants, may be summarised as follows:

- (a) the decision complained of was taken in excess and/or abuse of powers and/or contrary to the principles of administrative law in that applicants being superior to the interested parties, having regard to their merit, qualifications and seniority, the respondent Committee failed in its paramount duty to select the best candidates; and
- (b) in making the selection the respondent Committee did not take into account material factors and/or took into account immaterial factors.

It is not in dispute that both applicants, as well as the interested parties, possessed at the time the necessary qualifications for the post of Assistant Headmaster, secondary education.

Applicant No. 1, Christos Konnaris, as it appears from his personal file, *exhibit A*, was first appointed as an elementary school teacher on 1.9.53 after his graduation from the Teachers Training College, Morphou. On 1.9.59 he was appointed as a

teacher of English, secondary education and as from 1.9.61 he was promoted to class A. His qualifications are:-

- (a) Diploma, Teachers Training College, Morphou;
- (b) B.A. Diploma of the London University; and
- (c) Post graduate Diploma in the teaching of English of the Moray House College of Education, Edinburgh.

According to his Annual Confidential Reports, *exhibit B*, he is reported as a very good secondary education school master. His marks in the last two reports preceding the decision complained of, are 22 out of a total of 25.

Applicant No. 2, Christakis Vassiliou, as it appears from his personal file, *exhibit C*, was first appointed as an elementary school teacher on 1.9.53, after his graduation from the Teachers Training College, Morphou. As from 1.9.55 to 31.8.56 he served as a school master teaching English in technical education. As from 1956 to 1959 he was granted a scholarship by the Government of Cyprus and studied in England. After his return to Cyprus, he served as from 1.9.59 to 31.8.61 as a school master, secondary education and on 1.9.61 he was promoted to class A. His qualifications are the following:

- (a) Diploma, Teachers Training College, Morphou;
- (b) B.A. Degree of the Queen's University, Belfast.

According to his Annual Confidential Reports, *exhibit D*, he is reported as a very good secondary education school master. His marks in the last two reports preceding the decision complained of are 23 out of a total of 25.

Interested Party No. 1 Vassos Eleftheriades, a Philologist, as it appears from his personal file *exhibit G*, was first appointed as a school master secondary education, on 1.9.59 and as from 1.9.61 was promoted to class A. His qualifications are:

- (a) Diploma in Greek Literature of the University of Athens;
- (b) Academic Diploma in Education of the London University.

According to his Annual Confidential Reports, *exhibit H*, he is reported as a very good secondary education school master.

1974
Oct. 26

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

His marks for the last two years preceding the decision complained of, are for the school year 1967/68, 21, and for the school year 1968/69, 22.

Interested Party No. 2, Stavros Stavrakis, a Mathematician, as it appears from his personal file *exhibit O*, was first appointed as a school master, secondary education, on 1.2.57 and as from 1.9.61 was promoted to class A. His qualifications are the following:

- (a) Diploma in Mathematics of the Athens University;
- (b) University Diploma of Manchester Institute of Science and Technology. He attended the two terms of lectures from October 1967 to March 1968, specialising in Operation Research and Systems of Analyses as required under the regulations of the M.Sc. Course by examination and dissertation.

According to his Annual Confidential Reports, *exhibit P*, he is reported as a very good secondary education school master. His marks for the last two years preceding the decision complained of are 21 and 21 ½, respectively.

Interested party No. 3, Nicolaos Petsas, as it appears from his personal file *exhibit Q*, was first appointed as a secondary school master of Commercial Sciences on 1.9.59 and on 1.9.61 he was promoted to class A. His qualifications are:

- (a) Diploma in Economic and Commercial Sciences of the Highest School of Economic and Commercial Sciences, Athens.

According to his Annual Confidential Reports, *exhibit R*, he is reported as a very good secondary education school master. His marks for the last two years preceding the decision complained of are 23 ½.

Interested party No. 4 Pieris Pieri, a Mathematician, as it appears from his personal file, *exhibit K*, was first appointed as a secondary education school master on 1.9.57 and on 1.9.61 was promoted to class A. His qualifications are:

- (a) Diploma in Mathematics of the Athens University.

According to his Annual Confidential Reports, *exhibit L*, he is reported as a very good secondary education school master.

His marks for the last two years preceding the decision complained of, are $22\frac{1}{2}$.

Interested party No. 5, Charalambos Makariou, a Mathematician, as it appears from his personal file, *exhibit S*, was first appointed as a secondary school master on 15.12.56 and on 1.9.61 was promoted to class A. His qualifications are a diploma in Mathematics of the Athens University.

According to his Annual Confidential Reports, *exhibit T*, he is reported as competent and conscientious. His marks for the last two years preceding the decision complained of, are $20\frac{1}{2}$ and 21 respectively.

Interested Party No. 6, Andreas Kangallis, a teacher of Physics, as it appears from his personal file *Exhibit M*, was first appointed as a secondary education school master on 1.9.58 and on 1.9.61 was promoted to class A. His qualifications are a diploma in Physics of the Athens University.

According to his Annual Confidential Reports, *exhibit N*, he is reported as very good. His marks for the last two years preceding the decision complained of, are 21 and $21\frac{1}{2}$ respectively.

Interested Party No. 7 Georghios Hji Costis, a Philologist, as it appears from his personal file *exhibit U*, was first appointed as a secondary school master on 1.4.58 and on 1.9.61 was promoted to class A. His qualifications are a diploma in Greek Literature of the Athens University.

According to his Annual Confidential Reports, *exhibit V*, he is reported as a very good secondary education school master. His marks for the last two years preceding the decision complained of are $22\frac{1}{2}$ and 23 respectively.

Interested party No. 8, Michael Philippou, a Mathematician, as it appears from his personal file *exhibit W*, was first appointed as a secondary school master on 1.12.59 and on 1.9.61 was promoted to class A. His qualifications are a diploma in Mathematics of the Athens University.

According to his Annual Confidential Reports, *exhibit X*, he is reported as competent and conscientious. His marks for the last two years preceding the decision complained of are $20\frac{1}{2}$ and $21\frac{1}{2}$ respectively;

1974
Oct. 26

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

Lastly, interested party No. 9, Georghios Patsalides, a Mathematician, as it appears from his personal file *exhibit Y*, was first appointed as a secondary school teacher on 1.9.59 and on 1.9.61 he was promoted to class A. His qualifications are a diploma in Mathematics of the Athens University.

According to his Annual Confidential Reports, *exhibit Z*, he is reported as very good and his marks for the last two years preceding the decision complained of are 22½.

The law that makes provision for the functioning of the respondent Committee of Educational Service, for the appointment, promotion and retirement of educational officers, and for conditions of service, disciplinary proceedings and other matters relating to the Public Educational Service, is the Public Educational Service Law, 1969 (Law 10/69). The relative section of this law, as regards promotions, is section 35, particularly subsections 2 and 3, which read as follows:

- “ 2. The claims of educational officers to promotion shall be considered on the basis of merit, qualifications and seniority;
3. In making a promotion, the Committee shall have due regard to the Annual Confidential Reports on the candidates and to the recommendations made in this respect by the inspector concerned”.

The question of seniority among educational officers is determined by section 37 of this law. In the present case in particular, the relevant parts of the said section are subsections 1, 2 and 3, which read as follows:

- “ 1. Seniority between educational officers holding the same office, class or grade of the same office, shall be determined by the effective date of appointment or promotion to the particular office, class or grade;
2. In the case of simultaneous appointment or promotion to the particular office, class or grade of the same office, seniority shall be determined according to the previous seniority of the educational officers;
3. Seniority between educational officers holding different offices or grades with the same salary conditions, shall be determined according to the dates of their appoint-

ment to their present offices or, if these dates are the same, according to their previous seniority".

Applicant No. 1 on the question of merit is better than the interested party No. 1 Vassos Eleftheriades. He has got higher marks, with the exception of the last report where they have the same marks, and he is equally reported as a very good educational officer. Applicant has also got more qualifications as in addition to his B.A. degree, and post-graduate Diploma, which correspond more or less to the qualifications of this interested party, he has got the Morphou Teachers Training College Diploma. There can be no dispute that applicant No. 1 is senior to this interested party by exactly six years, since prior to their simultaneous appointment on 1.9.59 as secondary education school masters, and to their promotion on 1.9.61 to class A, applicant was first appointed in education on 1.9.53.

Applicant No. 2 as regards merit is also better than interested party No. 1 Vassos Eleftheriades. He has got higher marks and he is equally reported as a very good educational officer. On the question of qualifications it appears that the interested party is better qualified. If we assume that the B.A. degree of the Queen's University, Belfast, is equal to the Diploma in Greek Literature of the Athens University, then, surely, the academic diploma in education of the London University which the interested party possesses, is better than the Morphou Teachers Training College diploma of the applicant. However, applicant No. 2 is senior by six years to this interested party as prior to their promotion to class A on 1.9.61, applicant served as a school master in secondary education as from 1.9.55 to 31.8.56 and before that in elementary education as from 1.9.53 to 31.8.55, whereas interested party was first appointed in secondary education on 1.9.59.

As regards interested party No. 2, Stavros Stavrakis, applicant No. 2 is better on the question of merit. They are both equally reported as very good educational officers but applicant has got higher marks. As to qualifications, this interested party is better qualified than the applicant, but applicant is by six years senior to him as interested party was first appointed as a secondary education school master on 1.9.59.

Interested party No. 3, Nicolaos Petsas, as regards merit, is slightly better than applicant No. 2, since, being both reported as very good educational officers, he has got higher marks by

1974
Oct. 26

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

half-degree. However, on the question of qualifications and seniority the applicant has got more qualifications and he is clearly senior to him by six years.

Applicant No. 2 as regards merit is slightly better than interested party No. 4 Pieris Pieri. Both are reported as very good educational officers but the applicant has got higher marks by half degree. As to qualifications applicant is better qualified as the interested party, besides the University diploma in Mathematics, has no other qualifications. Applicant is also considered senior to this interested party, since he served in technical education teaching English as from 1.9.55, whereas the interested party was first appointed as a secondary education school master on 1.9.57. Secondary education as defined in section 2 of the interpretation section of the Public Educational Service Law, 1969, includes technical education.

Applicant No. 2 is also better on merit than interested party No. 5, Charalambos Makariou. He is reported as a better educational officer and has got higher marks. He also has more qualifications. On the question of seniority, applicant must be considered senior to this interested party as he was appointed in secondary education on 1.9.55 whereas the interested party was first appointed on 1.12.56. Since they were both promoted to class A on the same day, *i.e.* 1.9.61, the previous seniority of applicant is taken into account.

Applicant No. 2 is also better as to merit from interested party No. 6 Andreas Kangallis, who, although reported as equally very good educational officer, has got lower marks than the applicant. Applicant No. 2 has also got more qualifications and must be considered senior to this interested party as he was first appointed in secondary education prior to him.

Applicant No. 2 is slightly better as regards merit than interested party No. 7, Georghios Hji Costi. Although they are both reported as equally very good educational officers, and have both got the same marks in their last confidential reports preceding the promotions complained of, yet in the immediately previous one, applicant has got higher marks by half degree. As to qualifications, the applicant has got more qualifications than this interested party and he is also senior to him.

As regards interested party No. 8, Michael Philippou, applicant No. 2 is better on the question of merit. He is reported

as a better educational officer and he has got higher marks. He has also got more qualifications and he is clearly senior to him.

Lastly, as regards interested party No. 9 Georghios Patsalides, applicant No. 2 is slightly better as to merit. Although they are both reported as very good educational officers applicant has got higher marks by half degree. He has also got more qualifications and on the question of seniority he is clearly senior to this interested party.

Counsel for applicants argued that taking into consideration the merit, qualifications and seniority of both applicants as well as those of the interested parties, the respondent Committee failed in their paramount duty as they did not select the applicants as the best candidates. He further argued that in taking the decision complained of they took into account the specialization of the candidates, a fact which is not disputed by the other side. This he submitted, is an immaterial factor. They contravened the provisions of section 35 (2) of the Law where the factors to be taken into account are clearly stated:

The decision complained of appears in the Minutes of the respondent Committee of the 15th September, 1970, which Minutes read as follows:

“The Committee of Educational Service takes up the subject of the filling of post of Assistant Headmasters of schools of secondary education. For this purpose it considers the elements of service of those eligible for promotion contained in their personal files and confidential reports. Taking into account the merit, qualifications and seniority of the candidates, as well as the recommendations of the inspectors concerned, and after hearing the suggestions of the appropriate authority in connection with the specialization needs of the schools as regards Assistant Headmasters, decides that the following educational officers be offered promotion as from 25.9.70 to the post of Assistant Headmaster and to post them as follows:”

It is the paramount duty of a public authority or organ in effecting appointments or promotions to select the candidate most suitable, in all the circumstances of each particular case, for the post in question. (*Michael Theodossiou and The Republic of Cyprus through the Public Service Commission, 2*

1974
Oct. 26

CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

1974
Oct. 26
—
CHRISTOS
KONNARIS
AND ANOTHER
v.
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)

R.S.C.C. 44). In the present case, which is a case of promotion, the respondent Committee, in doing so, had to follow the provisions of section 35 subsections 2 and 3 of the Public Educational Service Law 1969.

The decision complained of in this recourse is a matter within the competence and discretion of the respondent Committee and the Court on a recourse under Article 146 of the Constitution is not empowered to substitute its own discretion for that of the said Committee (*Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784).

When the authority or organ concerned has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations and without taking into account irrelevant factors, the Court will not interfere as to the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law or has been made in excess or abuse of powers vested in the authority or organ concerned. (*Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133).

In the case in hand the respondent Committee had it applied only the criteria set out in section 35 (2) of the Law, *i.e.* merit, qualifications and seniority, applicant No. 1 would have certainly been selected instead of the interested party No. 1 Vassos Eleftheriades, as he is superior in merit, qualifications and seniority. Likewise, applicant No. 2 would have certainly been selected instead of interested parties No. 4 Pieris Pieri, No. 5 Charalambos Makariou, No. 6 Andreas Kangallis, No. 7 Georghios Hji Costi, No. 8 Michael Philippou and No. 9 Georghios Patsalides.

As regards the other three interested parties Nos. 1, 2 and 3 applicant No. 2 had more chances to be selected than them. It is clear, therefore, that what influenced the minds of the members of the respondent Committee and decided in favour of the interested parties was their specialization. If the applicants were philologists or mathematicians they would have surely been promoted.

The specialization of an educational officer in cases of promotion is, in my view, an immaterial factor and, if taken into account, as in the present case, is contrary to law. In the

present case it was not only taken into account but it went straight into the root of the matter and played a decisive role in favour of the interested parties. Specialization is a material factor only in cases of postings or transfers of educational officers but never in cases of promotion.

For all the above reasons, the decision of the respondent Committee to promote the interested parties is declared *null* and *void*.

Respondent to pay £35.- to each applicant against his costs.

*Sub judice decision annulled;
order for costs as above.*

1974
Oct. 26

—
CHRISTOS
KONNARIS
AND ANOTHER
v. . .
REPUBLIC
(COMMITTEE OF
EDUCATIONAL
SERVICES)