1983 April 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS MIAMILIOTIS AND ANOTHER,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMITTEE,
Respondent.

(*Case No.* 40/80).

Administrative Law—Administrative acts or decisions—Validity—Tested by reference to the facts which were in existence at the time they are taken.

Public Officers—Schemes of service—Officer not possessing qualifications required by relevant scheme of service of particular post, has no legitimate interest to contest validity of decision rejecting his application for emplacement on salary scale of such post.

Public officers—Promotions—There cannot be a vested right to promotion—Or a right that the required qualifications for a particular promotion post cannot be changed.

Constitutional Law—Equality—Article 28 of the Constitution—Allegation of unequal treatment has to be established by evidence—Onus on applicants to adduce such evidence.

The applicants, who were serving as Instructors on scale B.3 in the Technical Education applied to the respondent Committee for their emplacement on scale B.10. The respondent Committee rejected their application and hence this recourse. Under the schemes of service which following their amendment came into force on the 5th January, 1979 a University degree or title was required for emplacement on scale B10 which the applicants did not possess. In the course of the hearing of the recourse counsel for the applicant sought to rely on an agreement

between the Government and applicants' trade Union, which was reached after the sub judice decision and on the basis of which applicants were entitled to be emplaced on scale B.10. Counsel, further, contended that the applicants by being in the service before the amendment of the schemes of service, had a vested right for emplacement on scale B10 with the qualifications they had at the time, of which they could not be deprived; and, also, that there was a violation of Article 28 of the Constitution in that there was a discrimination and unequality of treatment between the applicants and other educational officers in similar situations.

Held, (1) that this case has to be considered on the relevant facts which were in existence at the time when the sub judice decision was taken; that since the agreement between applicants' trade Union and the Government was concluded subsequent to the sub judice decision it cannot be taken into consideration in testing the validity of the sub judice decision.

(2) That once the applicants did not satisfy the requirements of the schemes of service, it was open to the respondent Committee to reject their applications and in the circumstances the applicants did not possess a legitimate interest to contest the validity of such decision.

(3) That there cannot be a vested right to promotion or that the required qualification for a particular promotion post cannot be changed before any promotion is effected.

(4) That the allegation of unequal treatment has not been established by evidence and the onus was on the applicants to adduce such evidence.

Application dismissed.

Cases referred to:

Economides v. *Republic* (1972) 3 C.L.R. 506 at p. 520.

Recourse.

Recourse against the refusal of the respondent to emplace applicants on salary scale B.10.

C. Clerides, for the applicants.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants in these cases are holders of a diploma in Automobile Engineering of the Chelsea College of Aeronautical and Automobile Engineering of London and serve as Instructors on Scale B3 in the Technical Education. The first applicant, Savvas Miamiliotis, was firstly appointed to the post on contract (on Scale B3), on 20.9.1977 which was subsequently renewed annually till 31.8.1980. The second applicant, Michael Markides was firstly appointed on a monthly basis (on Scale B3) on 7.10.1978 and served as such till 1.6.1979, when he was offered a permanent appointment on probation.

The applicants by letters dated 27.10.1978 and 7.2.1979 applied to the respondent Committee for their emplacement on Scale B10. The respondent Committee after referring the case to the Evaluation Committee for advice concerning the qualifications of the applicants, and having received the views of such Committee, considered the applications in the light of all material before it, and decided to reject same on the ground, as it appears from the minutes, that the applicants did not possess the qualifications prescribed by the schemes of service applicable for emplacements on Scale B1O, and, in particular, that they did not possess a degree or title of a University or other equivalent qualification. Such decision was communicated to the applicants by letters dated 22.12.1979 (exhibits 1 and 1A annexed to the written address of counsel for them). In respect of the first applicant, it is mentioned in the said letter (exhibit 1), that he did not possess such qualifications on the date of his last appointment on contract, which was the 14th June, 1979 and in the case of the second applicant that he did not possess such qualifications on the 1st June, 1979 which was the date of his appointment on probation (see exhibit 1A). As a result, the applicants filed the present recourse by which they claim "a declaration of the Court that the act and/or decision of the respondent Committee communicated to the applicants on the 22nd December, 1979 to the effect that applicants do not possess the required qualifications in order to be entitled to be emplaced in Scale B10 of the scales for educational services, should be declared null and void and of no effect whatsoever".

Three grounds of law were advanced in support of the appli-

cation. In fact, the alleged grounds 1 and 2 are not in substance grounds of law, but merely a statement of facts which led to the filing of the petition. The only ground of law is ground 3 which reads as follows:

"Applicants contend that they both possess the required qualifications for emplacement in scale B10 and that respondents above decision should be declared null and void and of no effect whatsoever in that:

(a) It is contrary to the true interpretation of the relevant scheme of service.

(b) It conflicts with Article 28 of the Constitution as other candidates with same or similar qualification have in the past been emplaced in the same scale.

(c) It is not duly reasoned".

As to ground 3(a) which refers to the interpretation of the schemes of service, I wish to observe that the schemes of service have not been produced by either side and are not before the Court. From what, however, can be deduced from the facts as set out in the application and the opposition and from the addresses of both counsel, and about which there is no dispute, it was one of the requirements of the relevant schemes of service for emplacement on Scale B10, after such schemes were amended on 5.1.1979, that a "University degree or title or an equivalent qualification" was required. According to the same material, the schemes of service which were in force before the 5th of January, 1979, required only "a diploma or certificate in the relevant subject of the standard of the Higher National Certificate or an equivalent qualification".

It was the contention of counsel for the applicants that once the applicants had been appointed in the Public Service long before the amendment of the schemes of service and that at the time of their appointment they possessed the necessary qualifications required by the schemes of service in force at the time, the subsequent modification of the schemes of service could not affect their position and, therefore, they were entitled to be emplaced on Scale B10, having regard to the qualifications they already possessed. Furthermore, counsel contended that after an agreement reached between representatives of the

Government on the one side and representatives of the Trade Unions of Civil Servants and Educationalists on the other side, dated 5.1.1981, which relates to the re-organisation of certain posts of the Educational Service applicants and persons holding similar qualifications who were in the service before the 5th January 1979, were eligible for emplacement on scale B10. Such agreement has been attached to the written address in reply of counsel for applicants (exhibit 4). In such memorandum of agreement, reference is made to another memorandum of agreement copy of which was attached to the written address of counsel for applicants (as exhibit 5). The effect of both these exhibits is that those officers already in the service and holding posts which were subject to re-organisation, are treated differently from those who were to join the service after such date. The relevant part of exhibit 5 reads as follows:

"(e) *Instructors (scales B3-B6).*

It has been agreed that all instructors who were in the service prior to the 5th January, 1979 on Scales B3-B6, possessing the qualifications of H.N.C., H.N.D., H.T.I. or equivalent qualifications who could have been appointed on the basis of the schemes of service in force before the above date to the post of Instructor on Scales B10-B12, be so appointed to the post of Instructor on Scales B10-B12".

Counsel for applicants sought to rely on the above part of the agreement and contended that on the strength of it the applicants should have been emplaced on Scale B10. I find myself unable to agree with the contention of counsel for applicants that reliance may be placed on the said agreements. Such agreements were concluded subsequent to the sub judice decision and therefore they can have no bearing in the case, since they were not in existence at the time when the sub judice decision was taken. Therefore, any facts contained therein or related thereto, and any arguments based on such facts, should be disregarded. The same also applies to exhibit 6 annexed to the address of counsel for applicants which is a letter dated 29th June, 1981, to another instructor, informing him that his application for emplacement on Scale B10 had been approved. The decision in respect of such person was a decision taken after the signing of the memorandum embodying the

agreements reached between the Trade Unions and the Government. Any material which has been produced in relation to events which took place after the sub judice decision was taken and which presumably took place in conformity with agreements reached at a later date, is material which I cannot take into consideration in testing the validity of the sub judice decision. Therefore, this case has to be considered on the relevant facts which were in existence at the time when the sub judice decision was taken and the evidence related thereto.

Exhibits 1 and 1A, as already mentioned, are the letters sent separately to the applicants containing the sub judice decision. Exhibits 2, 2A and 3 relate to the recognition of several diplomas including those of the applicants as equivalent to H.N.C., H.N.D. and H.T.I. The fact that the qualifications of the applicants were considered as equivalent to the H.N.C. or H.N.D. or H.T.I. diplomas, has not been disputed by counsel for the respondent. The only point in issue is whether the applicants, having regard to their qualifications, had any right at the time when the sub judice decision was taken, to be emplaced on Scale B10.

The schemes of service in force at the time when the applicants submitted their applications to the respondent Committee for emplacement on Scale B10, were the ones which came in force on the 5th January, 1979 and whereby the previous schemes of service were amended to the extent that under the new schemes in force at the time of their applications a University degree or title was required for emplacement on Scale B10, a qualification which admittedly the applicants did not possess. Therefore, once the applicants did not satisfy the requirements of the schemes of service, it was open to the respondent Committee to reject their applications and in the circumstances the applicants did not possess a legitimate interest to contest the validity of such decision.

Counsel for applicants submitted that the applicants by being in the service before the amendment of the schemes of service, had a vested right for emplacement on Scale B10 with the qualifications they had at the time, of which they could not be deprived. As it has been held by this Court time and again,

there cannot be a vested right to promotion. In *Economides* v. *The Republic* (1972) 3 C.L.R. 506 at p. 520, it was held that—

> "It may be said here that in my judgment there is no such vested right as a right to promotion or that the required qualification for a particular promotion post will not be changed before any promotion is effected. There is an expectation for it and nothing more". (see, also *Piperis* v. *The Republic* (1967) 3 C.L.R. 295 and *Andreas Leontiou* v. *The Republic*, Case No. 398/80, not yet reported)*.

As to the contention of counsel for applicants under legal ground 3(b) that there is a violation of Article 28 of the Constitution in that there is a discrimination and unequality of treatment between the applicants and other educational officers in similar situations, counsel for applicants has mentioned the case of three other educational officers holding the same qualifications as the applicants who were emplaced on Scale B10. This allegation has not been established by evidence and the onus was on the applicants to adduce such evidence to prove their allegation of unequal treatment. The only material before me is exhibit 6 which is a letter of the 29th June, 1981, sent by the respondent to one Michael Constantinides, communicating to him their decision to emplace him on Scale B10. As I have already mentioned, this letter refers to a decision taken a long time after the date of the sub judice decision and presumably was based on the memorandums of agreement, exhibits 4 and 5 mentioned earlier in this judgment.

With regard to the other person named by counsel for applicant, one Alkiviades Michael, this was a case where a settlement was reached after a recourse was filed and the circumstances in which such settlement was reached are not before the Court and they might have been different from the circumstances of the present case. Counsel for respondents contended, with regard to this person, that he has been so emplaced after the evaluation of his qualifications, but there is no evidence before the Court as to what the qualifications of such person were. Therefore, the applicants have failed to discharge the onus which was cast on them to make out a case of unequal treatment to enable them to succeed on this ground.

* Now reported in (1983) 3 C.L.R. 221.

As to the last legal ground that the sub judice decision is not duly reasoned, I find the contention of counsel for applicants untenable, in that the reasoning of the decision is very clearly stated both in the decision itself and also in the letters addressed to the applicants (exhibits 1 and 1A) to the contents of which reference has already been made.

In the result, this recourse fails but in the circumstances I make no order for costs.

Before concluding, I wish to add that in the light of new facts which came into existence and in fact the agreements concluded between the Trade Unions of the Civil Servants and Educationalists and the Government, there is nothing to prevent the applicants from applying for a reconsideration of their case by the respondent.

Recourse dismissed. No order as to costs.