1984 March 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEOPATRA PAPADOPOULOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS AND/OR
EDUCATIONAL SERVICE COMMISSION,

Respondents.

(*Case No.* 339/83).

Administrative Law—Administrative acts or decisions—Executory act—Decision declaring applicant ineligible for appointment as a secondary school teacher because she lacked the necessary qualifications—Executory because it was productive of legal consequences—And applicant had a legitimate interest to pursue a recourse against such decision.

Educational officers—Schemes of service—Alteration—Within discretion of appropriate Authority—No one has a right to demand their non-alteration—Inclusion in the table of candidates compiled by virtue of the provisions of the Educational Service Regulations, 1972, does not confer a right to eligibility for appointment irrespective of changes in the schemes of service—Interpretation of schemes of service by appointing authority—Judicial control—Principles applicable—Reasonably open to respondents to conclude that graduation from "Omeios" School did not qualify as the envisaged, by the relevant scheme of service, three-year cycle of post secondary school studies.

Administrative Law—Principle of good faith—No administrative authority can evolve policies in breach of the provisions of the law—And no one could repose faith in such policy.

Constitutional Law—Equality—Principle of Equality—Article 28 of the Constitution—Scheme of service for post of Art teacher—

Exempting from the qualifications provided therein art teachers appointed in 1981-82 *on a temporary basis—And not exempting applicant who served in* 1972-1976—*Differentiation made does not offend Article* 28.

The applicant served on a temporary basis at different schools of secondary education as a teacher of art between the years 1972 and 1976. Her services were discontinued in 1976 for health reasons; and notwithstanding termination of her services, her name was not removed from the table of candidates awaiting appointment to the post of art teacher, compiled under the provisions of the Educational Service Regulations, 1972. The qualifications of the applicant were

(a) leaving certificate of a Gymnasium

(b) Certificate for Decorators from Omeros School for Designers-Decorators, a private school, functioning under the supervision of the Directorate of Vocational Education of the Greek Ministry of Education.

Though the above qualifications made her eligible for appointment in 1972, in view of the schemes of service then in force, requiring only leaving certificate of a secondary school and diploma or certificate certifying attendance of a two-year special course, thereafter in 1982 another scheme of service was introduced, requiring, apart from a leaving certificate from a secondary school, a title, degree or diploma, awarded after attendance of a three-year post Lyceum cycle of studies on the subject candidates were intended to teach.

When applications were invited for the filling of a number of posts of art teachers applicant's application was turned down for the reason that she lacked the qualifications envisaged by the new schemes of service. Hence this recourse.

Counsel for the applicant mainly contended:

(a) That applicant was excluded from the list of candidates in breach of the rights vested in her by the inclusion of her name in the list of candidates compiled prior to 1982.

(b) That the respondents wrongly interpreted the scheme of service.

(c) That the respondents have acted contrary to the principle of good faith.

(d) That the provisions of Article 28 of the Constitution were infringed because an arbitrary distinction was made at the expense of the applicant in that the scheme of service contained a transient provision, exempting from the qualifications provided therein art teachers appointed in 1981-82, on a temporary basis who served for a continuous period of five months.

Contention (c) was based on the ground that though the administration by its policy represented that inclusion in a table of candidates was a mark of eligibility they acted in breach of their representations in the case of the applicant.

Held, (1) that the sub judice decision is executory because it was productive of legal consequences in the sense that it declared the applicant ineligible for appointment as a secondary teacher; and that, further, applicant has a legitimate interest to pursue this recourse because she is not challenging her non-appointment but the decision declaring her ineligible for appointment.

(2) That no one has a right to demand the non alteration of a scheme of service; that the appropriate authority has a discretion in the matter and they may alter existing schemes or introduce an altogether new scheme of service; that the applicant had an expectation to be appointed; that her inclusion in the table of candidates did not confer upon her a right to eligibility irrespective of changes in the schemes of service; that in any event, possession of the qualifications envisaged by the scheme of service currently in force, is made, according to specific provisions of the law, a sine qua non for appointment, independently of inclusion in any table of candidates; and that, therefore, the respondents were perfectly entitled to exclude her for consideration if she did not possess the qualifications envisaged by the scheme of service introduced in 1982; accordingly contention (a) must fail.

(3) That the interpretation and application of the schemes of service is the responsibility of the appointing authority; that so long as they place upon the scheme a reasonable interpretation and apply it in a manner reasonably possible their decision will

be upheld; that it was reasonably open to the respondents to conclude that graduation from Omeros School did not qualify as the envisaged three-year cycle of post secondary school studies; accordingly contention (b) must fail.

(4) That a representation that inclusion in a table of candidates was a mark of eligibility would be illegal; that no administrative authority can evolve policies in breach of the provisions of the law and no one could repose any faith in such a policy; that there was nothing whatever before this Court to suggest that this was the policy of the administration; accordingly contention (c) must, also, fail.

(5) That the shaping of the law or administrative policy is the concern of the appropriate authority; that the differentiation made does not offend Article 28 of the Constitution because of the immediacy of the ties of those in active service, be it on a temporary basis, at the time of the introduction of the schemes of service that put them in a class apart; and that saving clause in their case was not beyond the discretion of the appropriate authority; accordingly contention (d) must, also, fail.

Application dismissed.

Cases referred to:

Petsas v. Republic, 2 R.S.C.C. 60;

Michael and Another v. P.S.C. (1982) 3 C.L.R. 726;

HjiChristoforou v. Republic (1983) 3 C.L.R. 280;

Makrides v. Republic (1983) 3 C.L.R. 622;

Kambouris v. Republic (1983) 3 C.L.R. 1165;

Republic v. Menelaou (1982) 3 C.L.R. 428.

Recourse.

Recourse against the refusal of the respondents to re-appoint the applicant as a teacher of art of secondary education.

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Cleopatra Papadopoulou served on a temporary basis at different schools of secondary education as a teacher of art, between the years 1972 and 1976. She continued serving in that capacity after her

displacement from Famagusta in the wake of the Turkish invasion in 1974. Her services were discontinued in 1976 for health reasons. In 1980, her health was restored to a degree enabling her to resume duties, as a government medical board certified. However, her request for reappointment was turned down on the ground that there were other candidates who held superior qualifications. Notwithstanding termination of her services, her name was not removed from the table of candidates awaiting appointment to the post of art teacher, compiled under the provisions of the Educational Service Regulations - See, reg. 5, Educational Service Regulations, Supplement 3, No. 205 - 10.11.72.

The only qualifications that applicant has, are -

(a) The leaving certificate of the Gymnasium and,

(b) Certificate for Decorators, from Omeros School for Designers-Decorators ("ΟΜΗΡΟΣ" Μέσαι Ἰδιωτικαὶ Τεχνικαὶ Ἐπαγγελματικαὶ Σχολαὶ Σχεδιαστῶν–Διακοσμητῶν) a private school, functioning under the supervision of the Directorate of Vocational Education of the Greek Ministry of Education.

Her qualifications made her eligible for appointment in 1972, in view of the schemes of service then in force, requiring only leaving certificate of a secondary school and diploma or certificate certifying attendance of a two-year special course, thereafter. Things changed in 1982. A more exacting scheme of service was introduced, requiring, apart from a leaving certificate from a secondary school, a title, degree or diploma, awarded after attendance of a three year post Lyceum cycle of studies on the subject candidates were intended to teach. In the meantime, the post of secondary school art master, was regraded and classified in scale A5 - A7, within the context of the restructure of the educational service.

Applications were invited for the filling of a number of posts of art teachers. The application of Miss Papadopoulou was turned down for the reason that she lacked the qualifications envisaged by the schemes of service. A decision to that effect was taken on 16.6.83. On 18.6.83 she was informed that she was ineligible as candidate. The present recourse challenges that decision.

The decision under review is executory in that it sealed the fate of the applicant as a prospective teacher and, frustrated her expectations in that direction. It was productive of legal consequences in the sense that it declared the applicant ineligible for appointment as a secondary school teacher. Counsel for the respondents submitted that applicant lacked, on account of her qualifications, legitimate interest in the pursuit of the recourse. It seems to me that counsel overlooks that applicant is not challenging her non-appointment, but the decision declaring her ineligible for appointment. Certainly, she has a legitimate interest to contest that decision which has erected a barrier to her candidature for appointment. Unless annulled, she will be unable to compete for appointment. Hence, the decision is definitive of the stand of the administration towards the applicant. It affects her rights in a direct way. The recourse is justiciable.

I find it convenient and time-saving to enumerate in the order appearing below, the grounds upon which the recourse is founded, recount the answer given thereto by the respondents and, my decision on each ground in a sequence that befits the nature and importance of each issue in the context of the proceedings.

(A) *Vested Rights:*

Central in the case of the applicant is the contention that she was excluded from the list of candidates in breach of the rights vested in her by the inclusion of her name in the list of candidates compiled prior to 1982. Respondents replied that inclusion in a table of candidates and any rights arising therefrom, are dependent on the continuance in force of the scheme of service, on the basis of which the table was compiled. Eligibility for appointment is forfeited upon a change of the provisions of a scheme of service upon which inclusion was decided. Regulation 6(1) specifically postulates possession of the qualifications required by the schemes of service as a prerequisite to eligibility. The law itself, s.28(c), categorically provides that no one can be appointed in the educational service unless he possesses the qualifications required by the schemes of service (see. also. reg. 10(3) of Educational Service Regulations).

No one has a right to demand the non alteration of a scheme of service. It is settled beyond doubt that the appropriate

authority has a discretion in the matter. They may alter existing schemes or introduce an altogether new scheme of service. They are the arbiters in the matter. This is a salient rule of administrative law that reflects the need to ensure that the administration enjoys the necessary freedom to model specifications for the manning of the Public Service, in this case the Educational Service, on the needs of the Service and present state of scientific and cultural knowledge, as well as the availability of personnel to meet these requirements, a social consideration. Any other approach would stultify progress and make for a static state of affairs.

The applicant had an expectation to be appointed. Her inclusion in the table of candidates did not confer upon her a right to eligibility irrespective of changes in the schemes of service. In any event, possession of the qualifications envisaged by the scheme of service currently in force, is made, according to specific provisions of the law, a sine qua non for appointment, independently of inclusion in any table of candidates. For instance, if the name of the candidate is wrongly included in a table, it does not make him eligible if he lacks the necessary qualifications. In my judgment, the respondents were perfectly entitled to exclude her for consideration if she did not possess the qualifications envisaged by the scheme of service introduced in 1982.

(B) *The Qualifications of the Applicant for Appointment:*

The interpretation and application of the schemes of service is the responsibility of the appointing authority. They have a wide discretion in the matter. And so long as they place upon the scheme a reasonable interpretation and apply it in a manner reasonably possible, their decision will be upheld (see, inter alia, *Petsas v. Republic*, 2 R.S.C.C. 60; *Michael and Another v. P.S.C.* (1982) 3 C.L.R. 726; *Hadjichristophorou v. Republic* (1983) 3 C.L.R. 280; *Makrides v. Republic* (1983) 3 C.L.R. 622; *Kambouris v. Republic* (1983) 3 C.L.R. 1165). What the respondents had to decide, was whether graduation from Omeros School, in the light of the nature, educational standing and the tuition offered, qualified as a three year post Lyceum cycle of studies and, whether the certificate or diploma issued upon completion of the studies, qualified as a title, degree or diploma following such a three-year cycle of studies. Although I agree that

reference to a Lyceum could not possibly exclude graduates of a six-year Gymnasium, it was, to say the least, reasonably open to the respondents to conclude that graduation from Omeros School did not qualify as the envisaged three-year cycle of post secondary school studies. It was reasonably open to the respondents to decide as they did. Therefore, the case of the applicant fails on this ground as well.

(C) *Good Faith:*

Counsel for the applicant made reference in his address to the principle of good faith binding the administration not to deviate from its proclaimed policy of practice - *Dagtoglou, Administrative A'*, 1977, p.106. The conduct of the administration must be consistent with the faith reposed in them by members of the public and the argument is that, whereas the administration, by its policy represented, that inclusion in a table of candidates was a mark of eligibility, they acted in breach of their representations in the case of the applicant. Firstly, any representation along the lines suggested, would fly in the face of specific provisions of the law and would be illegal. No administrative authority can evolve policies in breach of the provisions of the law and, no one could repose any faith in such a policy. Secondly, there is nothing whatever before me to suggest that this was the policy of the administration. I consider the advancement of this ground, on behalf of the applicant, as totally lacking in merit. The case of the *Republic v. Menelaou* (1982) 3 C.L.R. 428, is distinguishable from the present case. Reliance upon that decision can carry the case for the applicant no further.

(D) *Equality:*

Lastly, it was argued on behalf of the applicant that the provisions of Article 28 of the Constitution were infringed because an arbitrary distinction was made at the expense of the applicant. The scheme of service contains a transient provision, exempting from the qualifications provided therein art teachers appointed in 1981-82, apparently on a temporary basis, who served for a continuous period of five months. The submission is, there was no justifiable distinction between such candidates and others, like the applicant, who satisfied the requirements of the previous scheme of service and served for a similar period of time. I find it unnecessary to discuss at length the principles, repeatedly

stated, that define equality before the law - a principle that binds equally legislative and administrative authorities. The distinction must be reasonable and objectively relevant. There must be a reasonable basis for the differentiation. Moreover, the differentiation must have a nexus to the aims of the law or administrative policy or requirements. Beyond that, the shaping of the law or administrative policy is the concern of the appropriate authority. I refer advisedly to laws and administrative policies for, I do not wish to go, in this case, into the juridical nature of a scheme of service. Having anxiously reflected upon the differentiation made, I have come to the conclusion it does not offend Article 28. To this conclusion, I was driven mostly on account of the immediacy of the ties of those in active service, be it on a temporary basis, at the time of the introduction of the schemes of service that put them in a class apart. A saving clause in their case was not beyond the discretion of the appropriate authority.

In the result, the recourse is dismissed. Let there be no order as to costs.

Recourse dismissed with no order as to costs.