1983 November 19

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS KAMPOURIS,

Applicant.

v.

THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(*Case No.* 6/80).

Administrative Law—Administrative acts or decisions—Reasoning —Deducted from the relevant file.

Constitutional Law—Equality—Discrimination—Burden of establishing on applicant—No right to equality on an illegal basis.

Public Officers—Schemes of service—Interpretation—Judicial Control —Principles applicable—Relevant scheme of service requiring "degree/diploma of a University . . . of the standard of B.Sc. (Engineering)"—Entirely open to respondent to decide that holder of a Higher National Diploma (HND) in Mechanical and Production Engineering of the Central London Polytechnic was not qualified thereunder.

Public Officers—Schemes of Service—Not necessary to be prepared by the Council of Ministers—It is enough if approved by the Council.

The applicant, who was the holder of a Higher National Diploma (HND) in Mechanical and Production Engineering of the Central London Polytechnic was appointed on probation to the post of Instructor of Engineering at the Technical School of Nicosia, on scale B10, as from 1.6.1977. On 25.5.1979 he applied to the respondent Committee to be emplaced in the post of Technologist, on Scale B12.

The respondent Committee decided* that he did not possess

* The decision is quoted at p. 1168 post.

the qualifications required by the schemes of service, namely "degree/diploma of a University or of equivalent higher school or Institution of the Standard of B.Sc. (Eng.)", and dismissed the application. Hence this recourse.

Counsel for applicant mainly contended:

(a) That the sub judice decision was not duly reasoned.

(b) That the sub judice decision was taken in a manner contrary to Article 28 of the Constitution, subjecting thus the applicant to discrimination and unequal treatment, because by their decision dated 29.11.1979 in the case of a certain HadjiAndreou the respondents considered the HND as equivalent to the B.Sc. Engineering.

(c) That the interpretation given to the Schemes of Service was wrong and arbitrary.

(d) That the relevant schemes of service were wrongly made by Public Officers as such power to make or amend schemes of service concerning new or existing posts, is vested solely in the Council of Ministers.

Held, (1) that the sub judice decision is duly reasoned and that sufficient reasoning can also be deducted from the files and documents related thereto; that it is considered as sufficient reasoning of the decision complained of the fact that the applicant did not possess the required qualifications by the schemes of service which is clearly stated in the said decision; accordingly contention (a) should fail.

(2) That in the absence of evidence on behalf of the applicant proving discrimination and unequal treatment such contention must be dismissed; that, further, the case of HadjiAndreou cannot constitute any discrimination against the applicant, as the decision of the respondent Commitee of the 29.10.1979, was revoked on or about the 21.12.1979 and, therefore, no question of unequal treatment arises (see, also, *Voyiazianos* v. *Republic* (1967) 3 C.L.R. 239 at p. 243 where it was held that there can be no right to equal treatment on an illegal basis).

(3) That this Court will not give to a scheme of service an interpretation other than that given to it by the Commission,

provided that such interpretation was reasonably open to the Commission; that it was entirely open to the respondent Committee to give to the relevant schemes of service the interpretation it did; accordingly contention (c) should fail.

(4) That the schemes of service were approved by the Council of Ministers; that it would be far fetched to consider that the mode by which these schemes of service were made was not the proper one; that "prepared" does not imply that every preparatory act should have been done by the Council of Ministers, it is enough if after having the draft of the submission, they were approved by them; accordingly contention (d) should, also, fail.

Application dismissed.

Cases referred to:

Papapetrou v. *Republic*, 2 R.S.C.C. 66;

Petsas v. *Republic*, 3 R.S.C.C. 60 at p. 63;

Panayides v. *Republic* (1972) 3 C.L.R. 467 at p. 479;

Voyiazianos v. *Republic* (1967) 3 C.L.R. 239 at p. 243.

Recourse.

Recourse against the refusal of the respondent to emplace applicant on salary Scale B.12.

N. Clerides, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent of the 22.12.1979 by which they rejected his application to be emplaced to the post of Technologist, Scale B.12, is null and void and of no legal effect whatsoever.

The relevant facts of the case are as follows:

The applicant, who is the holder of a Higher National Diploma (HND) in Mechanical and Production Engineering of the Central London Polytechnic was appointed on probation to the post of Instructor of Engineering at the Technical School of Nicosia on scale B.10, as from 1.6.1977.

On 25.5.1979 he applied to the respondent Committee to be emplaced in the post of Technologist, Scale B.12.

On the 21.12.1979 the respondent Committee reached the following decision:

> "Ioannis Kambouris, Instructor of Engineering. The Educational Service Committee having examined the application of the above instructor in respect of his emplacement to the post of Technologist (Scale B.12) and having taken into consideration all the facts and documents before it (see also the opinion of the Evaluation Committee in the case of Mr. HjiAndreou Christou, PMP 6288) finds that he does not possess the qualifications required by the Schemes of Service (that is title equivalent to B.Sc.) for appointment to the post. For this reason it dismisses the application".

In view of this the respondent notified the applicant accordingly by letter dated 22.12.1979.

As a result the applicant filed the present recourse on 9.1.1980 which is based on the following grounds of law:

1. (a) That the sub judice decision lacks due reasoning contrary to Article 29 of the Constitution.

   (b) That reasoning is absolutely necessary, in view of the fact that by their letter dated 29.11.1979 the respondent informed the applicant that his qualifications are equivalent to the B.Sc. (Eng.);

2. That the interpretation given by the respondent to the scheme of service as regards Technologists (Scale B.12) and in particular to "Degree/Diploma of a University or of equivalent Higher School or institution of the standard of B.Sc. (Eng.) or equivalent qualification in the said specialization in accordance to the requirements of the Service" is arbitrary and contrary to the case law of the Supreme Court.

3. The sub judice decision is contrary to the principles of equality as this is specified by Article 28 of the Constitution.

Counsel for applicant has argued in his written address that the sub judice decision is not duly reasoned. He submitted

that sufficient and clear reasoning is required, as by their decision dated 29.11.1979 in the case of a certain HadjiAndreou the respondent considered the H.N.D. as equivalent to the B.Sc. Engineering. He further argued that the respondent failed to record the legal basis of their decision which cannot be ascertained from the file of the case.

He also argued that the sub judice decision was taken in excess and/or in abuse of power as the power relating to the creation of new posts and to the making and amending of schemes of service concerning existing or new posts. is vested in the Council of Ministers and not in Public Officers and made reference to the case of *Papapetrou* v. *The Republic*, 2 R.S.C.C. 66.

Finally, he argued that the sub judice decision was taken contrary to Article 28 of the Constitution in that the respondent had decided that the qualification of the H.N.D. was equivalent to the B.Sc. in Engineering creating thus a class of persons who were eligible for promotion; subsequently, by revoking this decision they acted to the discrimination of the applicant.

As regards the first ground of law, counsel for the respondent has submitted that the sub judice decision is duly reasoned and that sufficient reasoning can also be deducted from the files and documents related thereto. I fully subscribe to this view. I consider as sufficient reasoning of the decision complained of the fact that the applicant did not possess the required qualifications by the schemes of service which is clearly stated in the said decision.

As regards the respondent's decision of the 29.11.1979 by which they recognised the HND as equivalent to the B.Sc. Engineering, clearly, this decision does not concern the applicant in this recourse but was taken as regards another person, namely, Mr. Chr. HadjiAndreou. Moreover, as it transpires from the material before me this decision has been revoked by the respondents.

As regards the second ground of law that the interpretation given to the scheme of service was wrong and arbitrary, and as in my view it was entirely open to the respondent committee

to give to the relevant schemes of service the interpretation it did, this ground must also fail.

This view is supported by the following passage in the case of *Petsas* v. *The Republic*, 3 R.S.C.C. 60 at p. 63:

> "As it has been stated in the Judgment in Case No. 26/61, this Court will not give to a scheme of service an interpretation other than that given to it by the Commission, provided that such interpretation was reasonably open to the Commission. Likewise, in determining whether a certain applicant in fact possesses the relevant qualifications the Commission is given a discretion, and this Court can only examine whether the Commission, on the material before it, could reasonably have come to a particular conclusion".

Furthermore, the respondent referred the case for consideration and advice to the Evaluation Committee who considered the qualifications of the applicant vis a vis the schemes of service, and on the basis of the advice of the said Committee they rejected the application of the applicant.

As regards the argument on behalf of the applicant that the relevant Schemes of Service were wrongly made by Public Officers as such power to make or amend schemes of service concerning new or existing posts, is vested solely in the Council of Ministers, the short answer it this:

As it appears at the end of the relevant schemes of service (exhibits 3 and 4), they were approved by the Council of Ministers and as it is stated in the case of *Petrakis Panayides* v. *The Republic* (1972) 3 C.L.R. 467 at 479:

> "It would be far fetched to consider that the mode by which these schemes of service were made was not the proper one. 'Prepared' does not imply that every preparatory act should have been done by the Council of Ministers, it is enough if after having the draft of the submission, they were approved by them".

Therefore, this ground must also fail.

Finally, as regards his argument that the sub judice decision was taken contrary to Article 28 of the Constitution subjecting

thus the applicant to discrimination and unequal treatment, in the absence of any evidence on behalf of the applicant proving such contention, it must be dismissed. The case of Hadji-Andreou cannot constitute any discrimination against the applicant, as the decision of the respondent Committee of the 29.10.1979, was revoked on or about the 21.12.1979 (see blues 47 and 58 of exhibit 1) and, therefore, no question of unequal treatment arises.

In the case of *Praxitelis Voyiazianos* v. *The Republic* (1967) 3 C.L.R. 239 at 243, the following is stated:

> "In view of the above circumstances, I am of the opinion that no question of unequal treatment of, or discrimination against, the Applicant could arise, at all, contrary to Article 28, or Article 6, of the Constitution. There can be no right to equal treatment on an illegal basis; because in earlier cases the Respondent took an erroneous view of the law, Applicant in this recourse cannot be held to be entitled to the same error on the part of the Respondent. The Applicant had no legitimate interest to expect an illegal decision of the Respondent in his favour".

For all the above reasons, this recourse fails and is hereby dismissed.

On the question of costs I make no order.

Recourse dismissed. No order as to costs.