

1984 March 22

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

NICOS AVRAAMIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION

2. THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

(Case No. 444/80).

Educational Officers—Secondary Education Schoolmaster—Assignment of duties of Assistant Headmaster—Such assignment a measure of a temporary nature resorted to in order to meet specific educational needs which arise and does not create any legal rights —No duty upon the appropriate authority to make a comparison amongst the Officers eligible for performing the duties of the higher posts—Only requirement being that the person to whom the assignment of duties is made should have the qualifications required under the schemes of service—And no duty to select the best candidate so qualified or to assign such duties to the applicant or to anybody else—No vested right vested in applicant's favour by the fact that such duties were assigned to him during the previous year.

By a letter dated 9.10.1979, signed by the Director of Higher and Secondary Education the applicant, a secondary education school-master, was informed that the appropriate authority decided, in order to satisfy educational needs to assign to him the duties of Assistant Headmaster at Aradippou Gymnasium for the academic year 1979-1980. On 2.10.1980 he was transferred for educational needs from Aradippou Gymnasium to Makarios III Gymnasium of Larnaca; and on the 8th November, 1980 he was informed "that it has not been possible for the current year" to assign to him duties of Assistant Headmaster. Hence this

recourse whereby applicant sought a declaration of the Court that:

- 5 "1. The decision of the respondents or either of them not to assign duties of Assistant Headmaster to the applicant for the academic year 1980-1981, is void and of no legal effect whatsoever.
- 10 2. The decision of the respondents or either of them not to renew the assignment of duties of Assistant Headmaster to the applicant, for the year 1980-1981, is void and of no legal effect whatsoever.
- 15 3. The decision of the respondents or either of them to assign duties of Assistant Headmaster to the interested parties instead of the applicant is void and of no legal effect whatsoever".

15 *Held*, (1) that though Law 10/69 does not specifically provide about any assignment of duties this power to assign is considered as falling within the inherent powers of the appropriate authority to meet educational needs for the proper functioning of schools (see regulation 13(a)(iii) and (iv) of the Regulations)*; that
 20 assignment of duties as such is only a measure of a temporary nature resorted to in order to meet the specific educational need which arises and does not create any legal rights; that, therefore, no duty is cast upon the appropriate authority to make a comparison amongst those officers eligible for performing the duties of the higher post, since it is only a temporary
 25 measure and not a promotion, the only requirement being that the person to whom the assignment of duties is made should have the qualifications required by the schemes of service for the relevant post; that there is no duty to select the best candidate
 30 so qualified; that, therefore, there was no duty either on the part of the Educational Service Committee or the Minister of Education to assign the duties of Assistant Headmaster to the applicant or to anybody else; and that, accordingly, prayer
 35 1 of the applicant, must fail since the respondents had no duty, under the Law to assign to him the duties of Assistant Headmaster or to make a selection, for such assignment, by comparing the applicant with those officers to whom such duties were

* These Regulations are the Educational Officers (Teaching Personnel) (Appointments, Postings Transfers, Promotions and Connected Subjects) Regulation, 1972.

assigned, bearing also in mind that the applicant is not vested with any right to be assigned with such duties.

(2) That the fact that the duties of Assistant Headmaster were assigned to the applicant during the previous years does not create any vested right in his favour; and that, therefore, the respondents were under no duty to assign to the applicant again for the year 1980–1981, in another school, the duties of the post of Assistant Headmaster; and that, accordingly, prayer 2 of the recourse of the applicant, must, also, fail. 5

(3) That the respondents were under no duty to make a selection of the best candidate amongst those qualified for promotion the only consideration being that the persons to whom the duties of the higher post were assigned possessed the qualifications required by the schemes of service of that particular higher post; and that since there was no allegation that the interested parties did not possess these qualifications prayer 3 of the recourse must also fail. 10 15

Application dismissed.

Cases referred to:

- Olympios v. Republic* (1974) 3 C.L.R. 17; 20
Tsiropoullou-Kyrillou v. Educational Service Committee (1983)
 3 C.L.R. 313 at p. 320;
Shener v. Republic, 3 R.S.C.C. 138 at pp. 141, 142;
Tourpeki v. Republic (1973) 3 C.L.R. 592 at pp. 599, 600;
Partellides v. Republic (1969) 3 C.L.R. 291 at p. 296. 25

Recourse.

Recourse against the decision of the respondents not to assign duties of Assistant Headmaster to the applicant for the academic year 1980–1981.

- Sp. Spyridakis*, for the applicant. 30
G. Constantinou (Miss), Counsel of the Republic, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this case seeks a declaration of the Court that: 35

1. The decision of the respondents or either of them not to assign duties of Assistant Headmaster to the applicant

for the academic year 1980–1981, is void and of no legal effect whatsoever.

2. The decision of the respondents or either of them not to renew the assignment of duties of Assistant Headmaster to the applicant, for the year 1980–1981, is void and of no legal effect whatsoever.
3. The decision of the respondents or either of them to assign duties of Assistant Headmaster to the interested parties instead of the applicant is void and of no legal effect whatsoever.

The facts of the case are briefly as follows:

The applicant holds the post of a school master of Secondary Education since 1962.

By a letter dated 9.10.1979, signed by the Director of Higher and Secondary Education, applicant was informed that the appropriate authority decided, in order to satisfy educational needs to assign to him the duties of Assistant Headmaster at Aradippou Gymnasium for the academic year 1979–1980.

On 23.9.1980 the applicant wrote a letter to the Director of Higher and Secondary Education complaining about the fact that no acting appointment or assignment of duties of Assistant Headmaster were offered to him for the year 1980–1981 and requesting that such duties should be assigned to him until his case was re-examined.

On 2.10.1980 the applicant was transferred for educational needs from Aradippou Gymnasium to Makarios III Gymnasium of Larnaca. Applicant did not challenge such transfer. On 24.10.1980 he addressed another letter to the Minister of Education complaining about the non-assignment of duties of Assistant Headmaster to him, for the year 1980–1981 and requesting a reconsideration of his case and a reply to his request.

On the 8th November, 1980 the Director of Higher and Secondary Education replied to the applicant as follows:

“With reference to your letters to the Minister dated 24.10.1980 and the Director dated 23.9.1980 I regret that it has not been possible for the current year to assign to you

duties of Assistant Headmaster. I also express my contentment for the very satisfactory way in which you have discharged such duties which were assigned to you last year”.

As a result the applicant filed the present recourse. The interested parties referred to in this recourse, as they appear in Appendix ‘A’ thereof, are the following: 5

1. HadjiMitsi Georghia, 4th Gymnasium of Paphos, Commercial Science.
2. Papachristoforou Makarios, Solea Gymnasium, Religion. 10
3. Korfiotou Vera, E Gymnasium of Limassol, Philologist.
4. Chrysostomou Chrysostomos, Lanition Gymnasium of Limassol, Philologist.
5. Vrahimis Georghios, Paralimni Gymnasium, Commercial Science. 15

The grounds of law relied upon in support of the application, are the following:

- “1. The above decision of the respondents was taken without consideration and/or due evaluation of the real facts and/or was based on wrong facts and/or wrong evaluation of facts. 20
2. The above decision of the respondents amounts to excess and/or abuse of power.
3. The above decision violates the principle of equality.
4. The decision of the respondents amounts to a revocation of an individual administrative act which has created vested rights. 25
5. The decision of the respondents is unlawful and contrary to the principles of good administration; it is also contrary to the practice followed by the respondents until today. 30
6. The decision of the respondents actually amounts to the degrading and/or disciplinary punishment and/or a disciplinary measure against the applicant whilst no reason for it exists. 35

7. Taking into consideration the circumstances of the case, especially the greater experience, competence and qualifications of the applicant as against the interested parties, the applicant should have been preferred to them".

5 Counsel for applicant has argued in his written address that the assignment of duties of a higher post resembles promotion and is a recognition of the service of the person to whom the assignment is made. He also contended that the assignment
10 of duties to the applicant during the previous year amounted to a normal individual administrative act and as such it cannot be revoked since it has created vested rights in favour of the applicant. Counsel further maintained that the non-assignment of such duties to the applicant during 1980-1981 whilst the same duties were assigned to him during the previous year, amounted
15 in fact to his demotion which in its turn is a form of disciplinary punishment of the applicant which was imposed on him without first informing or trying him of any disciplinary offence. Counsel lastly proceeded to compare the applicant and the interested parties with regard to merit and to conclude that applicant
20 is better than all interested parties and that he should, therefore, have been preferred to them.

Counsel for the respondents argued her case on the assumption that assignment of duties resembles acting appointments and that it is made for the same purpose, that is the purpose
25 of serving educational needs, and on the same lines. She argued in this respect that it is made for a specific period of time, when there is a vacancy and it is also made for the specific post and the specific school where the vacancy exists; that it is a temporary measure and does not create any vested rights for permanent
30 promotion or appointment to that post. She made reference in this respect to section 34 of Law 10/69, section 42 of Law 33/67 and to the case of *Olympios v. The Republic* (1974) 3 C.L.R. 17, at p. 27 in support of the proposition that when the appropriate authority recommends somebody for an acting
35 appointment, the Committee is bound to follow such recommendation without making any comparison or selection. For this reason, counsel maintained, the applicant has no legitimate interest to contest the appointments of the interested parties, which were made for another period and not in Aradippou
40 Gymnasium, where applicant was performing the duties of

Assistant Headmaster during the previous year, which post was in the meantime, filled permanently.

Before I proceed any further, I wish to point out that the act challenged by the applicant is not an acting appointment for which provision is made in section 34 of the Public Educational Service Law, 1969, (Law 10/69). Acting appointments are made, according to section 34, by the Educational Service Committee on the recommendation of the Minister, are published in the official Gazette of the Republic (G.O.II/3.4) and the persons so appointed receive an acting allowance (G.O.II/3.6), whereas in the present case the assignment was offered by the "appropriate authority", which, according to section 2 of the Law, is the Minister acting through the Director-General of the Ministry, it has not been published in the official Gazette and the person to whom the assignment was made did not receive (according to what counsel for applicant has mentioned in his written address) any additional emoluments for performing such duties. Moreover, no mention of "acting appointment" is made in the letter Annex 'A' to the opposition, but of "assignment of duties". In addition, acting appointments (as well as secondments), are effected in cases where there are vacant posts, whereas here, it is the case of counsel for the respondents, there were no organic posts of Assistant Headmaster in the academic year 1979-1980.

No provision is made either in the Law or the Regulations about such "assignment of duties" and as to how and when it is effected. I am not going to embark further on the nature of the sub judice decision since no such point is raised by counsel. I may only say that as it seems from the letter Annex 'A' to the opposition, it is a measure resorted to by the administration in order to meet educational needs in cases where for some reason, no other appointment either acting or by way of promotion may be made.

Regulation 13(a) (iii) and (iv) defines the term "Educational needs" as including "the power to settle cases dictated by other lawful considerations" and "special circumstances dictating immediate settlement for the proper functioning of schools". Educational needs are within the ambit of the powers of the appropriate authority. The law does not specifically provide about any assignment of duties but I will consider this power to assign as falling within the inherent powers of the appro-

priate authority to meet educational needs for the proper functioning of schools. As such it is only a measure of a temporary nature resorted to in order to meet the specific educational need which arises and does not create any legal rights. It may therefore be said that no duty is cast upon the appropriate authority to make a comparison amongst those officers eligible for performing the duties of the higher post since it is only a temporary measure and not a promotion. No such duty is cast upon the same authority even in the cases of acting appointments or secondments for which special provision is made in the Law. (See the cases of *Olympios v. The Republic* (1974) 3 C.L.R. 17, and *Tsiropoullou—Kyrillou v. Educational Service Committee* (1983) 3 C.L.R. 313, 320). The only requirement is that the person to whom the assignment of duties is made should have the qualifications required by the schemes of service for the relevant post. There is no duty to select the best candidate so qualified. The considerations of promotion apply only in the case of a proper promotion under the Law. There was no duty, therefore, either on the part of the Educational Service Committee or the Minister of Education to assign the duties of Assistant Headmaster to the applicant or to anybody else. The decision to assign such duties to certain other educational officers was reached by the appropriate authority (the Minister) in order to meet certain educational needs in specific schools, which, in his judgment, required immediate settlement.

Prayer 1 of the applicant, therefore, fails, since the respondents had no duty, under the Law to assign to him the duties of Assistant Headmaster or to make a selection, for such assignment, by comparing the applicant with those officers to whom such duties were assigned, bearing also in mind that the applicant is not vested with any right to be assigned with such duties.

I come now to examine prayer 2 of the recourse, by which the applicant prays that the decision of the respondents not to renew for the year 1980/1981 the assignment of duties of Assistant Headmaster, which was made to him for the year 1979/1980, be declared void and of no legal effect whatsoever.

It has been decided by our Courts in the case of secondments and acting appointments, that they are not of a permanent nature but only of a temporary duration and they do not in any

way confer any vested rights in favour of the holders but are only taken into consideration for the purpose of assessing experience. Relevant in this respect are the cases of *Shener v. Republic*, 3 R.S.C.C. 138, at pp. 141, 142; *Tourpeki v. Republic* (1973) 3 C.L.R. 592, at pp. 599, 600, and *Partellides v. Republic* (1969) 3 C.L.R. 291 at p. 296. 5

It should be noted that the duties assigned to the applicant were assigned to him temporarily for a specific period, that is, for the year 1979/1980 and they were not terminated before their expiration but were exercised for the whole of such period. 10

The fact that the duties of Assistant Headmaster were assigned to the applicant during the previous year does not create any vested right in his favour. There was a specific educational need in the school where applicant was serving which the appropriate authority solved temporarily by assigning the duties of Assistant Headmaster to him. It is an accepted fact that in the following year that particular need was met by the promotion of another Master to the post of Assistant Headmaster against which promotion the applicant did not complain. The respondents were under no duty to assign to the applicant again for the year 1980/1981, in another school, the duties of the post of Assistant Headmaster. I, therefore, find that prayer 2 of the recourse of the applicant, also fails. 15 20

I come lastly to examine prayer 3 of the recourse of the applicant, which is to the effect that assignment of the duties of Assistant Headmaster should have been made to the applicant, instead of the interested parties. 25

I have already found earlier that the respondents were under no duty to make a selection of the best candidate amongst those qualified for promotion (see the cases of *Olympios v. Republic* (supra) and *Tsiropoullou—Kyrillou v. Educational Service Committee* (supra)). The only consideration is that the person to whom the duties of the higher post are assigned possesses the qualifications required by the schemes of service of that particular higher post. Since there is no allegation that the interested parties do not possess these qualifications, I find that this part of the recourse must also fail. I also find the contention of counsel for applicant that the non-assignment 30 35

of the same duties to the applicant for the year 1980/1981 amounts to a disciplinary punishment entirely unfounded. There is nothing in his files about any disciplinary complaint against him, but on the contrary, from the contents of the letter
5 of the Director of Higher and Secondary Education dated 8th November, 1980, the satisfactory way in which applicant had discharged the duties assigned to him, is praised. Furthermore, the applicant has failed to substantiate his allegations by any other evidence whatsoever.

10 In the result, the recourse fails and is hereby dismissed but in the circumstances there will be no order for costs.

*Recourse dismissed with no order
as to costs.*