

1984 July 9

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PITTAKAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 527/82).

Educational Officers—Transfer—Disciplinary transfers—And transfers for educational needs—Disciplinary transfers are not allowed—In case of doubt the relevant transfer must be treated as being a disciplinary one in order to afford the officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters and give him a chance to be heard.

The applicant in this recourse, a teacher in the elementary education, challenged the validity of the decision of the respondent to transfer him from the Elementary School of Moni to the Elementary School of Vassa Kilaniou. Though in the personal file of the applicant there was nothing tending to show that the sub judice transfer had any disciplinary character paragraph 2* of the facts in support of the opposition, which was a mere reproduction of paragraph 2 of the statement of facts prepared, apparently by the office of the respondent Commission for the use and guidance of counsel for the respondent, stated in effect that applicant had in the past committed disciplinary offences.

Held, that a transfer which is not made solely for the purpose of meeting the needs of the service, but involves an element or has the character of a disciplinary measure, is not allowed; that in case of doubt the relevant transfer must be treated as being a disciplinary one, in order to afford the officer concerned

* Paragraph 2 of the opposition is quoted at pp. 901-902 post.

the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters; that the contents of paragraph 2 of the opposition raise a doubt as to the true nature of the transfer in question; that since the opposition was prepared on the basis of the note sent from the office of the respondent Commission it may be inferred that the whole sequence of events as mentioned therein, regarding applicant's service and the various complaints against him, was always in the mind of the members of the Commission when effecting the transfer complained of raising a strong suspicion that they may have acted under the disguise of educational needs, whereas in fact it was a transfer for disciplinary purposes without having given the applicant a chance to be heard; and that, therefore, there is a doubt as to the true nature of the sub judge transfer, which, in consequence, has to be annulled.

Sub judge decision annulled.

Cases referred to:

Pillatsis v. Republic (1968) 3 C.L.R. 707;

Damianou v. Republic (1973) 3 C.L.R. 282;

Kyriakides v. Republic (1976) 3 C.L.R. 364;

Ladaki-Philippou v. Republic (1981) 3 C.L.R. 153.

Recourse.

Recourse against the decision of the respondent to transfer applicant from the Elementary School of Moni to the Elementary School of Vassa Kilaniou.

A. Haviaras, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse prays for a declaration of the Court that the act and/or decision of the respondent communicated to him by letter dated 30.9.82 by which he was transferred from the Elementary School of Moni to the Elementary School of Vassa Kilaniou, is null and void and of no legal effect whatsoever. Also, that the omission of the respondent to transfer him to Limassol, is null and void.

The applicant is a teacher in the Elementary Education having

been so appointed in 1965. He is married and has two young children and his family resides in Limassol where his wife owns a house. He has served all the years, since his appointment, in rural schools, and from 1980 - 1982 at Vassa Kilaniou.

5 On 15.2.82 the applicant applied in accordance with the relevant Regulations, for a transfer, stating the places of his preference to be (1) Limassol, (2) Polemidhia, (3) Ayia Phyla, and (4) Ypsonas. In support of his application he set out the following reasons:

- 10 (a) His continuous service in rural schools.
(b) His permanent residence in Limassol.
(c) He has a child who attends a Gymnasium in Limassol.
(d) He has served for nine years in schools of Class 'C'.
(e) Financial reasons.

15 The Educational Service Committee (to be referred to as the E.S.C.), informed the applicant by letter dated 2.7.82, that he was transferred, as from the 1st September from Vassa Kilaniou to Pachna (Blue 150 in his personal file, exhibit 1). Applicant accepted his transfer under protest (Blue 151).

20 On 9.9.82, applicant was then informed by letter (Blue 152) that he was transferred as from the 10th September, from Pachna to Moni village to which transfer applicant objected on the same day, by letter Blue 162, insisting that he had asked for transfer to Limassol.

25 Having served at Moni for a few days, the applicant was again informed by letter dated 30.9.82 that he was transferred from Moni to Vassa Kilaniou. Applicant objected to the above transfer, and was informed by letter dated 11.11.82 (Blue 155 in exhibit 1) that:

- 30 " (a) The Committee will not effect any transfers at the present stage.
(b) Your problem is known to the Committee and there is, therefore, no need to explain it personally, leaving your school for that purpose."

35 The above decision to transfer applicant from Moni to Vassa

Kilaniou, was taken by the E.S.C. at its meeting of 27.9.82, the minutes of which read as follows:

“B’ *ELEMENTARY EDUCATION*

1. *Transfers.*

The Educational Service Committee in continuation of its decision dated 30.6.82 and 4.9.82 and having considered the applications for transfers that have been submitted by those interested, as well as any objections regarding the previous transfers and having in mind - 5

- (a) the provisions of the Law and the Regulations, 10
 (b) the educational needs as submitted by the Ministry of Education and especially by document M.E. 520/82/A (27.9.82), decides as follows:

C’ Transfers the following as from 30.9.82 for educational reasons, that is those promoted to the post of Headmaster to B schools for the management of those schools, Asst. Headmasters on the basis of Reg. 19(c), teachers for the balanced distribution of teaching staff and/or to cover educational vacuums and the neutralisation of surpluses (Reg. 13) and/or the need to serve in another type of school and/or because their further stay in the school where they serve is in conflict with a justified claim of other colleagues of theirs (reg. 19(2) and 16(3)(ii)). 15 20

Teachers

Pittakas Andreas Moni Vassa Kilaniou.” 25

The applicant then filed the present recourse, on the 3rd day of December, 1982, which is based on the following grounds of law:

- “(1) The respondent took the sub judice decision in excess and/or abuse of powers especially in that it contravenes the provisions of the Public Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972. 30
 (2) The sub judice act and/or decision was taken contrary to

the needs of the service and/or in any event does not serve any needs of the service.

- 5
- (3) The sub judice act and/or decision was taken in a way constituting a defective exercise of its discretionary powers.
- (4) The sub judice decision is not at all and/or adequately reasoned and/or its reasoning is defective and/or wrong in law.
- 10
- (5) The sub judice act was taken in ignorance and/or in disregard of the personal circumstances of the applicant.
- (6) The sub judice act and/or decision amounts to a disciplinary punishment and does not serve any educational purpose."

15 Counsel for applicant has argued in his written address, in support of his last ground of law, that it transpires from paragraph 2 of the opposition that applicant's transfer was in fact a disciplinary measure, despite the fact that the sub judice decision refers to educational needs.

20 Paragraph 2 of the facts in support of the opposition is in fact a mere reproduction of paragraph 2 of the statement of facts prepared, apparently, by the office of the E.S.C., for the use and guidance of counsel for the respondent and which was attached to the opposition, and appears also in the personal file of the applicant (exhibit 1) as Blue 166. This paragraph reads as

25 follows:

30 "2. Το 1967 ο δάσκαλος ήλθε σε σύγκρουση με τη χωριτική αρχή των Κυβίδων και του επιστήθηκε η προσοχή. Στις 4.6.73 οι γονείς των μαθητών της Ανώγυρας δεν έστειλαν τα παιδιά τους στο σχολείο ζητώντες την απομάκρυνση του δασκάλου. Από 1.7.74 απολύθηκε από την υπηρεσία ύστερα από απόφαση του Υπουργικού Συμβουλίου. Επανήλθε, ύστερα από την ανάκληση της απολύσεως που έγινε στις 2.8.74. Το σχ. έτος 1975/76 ενώ υπηρετούσε στη Δορά, η Επιτροπή αναγκάστηκε να το μεταθέσει στη μέση του

35 σχολικού έτους (10.1.76) ύστερα από ορισμένα επεισόδια για να προστατεύσει αφενός την ομαλή λειτουργία του σχολείου και αφετέρου τον ίδιο τον δάσκαλο. Τον Ιούλιο του 1979 τέθηκε σε διαθεσιμότητα η οποία όμως τερατιστή-

ΚΕ ΣΤΙΣ 13.2.80 ύστερα από απόφαση του Υπουργικού Συμβουλίου.”

The English translation reads:

(“2. In 1967 the teacher came into contact with the village
 authorities of Kivides and his attention was drawn. On 5
 4.6.73 the parents of the pupils of Anoyira refrained from
 sending their children to school, seeking the removal of the
 teacher. As from 1.7.74 he was dismissed from the service
 after a decision of the Council of Ministers. He returned
 after the revocation of his dismissal which took effect on 10
 2.8.74. In the school year 1975 - 1976, during his service
 in Dhora, the Committee had to transfer him in the middle
 of the school year (10.1.76) after the occurrence of certain
 events, in order to protect the smooth running of the school
 on the one hand, and on the other, the teacher himself. In 15
 July, 1979 he was interdicted which interdiction was termi-
 nated on 13.2.80 after a decision of the Council of
 Ministers”).

It has been decided in a number of cases by this Court that a
 transfer which is not made solely for the purpose of meeting the 20
 needs of the service, but involves an element or has the character
 of a disciplinary measure, is not allowed. It has also been deci-
 ded that in case of doubt the relevant transfer must be treated as
 being a disciplinary one, in order to afford the officer concerned
 the safeguards ensured to him through the appropriate proce- 25
 dure applicable to disciplinary matters. (See in this respect, the
 cases of *Pilatsis v. Republic* (1968) 3 C.L.R. 707, *Damianou v.*
Republic (1973) 3 C.L.R. 282, *Kyriakides v. Republic* (1976) 3
 C.L.R. 364 and *Ladaki-Philippou v. Republic* (1981) 3 C.L.R. 153.

Thus, in the case of *Kyriakides v. Republic* (supra), it was said 30
 at pp. 376, 377, restating the principles governing suspected
 disciplinary transfers that:

“It is true, of course, that transfers could be made both for
 reasons of misconduct and other reasons at the same time.
 I would go as far as to state that in such cases it may not 35
 always be easy to draw the line between disciplinary and
 other transfers. But it was said that the test to be applied
 in such cases is to ascertain the essential nature and pre-
 dominant purpose of the particular transfer. In case of

doubt whether a transfer is disciplinary or not, then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned or the educationalist concerned, the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters. Such a course is to be adopted both by the Commission and by this Court when dealing within their respective competences with regard to transfers. Furthermore, it is equally important to state that in these matters there should be left no room for speculation when the application of the principles of natural justice is at stake. (*Kalisperas and The Republic & Another*, 3 R.S.C.C. 146 at pp. 151-152)."

In dealing with the present case, a doubt was raised in my mind, in view of the contents of paragraph 2 of the opposition to which I have referred earlier, as to the real reason for applicant's consecutive transfers during 1982. As I had no other evidence before me on this ground, I decided to re-open the case and seek the production of the personal file of the applicant and invite both counsel for any further addresses which they might wish to make after such files were put before the Court.

I have studied the personal file of the applicant very carefully and in my view there is nothing therein contained tending to show that the sub judice transfer has any disciplinary character. If I had to decide this case on the contents of the personal file of the applicant, which preceded the filing of the present recourse, I would have found that there is not enough evidence establishing any ground that the sub judice transfer contains an element of disciplinary punishment. I cannot however, lose sight of the contents of paragraph 2 of the opposition and the fact that it was written in accordance with the note prepared for this purpose by or on behalf of the E.S.C., and is also contained in the file of the applicant.

Applying the legal principles already mentioned above to the facts of the present case, I find that the contents of paragraph 2 of the opposition raise a doubt as to the true nature of the transfer in question. Since the opposition was prepared on the basis of the note sent from the office of the E.S.C., it may be

inferred that the whole sequence of events as mentioned therein, regarding applicant's service and the various complaints against him, was always in the mind of the members of the E.S.C. when effecting the transfer complained of, raising a strong suspicion that they may have acted under the disguise of educational needs, whereas in fact it was a transfer for disciplinary purposes without having given the applicant a chance to be heard. In the circumstances of the present case, I find that there is a doubt as to the true nature of the sub judge transfer, which, in consequence, has to be annulled.

Having reached the conclusion that the sub judge decision has to be annulled as a consequence of which a new decision will have to be taken, I find it unnecessary to examine the second part of the prayer in this recourse.

In the result this recourse succeeds and the sub judge decision is annulled, but without any order as to costs.

Sub judge decision annulled. No order as to costs.