

1988 December 23

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VASSOS CHRISTODOULOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Cases No. 569/88).

Educational Officers—Transfers—The Educational Officers (Postings, Movements and Transfers) Regulations, 1987, Regs 12(1) and 12(2)—Neither regulation is ultra vires as being contrary to enabling law or as being unreasonable.

- 5 *Educational Officers—Transfers—Vested right—The Interpretation Law, Cap. 1, Section 10—Matters of transfer should not be put into moulds or channels of vested rights.*

The facts of this case sufficiently appear from the Judgment of the Court.

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

Stavrou v. The Republic (1976) 3 C.L.R. 66;

Economides v. The Republic (1972) 3 C.L.R. 506.

Recourse.

Recourse against the decision of the respondent to transfer applicant from Nicosia to Larnaca.

L. Papaphilippou, for the applicant.

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

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Cur. adv. vult.

A. LOIZOU P. read the following judgment. The applicant in this recourse is a Headmaster in the Secondary Education. On the 27th May, 1988, the respondent Educational Service Commission, (hereinafter to be referred to as the Commission, decided to transfer him from Nicosia to Larnaca. As against this decision he made an objection which was dealt with and rejected on the 21st June 1988.

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After the rejection of his objection he challenges the decision relating to his transfer by means of this recourse.

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The sub judice decision was taken for the purpose of satisfying justified requests of other educational officers for transfer or for the filling of vacant posts which resulted due to the making of transfers in accordance with Regulations 9 and 13(4) of the Educational Officers (Postings, Movements and Transfers) Regulations 1987. His objection was rejected on the ground that the units standing to his credit were less than the units of his colleagues who were liable to a transfer and who serve in posts of the choice of the applicant and in whose case there do not apply the prerequisites of Regulation 11(1) for transfer.

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In making the sub judice transfer the Commission had in mind the lists (Appendices D and E) which were prepared on the basis of Regulations 13(3) of the above regulations and of section 8 of the Public Educational Service (Amendment) Law, 1987 (Law No. 65 of 1987). The Commission acting in accordance with

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Regulation 13(4) transferred such a number of those included in Appendix "D", as was necessary in order to satisfy the requests for transfer of those included in Appendix "E", who had more units than them.

5 The recourse was founded on the following grounds of Law:

(1) The Educational Service Commission based the sub judge decision on criteria of transfer prescribed in Regulation 12(1) and (2) of the Regulations which is ultra vires the Public Educational Service Laws, 1969 to 1987.

10 (2) By the sub judge decision and/or with the application of the above Regulation 12(1) and (2) the Educational Service Commission violated a vested right of the applicant which he had acquired by virtue of the Educational Officers (Postings, Movements and Transfers) Regulations and/or in a manner contrary to
15 the Interpretation Law, Cap. 1, section 1.

(3) The Educational Service Commission by applying Regulation 12(2) deprived itself of the amenity to exercise its discretion by reference to the actual facts of the case and turned itself into a mathematical calculator, thus ignoring the human element and the
20 best interests of the Educational Service and of the educationalists.

(4) The said Regulation 12(2) and its application leads to unreasonable results which are detrimental to the Educational Service and to Educational Officers, because,

25 (a) It comes in conflict with Regulation 12(1).

(b) It ignores and/or is inconsistent with Regulation 7.

(c) The test of transfer or not, of an educational officer is decided by means of a mathematical exercise.

(d) It grants to the Educational Service Commission legislative

power in breach both of the enabling enactment and the principle *delegatus non potest delegare*.

(e) It violates every principle of good administration.

(5) The Educational Service Commission in taking the sub judice decision acted in a manner contrary to Section 4(2) of the Public Educational Service Law 1969 (Law No. 10 of 1969) because it permitted organs or persons not entitled to be present to attend its meeting. 5

6. The sub judice decision was taken under a misconception of fact because the Educational Service Commission 10

(a) Failed to consider and decide on the objection of the applicant and on all the facts and circumstances of the case.

(b) It relied on a mathematical exercise and not on the substance of the case.

(c) It ignored the best interest of the Educational Service and relied on mathematical evaluation of criteria that pre-existed the applicant's objections. 15

(e) It ignored the fact that the applicant had served in rural schools for five years prior to his transfer to Nicosia, and he thus acquired the right for his non transfer outside this area. 20

7. The Educational Service Commission effected without cause an adverse transfer.

8. The Educational Service Commission misinterpreted Regulations 9, 11 and 13(4) of the Regulations, and erroneously relied on these Regulations. 25

I shall consider the above grounds one by one. *In Stavrou v. The Republic* (1976) 3 C.L.R. 66, I made a review of the legal

principles governing the validity of subsidiary legislation and I need not repeat them here. Suffice it to say that in my opinion on the true and proper construction of the enabling enactment, same authorises the making of the said Regulation 12(1). Therefore
5 such a Regulation is not ultra vires the enabling enactment. Ground 1, must therefore fail.

Regarding ground 2, I must say that the Interpretation Law, Cap. 1, does not apply in this case, as there is no vested right to a transfer or non transfer. Matters of transfer are primarily gov-
10 erned by the exigencies of the Service, and if they are put in moulds, or channels of vested rights such a course will be detrimental to the interest of the Educational Service and at that to the public interest. As it was held in *Economides v. The Republic* (1972) 3 C.L.R. 506, on matters of promotion the right to pro-
15 motion is not a vested right but a mere expectation and thus the required qualifications for a particular promotion post may validly be changed before any promotion is effected. This means - the *Economides case* goes on the say - that new laws, regulations and decisions affecting changes to those existing at the time of ap-
20 pointment and regulating the relations of the State and the civil servants may be properly enacted or taken. By analogy changes affecting as in this case matters of transfer can properly be made and no question of violation of Section 10 of Cap. 1 arises. Therefore ground 2, fails also.

25 Regarding ground 3, it must be said outright that there is nothing wrong or objectionable to the course provided by Regulation 12(2), because such a course is fully supported by the provisions of Section 39(2) and (4) of Law No. 10 of 1969. In the absence
30 of a contention that those provisions run contrary to the Constitution, I cannot go into the wisdom of the legislation or the provision that dictated those provisions. Suffice it to say that those provisions aiming at treating equally all educationalists by reference to criteria which are applicable to all of them, Ground 3, must therefore fail.

35 Regarding ground 4, as I said above it does not lead to unrea-

sonable results but aims at treating equally all educational officers by reference to criteria which are applicable to all of them. So this ground also fails.

With regard to ground 5, affidavits were filed by the parties and the Chairman of the respondent Commission was cross-examined on the contents of his affidavit. It transpired from his affidavit and his evidence, which I accept, that at the meeting in which the sub judice decision was taken no one else other than the members of the Commission was present. Further it transpired that at no stage did the Commission consult or take the views of any other person or body. Therefore ground 5, must fail too.

Grounds 6, 7, and 8, can be taken together. The Commission indeed duly considered the objection of the applicant and all the facts and circumstances pertaining to the applicant. Also the sub judice decision was not an adverse transfer. On the contrary it was taken in a manner strictly in accordance with the Public Educational Service Laws, 1969 to 1987 and the Regulations made thereunder which were not misinterpreted or wrongly applied.

For all the above reasons the recourse must fail and is hereby dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*