1984 February 20

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ALEXANDROU AND OTHERS.

Applicants.

v.

THE REPUBLIC OF CYPRUS AND/OR
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTER OF FINANCE,
3. THE MINISTER OF EDUCATION,
4. THE COUNCIL OF MINISTERS.

Respondents.

(Case No. 126/83).

Legitimate interest—Unreserved acceptance of an administrative act deprives the acceptor of a legitimate interest to question it—Article 146.2 *of the Constitution.*

Public officers—Promotions—No officer has a vested right to promotion.

Equality—Principle of equality—Article 28.1 *of the Constitution.*

Following attendance of a course the applicants, who were elementary school teachers, were seconded in 1969, on their application, to serve as secondary school teachers of practical knowledge. Ever since, it was their persistent demand that they should be given the right to join secondary education. This right was acknowledged by a collective agreement between Government and educationalists and given effect to by Law 12/81 by virtue of which they were given the right to join the establishment of secondary education retrospectively as from 1979; and applicants accepted the offer to join secondary education at scale A5–A7 without qualification thereby attaching no conditions to their acceptance and making no reservation of rights whatever. They thereafter applied to the respondents to have them emplaced on scale A11 and their application was

refused and as a result they filed this recourse contending that their emplacement on scale A5–A7 was made in breach of rights vested in them and in defiance of the principle of equality enshrined in Article 28 of the Constitution

Held, that it is settled in administrative law that unreserved acceptance of an administrative act, precludes the acceptor from questioning it, that since the applicants accepted to join the secondary education without qualification their recourse is not viable and must be dismissed

Held, further, that the recourse must fail on the merits because no officer has a vested right to promotion and also no question of vested rights can arise in this case and because the complaint of inequality is ill-founded (pp 18–19 post)

Application dismissed

Case referred to

Paphitis and Others v *Republic* (1983) 3 C L R 255,

Paschali v *Republic* (1966) 3 C L.R. 593,

Markou v *Republic* (1968) 3 C L R. 267,

Theocharous v *Republic* (1969) 3 C L.R. 318,

Myrianthis v *Republic* (1977) 3 C L R. 165,

Tompoli v *C Y T A.* (1980) 3 C L R 266,

HjiConstantinou v *Republic* (1980) 3 C.L.R. 184,

Economides v *Republic* (1972) 3 C L R 506,

Republic v *Menelaou* (1982) 3 C L R 419.

Recourse.

Recourse against the refusal or failure of the respondents to acknowledge applicant's eligibility to ascend to scale A.11 under the grading system for educationalists which was introduced by law 12/81.

A S Angelides, for the applicants.

R. Vrahimi (Mrs), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. This is an application by 34 teachers of secondary education, classified as Teachers of Practical Knowledge, complaining of unequal, unjustified and erroneous treatment by the Educational Authorities arising from their refusal or failure to acknowledge eligibility to ascend to Scale A11 under the grading system for educationalists introduced by Law 12/81. Basically, they contest their emplacement on grade A5 - A7, allegedly made in breach of rights vested in them and in defiance of the principle of equality enshrined in Article 28. Moreover, the authorities are guilty of bad faith in refusing to grade them in a manner that would give them the right to rise up to Scale A11, a right they would have enjoyed if they had remained as teachers of elementary education provided they were promoted to Assistant Headmasters.

I must confess I find the recourse muddled. It is difficult to discern the precise act or decision against which the recourse is directed, as well as the legal and factual foundations of the recourse. Doing my best to distil the substance of the application, reading through the application, the material in the file and the address submitted on behalf of the applicants, the case for the applicants may be depicted as follows:

The decision to grade the applicants in the manner above explained, though consonant with the provisions of Law 12/81 and the collective agreement that preceded it, is, nonetheless, wrong because of -

(a) Failure to preserve the rights of the applicants that allegedly vested because of their former service in elementary education, judged in combination with the circumstances under which they joined secondary education.

(b) Failure to heed the principle of equality embodied in Article 28, arising from their unequal treatment in comparison to other teachers of the faculty of practical knowledge, namely graduates of the Higher Technical Institute and,

(c) breach of the principle of good faith that binds the Administration to live up to its promises, estopping it thereafter from deviating therefrom.

The respondents deny the validity of the complaints, while they dispute the justiciability of the recourse. The applicants

are precluded from challenging the decision to emplace them at Scale A5 - A7 and the consequences deriving therefrom, because of their unqualified acceptance of the offer made to join the secondary education at the above position, resulting in organic severance of their link from elementary education To understand the implications of this submission, we must refer to the circumstances under which applicants joined secondary education

Following attendance of a course, the applicants were seconded, in 1969, on their application to serve as secondary school teachers of practical knowledge Ever since, it was their persistent demand they should be given the right to join secondary education. Their claim was espoused by the Union of Teachers of Technical Education (OEΛΤΚ) This right was acknowledged by the collective agreement between Government and educationalists and given effect to by Law 12/81. hey were given the right to join the establishment of secondary ducation retrospectively, as from 1979

I had occasion to examine the ambit and impact of Law 12/81 n *Paphitis And Others v The Republic* (1983) 3 C.L.R 255 Applicants accepted the offer to join secondary education at Scale A5 - A7 without qualification They attached no conditions to their acceptance and made no reservation of rights whatever It is by this unqualified acceptance they joined econdary education There was nothing to prevent them from everting to elementary education. in fact, some of their colleagues chose that course It is settled in administrative law that unreserved acceptance of an administrative act precludes the acceptor from questioning it (see, inter alia, *Paschali v The Republic* (1966) 3 C L R 593, *Markou v The Republic* (1968) 3 C L R 267, *Theocharous v The Republic* (1969) 3 C L R 318 *Mavranthis v The Republic* (1977) 3 C L R 165; *Tomboli v C Y T A* (1980) 3 C L R. 266; *Hadjeonstantinou v The Republic* (1980) 3 C L R 184) Consequently the recourse of the applicants is not viable and must on that account be dismissed However, examination of the merits of the recourse could not lead to any different result either

Speaking of vested rights, it is abundantly clear no officer has a vested right to promotion (see, inter alia, *Economides v The Republic* (1972) 3 C L R 506) The subject of vested rights and the circumstances of their accrual were also discussed

by the Full Bench of the Supreme Court in *Republic* v. *Menelaou* (1982) 3 C.L.R. 419. However, I fail to see how a question of vested rights can arise in this case. On the one hand, before the enactment of Law 12/81, applicants had no right to become teachers of secondary education. They became teachers of secondary education by their own choice and in consequence thereof. That their former colleages now enjoy a right to be promoted to a position that carries a salary on Scale A11 - Assistant Elementary School Headmaster—is totally irrelevant. Their joinder of secondary education was in no way dependent on the administration safeguarding equal opportunities for promotion as they might, at anyone time, enjoy in the elementary education had they not resigned therefrom. Their emplacement was, in my judgment, properly made in accordance with the law.

Equality, as often repeated, is a relative concept designed to ensure equality among persons or things intrinsically equal. The principle is so well settled that it is unnecessary to refer to any of the numerous decisions on the subject. There were inherent differences between the applicants and secondary school teachers in possession of the diploma of the H.T.I.. Emplacement of the latter on a scale higher than that of the applicants was the result of the application of the relevant provisions of the law bearing on the readjustment of their salary scale and regrading in the service. The legislature may legitimately tie the grading of an officer to the possession of academic qualifications, as well as former service. There was nothing invidious to equality in choosing this course. The differentiation was in no way arbitrary. Hence complaints of inequality are, in my judgment, altogether ill-founded.

Lastly, there is no substance whatever in the complaints attributing to the educational authorities bad faith. Certainly, they implemented the collective agreement though it must be said, as stressed in *Paphitis*, supra, that a collective agreement is not of itself a source of rights at public law. The decision or decisions complained of in these proceedings were consonant with the law and were the product of its application.

In my judgment, the recourse is altogether ill-founded. It is dismissed. Let there be no order as to costs.

Application dismissed with no order as to costs.