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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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SAVVAS
HJI GEORGHIOU
v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

SAVVAS HJI GEORGHIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 64/72).

Educational service—Educational officers—Promotions—Promotions to the post of Headmaster in elementary education—Completed at two stages amounting thus to a composite administrative act—First stage being the preparation of a short list of candidates out of those eligible for promotion—Invited for the usual personal interview preceding the final selection—Exclusion from the said short list of a great number of officers in law eligible for promotion including the applicant in the instant recourse—Preparation of said short list made on the basis of criteria which are not in accordance with the scheme of service, the relevant statute (infra) and the general principles of administrative law—Particularly through failing to take into account the material factors of qualifications and seniority—Cf. section 35 (1) (2) (3) of the Public Educational Service Law, 1969 (Law No. 10 of 1969)—Course adopted to the prejudice of the applicant who was better qualified than the two interested parties and senior to one of them—Sub judice promotions have, therefore, to be annulled.

Composite administrative act—Completed at two stages which are not separate and independent of each other—Administrative actions taken on the basis of a continuing process resulting in a final administrative decision as the one in the present case (see supra)—Invalidity of the first part of such composite act entails automatically the invalidity of the final decision—See further supra.

Discretionary powers vested in the administration—Judicial control—Defective exercise of discretion—The Court will not interfere unless there was a defective exercise of such discretionary powers—Not taking into account material factors is one of such defects.

Promotions—Principles applicable—Paramount duty of the administrative authorities concerned to select the most suitable candidate.

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The applicant in this recourse under Article 146 of the Constitution claims a declaration of the Court that the decision of the respondent Educational Service Committee published on January 28, 1972, to promote the two interested parties to the post of Headmaster Class 'A', in the elementary education, instead of himself, is *null* and *void* and of no effect whatsoever.

The learned judge, accepting the submissions made by counsel for the applicant, annulled the promotions complained of on the ground that, in reaching its decision to select the interested parties, the respondent Committee failed to consider at all two vital factors *i.e.* the qualifications as well as the seniority of the applicant, such failure being contrary to law and in abuse and excess of powers (*infra*). As it will be explained later on, the promotions in question were effected or completed at two stages in the way of a composite administrative action. The applicant in the present case was discarded at the first stage of this continuing process on the basis of criteria which obviously are not in accordance with the relevant scheme of service, the statute (*i.e.* section 35 (2) (3) of Law No. 10 of 1969, *infra*) and the general principles of administrative law (*infra*).

The facts of the case may be put briefly as follows:

According to the relevant schemes of service the post of Headmaster Grade 'A', in the elementary education, is a promotion post and the required qualifications are:

- (1) At least three years service in the post of headmaster;
- (2) At least successful service on the basis of the last two confidential reports out of which one at least should be for the post of headmaster;
- (3) Post-graduate studies abroad or additional title of studies in educational subjects..... are considered as an additional qualification.

At its meeting of December 2, 1971, the respondent Committee decided to call for a personal interview for the filling of two posts of Headmaster Grade 'A', 71 candidates out of those eligible for such promotion. The relevant minutes of the Committee read as follows:

“Elementary Education.

Filling of posts of Headmaster Grade ‘A’. The Committee takes up the subject and considers all elements and documents contained in the personal files of those headmasters who in law are eligible for promotion to the post of Headmaster ‘A’ and decides to invite for personal interview with it:—

- (a) Those who have completed at least 10 years in the post of headmaster and have in the last two confidential reports received average marks at least 20;
- (b) those who have completed at least 5 years in the post of headmaster and have in the last two confidential reports received average marks at least 21; and
- (c) those who have completed at least 3 years in the post of headmaster and have in the last two confidential reports received average marks at least 22.

On the basis of the above the following headmasters are invited for personal interview on the 20th, 21st and 22nd December, 1971”.

The said list of 71 candidates then follows in which the name of the applicant is not included, apparently because, falling in category (b) above, he did receive average marks 20.85 (and not 21, *supra*) in the last two confidential reports.

The aforesaid personal interviews of the candidates having taken place in due course, the respondent Committee on January 5, 1972, decided to select for promotion amongst the said 71 candidates the two interested parties. This is the decision published on January 28, 1972 and which is the subject of the present recourse (*supra*).

It was not disputed that:—

- (1) The applicant was in law eligible for promotion;
- (2) the applicant was not included in the short list of 71 candidates (*supra*) for no other reason than because in the last two confidential reports concerning him, he, falling within the said category (b), has received average

marks 20.85 (and not 21 as provided in the said minutes, *supra*);

(3) the applicant possesses the additional qualifications, provided in paragraph (3) of the scheme of service (*supra*), whereas none of the interested parties does possess any such additional qualification;

(4) the applicant is senior to the second interested party.

Section 35 (2) of the Public Educational Service Law, 1969 (Law No. 10 of 1969) reads:—

“(2) The claim of educational officers to promotion shall be considered on the basis of merit, qualifications and seniority”.

On the other hand, it is a long established principle of administrative law that the paramount duty of the appropriate authority in effecting appointments as well as promotions is to select the most suitable candidate for the post concerned (*Theodossiou* and *The Republic* 2 R.S.C.C. 44):

Annuling the promotions complained of in this case, the learned judge:—

Held, (1) The court will not interfere with the exercise of the discretionary powers vested in the administration except in cases where there has been an improper use of those powers, or a misconception concerning the factual situation, or failure to take into account material factors (*Vafiadis v. The Republic*, 1964 C.L.R. 454).

(2) (a) In the present case it is clear from the material on record that the respondent Committee in preparing the aforesaid short list of the 71 candidates only and excluding therefrom the applicant did not take into account the material factor of qualifications contrary to section 35 (2) of the statute *i.e.* the Public Educational Service Law, 1969 (*supra*).

(b) This course was obviously to the prejudice of the applicant who was better qualified than the interested parties.

(c) And had this factor been taken into account it is doubtful as to whether the interested parties were to be selected for promotion, particularly the second interested party to whom the applicant is also senior.

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(3) The decision complained of was completed in two stages which are not separate and independent of each other *i.e.* in the way of a composite administrative act. That being so, it follows that since the first part thereof is contrary to law and, therefore, *null* and *void*, the whole must be declared void.

Consequently, the promotions of the interested parties are hereby declared *null* and *void*.

The respondent Committee to pay to the applicant £30 costs.

*Sub judice decisions annulled.
Order for costs as above.*

Cases referred to:

Nemitsas Industries Ltd. v. The Municipal Corporation of Limassol and Another (1967) 3 C.L.R. 134;

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

Vafeadis v. The Republic, 1964 C.L.R. 454.

Recourse.

Recourse against the decision of the respondent Educational Service Committee to promote the interested parties to the post of Headmaster Class A, elementary education, in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

MALACHTOS, J.: The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent Committee, which was published in the Official Gazette of the Republic on 28.1.72, to promote and/or appoint and/or post Georghios Tsangarides and Menelaos Christodoulou to the post of Headmaster Class A, elementary education, instead of the applicant, is *null* and *void* and of no legal effect whatsoever.

According to the relevant schemes of service (*exhibit 2*) the post of headmaster class A, in the elementary education is a promotion post and the required qualifications are:

1. At least 3 years service in the post of headmaster;
2. at least successful service on the basis of the last two confidential reports out of which one at least should be for the post of headmaster;
3. post-graduate studies abroad or additional title of studies in educational subjects or certificate of successful attendance of special series of educational lessons organised by the Ministry, is considered as an additional qualification.

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The applicant was first appointed as an elementary school teacher in 1955 and in 1959 proceeded to Greece for post graduate studies where he studied for two years. After his return to Cyprus he was on 1.9.65 promoted to headmaster class B.

At its meeting of 2.12.71 the respondent Committee decided to call for a personal interview for the filling of two posts of headmaster class A, 71 candidates out of those eligible for promotion. The relevant minutes of the Committee, *exhibit 4*, read as follows:

“ Elementary Education

Filling of Posts of Headmaster A

The Committee takes up the subject of the filling of posts of Headmaster A of schools of elementary education and considers all the elements and documents contained in the personal files of those headmasters who in law are eligible for promotion to the post of headmaster A and decides to invite for personal interview with it -

- (a) those who have completed at least 10 years in the post of headmaster and have in the last two confidential reports received average marks at least 20;
- (b) those who have completed at least 5 years in the post of headmaster and have in the last two confidential reports received average marks at least 21; and
- (c) those who have completed at least 3 years in the post of headmaster and have in the last two confidential reports received average marks at least 22.

On the basis of the above the following headmasters are invited for personal interview on the 20th, 21st and 22nd December, 1971”.

A list of 71 candidates then follows in which the name of the applicant is not included as falling in category B above, since he did not have 21 average marks in the last two confidential reports. In fact, his marks were for the school year 1969/70, 20.60 and for 1970/71, 21.25, *i.e.* an average of 20.85 marks.

On the 5th January, 1972, the respondent Committee decided to promote the interested parties to the post of headmaster A as from 1.1.72. The relevant minutes of the respondent Committee, *exhibit 1*, read as follows:

“The Committee of Educational Service takes up the subject of the filling of vacant posts of headmasters A of schools of elementary education. On the basis of its decision of the 2.12.71 the Committee of Educational Service selected 71 candidates out of those eligible for promotion to the post of headmaster A and invited them for personal interview (see Minutes of 20th, 21st and 22nd December, 1971).

The Committee of Educational Service taking into consideration,

- (a) the merit of the candidates as it appears from the elements before it, the confidential reports of the inspectors concerned and the impression that it formed from the personal interview with them,
- (b) the qualifications of the candidates,
- (c) their seniority, and
- (d) the recommendations of the department concerned, it came to the conclusion that Messrs.

1. Tsangarides Georghios, and
2. Christodoulou Menelaos

respond more fully over all candidates as regards the requirements of the schemes of service and the law. Therefore it decides to promote them to the post of headmaster class A as from 1.1.72. They

are posted to the schools in which they are now serving”.

The grounds of law on which the application is based, as stated therein, are the following:

1. the respondent acted, as it appears in the statement of facts, in excess and/or in abuse of power and in a discriminatory way against the applicant, as in the exercise of their discretionary power did not take into consideration and/or forgot and/or ignored the merit, output, abilities, qualifications and seniority of the applicant.
2. The respondent at the time they were taking the decision and/or act complained of, were acting under a misconception of facts as they did not take into consideration and/or did not know and/or ignored that the applicant has got a diploma of two years post graduate studies in Greece whereas the interested parties have no such diploma, and
3. The decision and/or act complained of is not duly and/or legally reasoned and/or lacks, under the circumstances, of real and legal and/or due reasoning.

The main argument of counsel for applicant is that although the applicant was admittedly eligible for promotion, yet, in view of the decision of the respondent Committee of 2.12.71, *exhibit 4*, he was precluded from being invited for an interview and so he was not considered at all for promotion. He submitted that the list of the 71 candidates was prepared on wrong principles as the factor of qualifications was not at all taken into account in preparing it and this was to the prejudice of the applicant, who had additional qualifications to the qualifications required by the schemes of service. He further submitted that the decision of the respondent Committee of the 5th January, 1972, *exhibit 1*, by which the two interested parties were promoted to headmasters A, is a composite administrative act and since part of it *i.e.* the decision contained in *exhibit 4*, is void, then the whole act should be void. In preparing the criteria on which a candidate eligible for promotion would be invited for a personal interview the respondent Committee acted contrary to the provisions of the Educational Service Law, 1969, particularly section 35.

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On the other hand, counsel for respondent argued that in view of the fact that a very large number of candidates were always eligible for promotion it has been the practice even before the coming into force of the Educational Service Law, 1969, to prepare on the criteria referred to in *exhibit 4*, a list, known as "the short list", and invite for an interview all those appearing therein. In support of his above allegation he called as a witness Spyros Tingirides, the Secretary of the respondent Committee who gave evidence to that effect.

It is not in dispute that the interested parties have no additional qualifications but they have got higher marks than the applicant. As to seniority, interested party Georghios Tsangarides is senior to the applicant, but applicant is senior to the interested party Menelaos Christodoulou.

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 (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”..

Now, as to whether the respondent Committee is entitled by law to prepare a short list is not of any significance is this recourse. What is important is whether the criteria applied in preparing the said list, as they appear in *exhibit 4*, are correct and in accordance with the law.

It is clear from the material before the Court that the decision complained of was reached in two stages. At the first stage on 2.12.71, the so called short list was prepared on the basis of the criteria contained in *exhibit 4*. As from that date all the other candidates were excluded and the selection was to be made out of the 71 candidates included in the said list. At

the second stage on 5.1.72 the interested parties were selected for promotion.

One of the characteristics of an administrative act is that it should be a unilateral authoritative pronouncement. This requirement, however, does not exclude composite administrative actions taken on the basis of a continuing process resulting in a final administrative action as in the present case.

The invalidity of part of a composite administrative action, leads to the invalidity of the said action as a whole because, the component parts of the action, in their nature, are not separate and independent of each other. (*Nemitsas Industries Ltd. v. The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134).

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 through the P.S.C.*, 2 R.S.C.C. 44). The selection of a candidate for promotion is within the powers and discretion of the authority or organ concerned conferred upon it by law. 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.

The exercise of the discretion of the administration is not subject to the control of an administrative Court except in cases where there exists an improper use of the discretionary power, or a misconception concerning the factual situation or the non taking into account of material factors (*Costas Vafeadis v. The Republic of Cyprus, through the P.S.C.*, 1964 C.L.R. 454).

In the present case it is clear from *exhibit* 4 that the respondent Committee in preparing the short list did not take into account the material factor of qualifications contrary to the provisions of section 35 (2) of the Public Educational Service Law, 1969. This course was obviously to the prejudice of the

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applicant who was better qualified than the two interested parties. Had this factor been taken into account it is doubtful as to whether the interested parties were to be selected for promotion, particularly, interested party No. 2 to whom the applicant is also senior.

As I have already said the decision complained of was completed in two stages which are not separate and independent of each other and, therefore, it is a composite administrative act and since the first part is *null and void* the whole must be declared void.

Consequently, the decision of the respondent Committee to promote the interested parties is declared *null and void*.

Respondent Committee to pay to the applicant £30.- costs.

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