1987 December 22

[TRIANTAFYLLIDES P SAVVIDES LORIS PIKIS KOURRIS JJ]

PETROS PAPACHARALAMBOUS AND ANOTHER,

Appellants-Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTRY OF EDUCATION,
2 THE DIRECTOR OF SECONDARY EDUCATION,

Respondents

(Revisional Jurisdiction Appeals Nos 597, 667)

Legitimate interest — Educational Officers aspiring for promotion to post of Assistant Headmaster — Scheme of service for such post required a rating of at least «very good» in the two last confidential reports — Dismissal of objections lodged pursuant to Reg 22 of the Educational Officers (Inspection and Evaluation) Regulations 1976 against ratings of «very good» and «excellent» — No existing legitimate interest of either appellant was affected thereby

Executory act — Preparatory act — Test applicable for discerning the existence of an executory act — Educational Officers — The Educational Officers (Inspection and Evaluation) Regulations 1976 — Special reports — Whether such reports constitute an executory administrative act

Appellant Papacharalambous, was rated by means of a confidential report as «very good» in respect of the school year 1983/1984, having been accorded 33 marks out of 40, and appellant, Kammitsi, was rated by means of a confidential report as «excellent» in respect of the school year 1982/1983, having been accorded 36 marks out of 40

The Regulations provide for the evaluation and assessment of the services and qualities of secondary school teachers in special and ordinary reports prepared every two and three years, respectively Special reports, though confidential, may be disclosed to educationalists on request who may, if they feel aggrieved, petition for their review before the Inspector-General

Each of the appellants filed an objection against the respective report, pursuant to Reg 22 of the aforementioned regulations

Both objections were turned down As a result each of the appellants filed a recourse to this Court Both recourses were dismissed on the ground that the

subject decision was not an executory administrative act. The recourse of appellant Papacharalambous was dismissed on the additional ground that no existing legitimate interest of his was directly and adversely affected by the rejection of his said objection.

Held, *dismissing the appeals:* (A) *Per Triantafyllides, P.:* At the material time both the appellants were aspiring to be promoted to the post of Assistant Headmaster in Secondary Education.

According to the scheme of service for this post there was required as a qualification for promotion at least a rating of «very good» on the basis of the two most recent confidential reports.

There is nothing before the Court to show that on the strength of the aforementioned ratings the appellants were placed on lists of those eligible for promotions and thus their promotion prospects were affected.

As neither of the two appellants was prejudicially affected as regards his or her prospects of promotion to the post of Assistant Headmaster by the reports in question, the conclusion is that no existing legitimate interest of either of the appellants was adversely and directly affected by the complained of by them dismissals of their objections against the said ratings.

(B) *Per Pikis, J.:* (1) To begin, the changes brought about in the system of assessment of the work of educationalists leave unaffected the juristic implications of the system, in effect indistinguishable from that reviewed in *Pavlides v. The Republic* (1977) 3 C.L.R. 421.

(2) Responsibility for the promotion of educationalists in Cyprus vests exclusively in the Educational Service Commission. The criteria to which they must have regard in making their choice are laid down in s. 35(2) of Law 10/69 as amended, merit, qualifications and seniority of the candidates. In discerning the qualities and worth of competing candidates the law enjoins the E.S.C. to duly heed service reports, material no doubt relevant to the merits and devotion of educationalists to their duties. Neither special nor ordinary reports are in themselves definitive of the right of an educationalist to promotion.

(3) The judiciary is not charged under the Constitution with the overseeing of administrative efficiency or proficiency. Its jurisdiction is confined to the control of the legality of executory administrative action. To be justiciable the act must have legal consequences ascertainable from an objective angle.

It is trite law that only executory acts are amenable to judicial review under Article 146.1 of the Constitution. As often repeated only acts productive of legal consequences classify as executory. Legal consequences in the domain of public law ensue whenever, as a result of unilateral administrative action, the rights of the subject are affected thereby.

(4) The sub judice decisions left the status and position of both appellants in the service wholly unaffected They had no noticeable legal consequences whatsoever They were internums of the Administration for the assessment of the services of educationalists and to the extent that they affected the rights to promotion of the officers concerned they constituted preparatory acts

Appeals dismissed No order as to costs

Cases referred to:

Pavlides v The Republic (1977) 3 C L R 421.

Tanis v The Republic (1978) 3 C L R 314.

Kostea v The Republic (1982) 3 C L R 115

Karapataki v The Republic (1982) 3 C L R 80.

Yiallourou v The Republic (1976) 3 C L R 214.

Kolokassides v The Republic (1965) 3 C L R 542.

Republic v Demetriou and Others (1972) 3 C L R 219.

Georghiou v The Republic (1981) 3 C L R 591

Frangos v Medical Disciplinary Board (1983) 1 C L R 256.

Papadopoullou v The Republic (1983) 3 C L R 142.

Papadopoullos v The Republic (1984) 3 C L R 332

Savva v The Republic (1985) 3 C L R 2288

Appeals.

Appeals against the judgment of Judges of the Supreme Court of Cyprus (Stylianides, J. and A. Loizou, J.) given on the 10th May, 1986 and 13th October, 1986 (Revisional Jurisdiction Cases Nos. 541/86* and 695/85** respectively) whereby appellants' recourses against the rejection of their objections against their ratings for the period 1983-1984 and 1982-1983 were dismissed.

A. S. Angelides, for the appellants.

** Reported in (1986) 3 C L.R 1042*

*** Reported in (1986) 3 C.L.R 1561*

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgments were read:

TRIANTAFYLLIDES P.: These two appeals have been made separately against the first instance judgments given, respectively, in recourse No. 541/85 (filed by the appellant in revisional jurisdiction appeal No. 597, Petros Papacharalambous) and in recourse No. 659/85 (filed by the appellant in revisional jurisdiction appeal No. 667, Egli Kammitsi).

These appeals were heard together in view of their closely related nature and this judgment is now being delivered in respect of both of them.

By their recourses the appellants had sought to annul decisions rejecting objections of theirs against the ratings which were accorded to them as educationalists in Secondary Education.

Both these recourses were dismissed on the ground that the decisions by means of which there were rejected the objections of the appellants against the ratings accorded to them were not of executory nature and, consequently, they could not be made the subject-matter of recourses under Article 146 of the Constitution. Moreover the recourse of appellant Papacharalambous appears to have been dismissed on the additional ground that no existing legitimate interest of his, in the sense of Article 146.2 of the Constitution, was directly or adversely affected by the rejection of his objection against the complained of by him rating.

Each one of the learned Judges of this Court who tried, respectively, the recourses of the appellants relied, in deciding that the decisions rejecting the objections of the appellants were not of an executory nature, on previous case-law of this Court to that effect, such as *Pavlides v. The Republic*, (1977) 3 C.L.R. 421 and *Tanis v. The Republic*, (1978) 3 C.L.R. 314.

It is to be noted that one of the two appellants, Papacharalambous, was rated by means of a confidential report as «very good» in respect of the school year 1983/1984, having been accorded 33 marks out of 40, and that the other appellant, Kammitsi, was rated by means of a confidential report as

«excellent» in respect of the school year 1982/1983, having been accorded 36 marks out of 40.

Both appellants availed themselves of the opportunity to challenge the complained of by them ratings by means of objections lodged under regulation 22 of the Educational Officers (Inspection and Evaluation) Regulations, 1976 (see No. 223, in the Third Supplement, Part I, to the Official Gazette of the Republic of 5 November 1976).

As already stated the objections of both the appellants were rejected and as a result they filed these recourses which were dismissed by the judgment against which the present appeals have been made.

At the material time both the appellants were aspiring to be promoted to the post of Assistant Headmaster in Secondary Education.

According to the scheme of service for the post of Assistant Headmaster which was in force at the material time, having been adopted by the Council of Ministers of 5 August 1982, and which was published in the Official Gazette of the Republic on 23 December 1983, when vacancies in the post of Assistant Headmaster in Secondary Education were advertised, there was required as a qualification for promotion at least a rating of «very good» on the basis of the two most recent confidential reports.

As already stated the performance of appellant Papacharalambous was rated as «very good» and that of appellant Kammitsi was rated as «excellent» and, consequently, neither of the two was prejudicially affected as regards his or her prospects of promotion to the post of Assistant Headmaster.

It is to be borne in mind, further, that there is nothing before me to show that on the strength of the aforementioned ratings the appellants were placed on lists of those eligible for promotions and thus their promotion prospects were affected.

In the light of the foregoing I have reached the conclusion that no existing legitimate interest of either of the appellants was adversely and directly affected by the complained of by them dismissals of their objections against the ratings accorded to them and for this reason the recourses of both of them ought to fail and their appeals have to be dismissed; and, in the circumstances, it is

not necessary to pronounce on the issue of whether or not the decisions dismissing their objections are to be treated as being of an executory nature

It is to be noted that after these appeals had been filed there was promulgated in the Official Gazette of the Republic, on 8 May 1987, the Public Educational Service (Amendment) Law, 1987 (Law 65/87), which has been relied on by counsel for the appellants in order to argue that a legitimate interest of his clients has been affected by the sub judice dismissals of their aforesaid objections

I am, however, of the view that the provisions of this Law are not really relevant to the outcome of the present appeals because it was not in force at the material time when the objections of the appellants were dismissed, and I leave entirely open what may be the effect of this Law on similar cases in future as regards the appellants or any other educationalists to whom it is to be applied

In concluding I should observe that as far as appellant Kammitsi is concerned it appears that the three Inspectors who dealt with her objection did not agree and, actually, two of them were inclined to decide the objection in her favour and, as a result, the General Inspector of Secondary Education recommended to the respondent Director of Secondary Education that the objection of this appellant should be sustained, but he rejected this recommendation and dismissed her objection

It seems, therefore, to me that there was real merit in the objection in question of this appellant

In the result both these appeals have to be dismissed, but there should be no order as to their costs

PIKIS J The grievance of the appellants is that by declining revisional jurisdiction the trial Court left them remediless before the injustice done them in the assessment of their service by the inspectorate of secondary education The Court held that the rating of secondary school teachers in special reports submitted and confirmed under the relevant Regulations* introduced under s. 76 of the Law**, is not an executory act and as such non justiciable under Article 146 of the Constitution, whereupon the recourses of the appellants were dismissed

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** (Educational Officers (Inspection and Rating) Regulations 1976*

*** (See, Public Educational Service Law - 10/69 (amended)*

The Regulations provide for the evaluation and assessment of the services and qualities of secondary school teachers in special and ordinary reports prepared every two and three years, respectively. Special reports, though confidential, may be disclosed to educationalists on request who may, if they feel aggrieved, petition for their review before the Inspector-General. Appellants, teachers of secondary education, were apprised on request of their rating in special reports submitted under the Regulations and, feeling aggrieved, sought review of their reports hoping for a favourable reappraisal. The Inspector-General confirmed their rating whereupon they mounted separate recourses for a review of the decision, of the Inspector-General. In view of the similarity of the legal issues raised in the two recourses the proceedings were jointly tried and disposed of simultaneously.

The central point in the arguments raised on behalf of the appellants is that special reports are reviewable notwithstanding the absence of any noticeable consequences on the status or position of the educationalists affected thereby. By analogy to the reviewability of decisions of Service Boards adjudicating upon complaints of public officers disputing the content of reports prepared under the Greek Code of Public Employees, counsel submitted that decisions of the Inspector-General issued under the aforementioned Regulations are, for similar reasons, amenable to the revisional jurisdiction of the Supreme Court. The point was pressed despite the absence of any immediate effects on the position or prospects of promotion of either of the two appellants. The recourses were pursued notwithstanding the «Excellent» overall assessment of appellant Egli Kammitsis and «Very Good» in the case of Papacharalambous.

Counsel sought to distinguish the case of *Iacovos Pavlides v. Republic** the ratio of which, he submitted, is inapplicable to the review of decisions relevant to special reports in the light of changes brought about in the system of assessment of educationalists. In the above case Malachtos, J., held that reports on educationalists submitted within the framework of the assessment of their worth, are not acts of an executory character but acts of an intrinsically, preparatory nature and as such non justiciable. The changes brought about in the system of assessment of educationalists changed, counsel argued, the

* *(1977) 3 C.L.R. 421.*

nature of the decisions of the appropriate educational Authorities by the exposure of the report to hierarchical review, introducing in Cyprus, as in Greece, what he described as the «system of open file».

To begin, the changes brought about in the system of assessment of the work of educationalists leave unaffected the juristic implications of the system, in effect indistinguishable from that reviewed in *Pavlides*. In that case, too, what was challenged by the recourse was the confirmation by the head of Higher and Secondary Education of a report of the Inspectorate on the aggrieved educationalist. Nor has the significance of reports upon educationalists respecting their rights to promotion been changed. Special reports, like the reports challenged in the case of *Pavlides*, supra, constitute material revelatory of the value of the services of an educationalist. As Malachtos, J., observed in *Pavlides*, service reports in Greece, too, could not be made the subject of judicial review before the amendment of the Code of Public Employees whereby added significance was attached to service reports, definitive to a far greater extent than in Cyprus of the rights of public employees to promotion. As a matter of factual reality service reports under the Greek Code of Public Employees are of far greater significance than corresponding reports on educationalists in Cyprus on their rights and prospects for promotion*.

Responsibility for the promotion of educationalists in Cyprus vests exclusively in the Educational Service Commission**. The law entrusts the Educational Service Commission with wide discretion in making a selection of the candidates best suited for appointment or promotion. The process of selection necessarily involves in every case examination of the rival merits of candidates. Promotions are made through comparison not on a qualifying basis. The criteria to which they must have regard in making their choice are laid down in s. 35(2)***, merit, qualifications and seniority of the candidates. In discerning the qualities and worth of competing candidates the law enjoins the E.S.C. to duly heed service reports, material no doubt relevant to the merits and devotion of educationalists to their duties.

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* *(See, in particular, articles 92, 93, 101 and 104).*
** *(See, Law 10/69 (as amended)).*
*** *(See, Law 10/69 (as amended by Law 53/79)*

The exercise of the discretion of the Commission is not fettered by any consideration other than that specified in s. 35(1)(c), that is, that the educationalist must not have been reported upon as unsuitable for promotion in the last two service reports. It emerges that neither special nor ordinary reports are in themselves definitive of the right of an educationalist to promotion. Moreover, their confidential character does not expose the worth of an educationalist to public view. Nonetheless, counsel invited us to exercise the jurisdiction vested by Article 146.1 of the Constitution as a measure remedial for the preservation of the self-esteem of the appellants and any other educationalist wronged in special reports.

The judiciary is not charged under the Constitution with the overseeing of administrative efficiency or proficiency. Its jurisdiction is confined to control of the legality of executory administrative action. Judicial review under Article 146.1 is not a forum for the ventilation of personal grievances or the removal of alleged administrative injustice, independently of the character of the act*. To be justiciable the act must have legal consequences ascertainable from an objective angle**. The internal functioning of the Administration is not, as Triantafyllides, P., ruled in *Chrystalla Yiallourou v. Republic****** amenable to judicial review under Article 146.1. The separation between the powers of the State prohibits the assumption of competence by anyone of the three powers in the domain of the other powers of the State.

It is trite law that only executory acts are amenable to judicial review under Article 146.1 of the Constitution. As often repeated only acts productive of legal consequences classify as executory. Legal consequences in the domain of public law ensue whenever, as a result of unilateral administrative action, the rights of the subject are affected thereby. In the case of public employees they are affected whenever their status or position in the public service is prejudiced as a result of the sub judice decision. The concept of rights in this area is not identical with the notion of rights as known to the civil law. It is a broader concept linked in the case of civil servants to the implications of the decision on their position, status and eligibility to promotion.

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* *(See, Kostea v. Republic (1983) 3 C.L.R. 115).*

** *(See, Karapataki v. Republic (1982) 3 C.L.R. 80, 94).*

*** *(1976) 3 C.L.R. 214.*

The test to determine the justiciability of an act under Article 146 1 of the Constitution is substantive, not formal, interwoven with the implications of the act on the interests of the subject * To be prejudicial to his position or status the decision must be productive of legal consequences Whether legal consequences ensue from a decision is a mixed question of law and fact In each case we must discern the effects of the decision on the position and status of the employee If the decision has a bearing on either of the two or is determinative of his eligibility to appointment or promotion, the act qualifies as executory because its repercussions are indistinguishable from a finite executory act Thus, in the cases of *Papadopoulou v Republic*** and *Savva v Republic**** decisions of the Administration affecting the eligibility and priority of candidates to appointment, respectively, were held to be justiciable because they were definitive of the right of the candidate affected to appointment notwithstanding the absence of vacancy The decisions were definitive of the position of the subject vis-a-vis the Administration and as such amenable to the revisional jurisdiction of the Supreme Court

The sub judice decisions left the status and position of both appellants in the service wholly unaffected They had no noticeable legal consequences whatsoever They were internums of the Administration for the assessment of the services of educationalists and to the extent that they affect the rights to promotion of the officers concerned, they constituted preparatory acts Consequently, in agreement with the learned trial Judge, we hold that the acts were non justiciable and for that reason the appeals are dismissed

By way of addendum, it is noticed that the recent amendment of the Educational Service Law by the provisions of Law 65/87 left unaffected the complexion of the sub judice decisions Nothing said in this judgment should be construed as having any bearing on the interpretation or the implications from the application of the newly enacted legislation

Appeals dismissed
No order as to costs

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* *(See, inter alia, Nicos Kolokassides and the Republic of Cyprus through the Minister of Finance (1965) 3 C L R 542 Republic v Costas Ch Demetriou and Others (1972) 3 C L R 219, Georghiou v Republic (1981) 3 C L R 591, and Frangos v Medical Disciplinary Board (1983) 1 C L R 256)*

** *(1984) 3 C L.R 332 see, also, Papadopoulos v Republic (1983) 3 C L R 1423, 1426*

*** *(1985) 3 C L R 2288*