[TRIANTAFYLLIDES, J.]

1964
August 27,
Sept. 8, 17,
1965
April 20

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARO K. CONSTANTINOU (NEE PANTELIDOU),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 109/63).

MARO K. CONSTANTINOU (Née PANTELIDOU) *and* THE REPUBLIC OF CYPRUS THROUGH THE PUBLIC SERVICE COMMISSION

Administrative Law—Public Service—Public Officers, on a month-to-month basis (Unestablished)—Termination of services of such an Officer "on grounds of inefficiency"—Termination upheld on its substance but annulled regarding the date of its effect.

Public Service Commission—Proceedings by, for the termination of the services of a Public Officer (supra)—Proceedings an inquiry into the question of inefficiency of such officer and not disciplinary—No excess or abuse of powers of Commission in disallowing representations by Counsel—Likewise Commission not bound to offer such Officer opportunity to be heard as such proceedings are not of quasi-judicial nature—Nor was it obliged to furnish applicant with copies of relevant documents.

Public Service Commission—Termination of services of a Public Officer (supra)—On the material before it Commission was at liberty to treat termination either as a matter of inefficiency or as a matter of disciplinary proceedings.

Applicant was first employed as a clerical Assistant, on an unestablished month to month basis, in March 1959, having been previously employed on casual basis since August, 1958. Her last place of employment was the Registry of Famagusta District Court, having previously been posted in the Public Works Department and the Inland Revenue Department, in Famagusta.

On the 3rd October, 1961, the Public Service Commission terminated the Applicant's services in view of complaints contained in a report made against her by the Registrar of the Famagusta District Court, on the 8th Sep-

tember, 1961.

On the 12th February, 1962, Applicant filed a recourse, No. 49/62, *(Pantelidou and The Republic,* 4 R.S.C.C. p. 100), against the termination of her services.

That recourse was determined by the Supreme Constitutional Court on the 1st February, 1963, and as a result the decision to put an end to the services of Applicant was annulled on the ground that, in the circumstances in which it had been taken, it ought to have been regarded by the Commission as a disciplinary matter and the appropriate procedure for disciplinary matters, including, *inter alia,* affording an opportunity to Applicant to be heard in answer to the complaints made against her, ought to have been followed.

On the 5th February, 1963, the Commission addressed a letter to Applicant informing her that as disciplinary proceedings were about to be taken against her, with a view to her dismissal from the service, the Commission had decided that she should be interdicted from the exercise of the powers and functions of her office as from the 1st February, 1963, and that she would be on half-pay during the period of her interdiction.

On the 28th February, 1963, a further letter was addressed by the Commission to Applicant informing her that the Commission contemplated her dismissal from the service "on grounds of inefficiency"; It was stated that the Commission would consider the matter on the 8th March, 1963, and Applicant was requested to appear before it then in order to put before the Commission any representations she might wish to make.

Eventually, on the 5th April, 1963, a letter was written by the Commission to Applicant informing her that after considering her record of service and taking into account the representations which she was allowed to make before the Commission, it had been decided that her appointment should be terminated as from the 27th March, 1963, "on grounds of inefficiency".

Against this decision, Applicant filed this recourse on the 19th June, 1963:

Held, 1. On what was the exact nature of the proceedings before the Commission.

(a) The nature of the proceedings before the Commission was not disciplinary and that such proceedings amounted only to a full examination of the alleged inefficiency of Applicant.

II. On whether it was open to the Commission to treat the case of Applicant as a matter of inefficiency only, and not as a disciplinary matter.

(a) It was open to a body, such as the Commission, in dealing with the question of the termination of the services of an employee, such as Applicant, to decide clearly whether or not to treat such termination as a matter of inefficiency or as a matter of disciplinary proceedings, when the material before the Commission appeared to warrant either of such courses, as in this Case.

(b) So long as the essential nature and predominant purpose of the action taken by the Commission was clear to it—as this is also clear to this Court in controlling now the exercise of its relevant discretion—the Commission in a Case, such as the present, was not bound, to proceed disciplinarily when it felt that it ought to proceed only on the question of inefficiency.

(c) Treating the termination of the services of Applicant as a matter of inefficiency only was a course lawfully open to the Commission at the time of the second termination of the services of the Applicant.

III. On whether or not the decision of the Commission to terminate Applicant's services for inefficiency was properly taken.

(a) The decision of the Commission to terminate Applicant's services cannot be declared *null* and *void* and has to be confirmed.

IV. As to the date of the termination of Applicant's services.

(a) Applicant rightly complains that such termination could not have been given effect before its communication to Applicant and that it had to be made in accordance with the terms of her employment, i.e. a month's notice had to be given to her, or a month's salary in lieu of notice. The date, therefore, of the effect of the termination could

not have been the 27th March, 1963, as stated in the Commission's letter dated the 5th April, 1963.

(b) It is possible, in a proper case, and this is one of them, to uphold a decision of the commission regarding the question of the substance of termination of the services, but to *annul* it regarding the date of its effect. I, therefore, declare *null* and *void* the termination of the services of Applicant, to the extent only that it was to take effect on the 27th March, 1963, and it is up to the appropriate authorities to put the matter right.

Morsis and The Republic, (reported in this part at p.1 *ante*) followed.

V. As regards costs.

Each party should bear its own costs.

Order in terms.

Cases referred to:

Pantelidou and The Republic (4 R.S.C.C. p. 100);

Kalisperas and The Republic (3 R.S.C.C. p. 146);

Rallis and The Greek Communal Chamber (5 R.S.C.C. p.11);

Rossides and The Republic (3 R.S.C.C. p. 95);

Neophytou and The Republic, 1964 C.L.R. 280;

Morsis and The Republic (reported in this part at p. 1 *ante*).

Recourse.

Recourse against the decision of the respondents to terminate the services of the applicant as clerical Assistant, unestablished, on grounds of inefficiency.

N. Zomenis for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The facts of the case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLIDES, J.: This is a Case with a rather compli-

cated and devious history of events:

Applicant was first employed as a clerical assistant, on an unestablished month to month basis, in March 1959, having been previously employed on casual basis since August, 1958. Her last place of employment was the Registry of the Famagusta District Court, having previously been posted in the Public Works Department and the Inland Revenue Department, in Famagusta.

On the 3rd October, 1961, the Public Service Commission (hereinafter referred to as 'the Commission') terminated the Applicant's services in view of complaints contained in a report made against her by the Registrar of the Famagusta District Court, on the 8th September, 1961.

Such report is part of the file of proceedings in recourse 49/62, which is *exhibit* 19 in this Case. In this report the Applicant was described as being most unsatisfactory in her work, lacking in zeal and inefficient as a typist. It was, further, stated that she had "remained in the habit of malingering in all ways, especially by using the telephone for private affairs too often and sometimes for too long periods" and she was accused of "pretending illness at any time".

Before the decision of the Commission to terminate her services had been communicated to Applicant, the Registrar of the District Court of Famagusta had, once again, reported on the 27th November, 1961, that Applicant, having been granted six days' sick leave, had been seen, during that period, dancing at a cabaret in Famagusta.

Eventually on the 5th December, 1961, a letter was addressed to Applicant, terminating her services, as from the end of vacation leave to be taken after the 8th January, 1962, and, as a matter of fact, her services were effectively terminated at the expiration of such leave on the 22nd January, 1962.

On the 12th February, 1962, Applicant filed a recourse, No. 49/62, (*Pantelidou and The Republic*, 4 R.S.C.C. p. 100), against the termination of her services.

That recourse was determined by the Supreme Constitutional Court on the 1st February, 1963, and as a result the decision to put an end to the services of Applicant was annulled on the ground that, in the circumstances in which it had been taken, it ought to have been regarded by the

Commission as a disciplinary matter and the appropriate procedure for disciplinary matters, including, inter alia, affording an opportunity to Applicant to be heard in answer to the complaints made against her, ought to have been followed.

On the 2nd February, 1963, counsel for Applicant addressed a letter to the Commission drawing its attention to the judgment of the Supreme Constitutional Court in recourse 49/62, stating that Applicant had reported for duty at the Registry of the Famagusta District Court but she had been told to stay at home awaiting instructions, requesting that all necessary arrangements should be made to pay to Applicant the arrears of salary due to her and, finally, stressing that though Applicant was ready and willing to continue working at the Registry of the Famagusta District Court, yet in the circumstances she was requesting a transfer to some other Department at Famagusta.

On the 5th February, 1963, the Commission addressed a letter to Applicant informing her that as disciplinary proceedings were about to be taken against her, with a view to her dismissal from the service, the Commission had decided that she should be interdicted from the exercise of the powers and functions of her office as from the 1st February, 1963, and that she would be on half-pay during the period of her interdiction.

On the 28th February, 1963, a further letter was addressed by the Commission to Applicant informing her that the Commission contemplated her dismissal from the service "on grounds of inefficiency"; copies of statements made by her superior officers were attached for her information. It was stated that the Commission would consider the matter on the 8th March, 1963, at 9.30 a.m. and Applicant was requested to appear before it then in order to put before the Commission any representations she might wish to make. The statements attached to such letter were a statement by Mr. Th. Ionides, Director of the Department of Inland Revenue, a statement by Mr. Chr. Karakannas, a Principal Assessor, and a statement by Mr. Epenetos, the Registrar of the District Court of Famagusta.

Such statements had been made before the Commission, in the absence of Applicant, on the 27th February, 1963, in

the course of a relevant inquiry conducted by the Commission.

What led to the writing of these two rather inconsistent letters of the Commission to Applicant, the first on the 5th February, 1963, and the other on the 28th February, 1963, appears from the relevant minutes of the Commission.

On the 5th February, 1963:

> "The Commission took notice of the judgment of the Supreme Constitutional Court in case No. 49/62 (between Maro Pantelidou and the P.S.C.), by which the Court declared that the decision of the P.S.C. to dismiss Maro Pantelidou from the service was *null* and *void.*
>
> "The Commission decided that disciplinary proceedings should be instituted against her with a view to her dismissal from the Service. The Commission further decided that she should be interdicted from the exercise of the powers and functions of her office as from the 1st February, 1963".

Then, on the 12th February, 1963:

> "The Commission after careful reconsideration of this case decided by majority of 7 to 3 (1 Greek and 2 Turkish Members dissenting) that an enquiry should be carried out on the 19th February, 1962 (sic) in connection with Miss Pantelidou's inefficiency with a view to her dismissal and that its decision of the 5th February, 1962, (sic) in so far as it relates to the institution of disciplinary proceedings against this officer should be cancelled.
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> "The Commission also decided that all Heads of Department under whom Miss Pantelidou served and who reported that she was inefficient should be asked to appear before the Commission and give evidence in relation to such inefficiency bringing with them all relevant documents including Miss Pantelidou's Departmental Personal File".

It will be seen, thus, that, though at first it was decided to proceed disciplinarily against the Applicant, then it was decided to abandon such course and treat the matter as one of inefficiency. Applicant continued to remain interdicted and she was not asked to assume duties pending the decision of the Commission. This has been put right *ex post facto*

by the Commission, as far as possible, by deciding on the 2nd July, 1963, that Applicant should be paid her full salary in respect of the period of her interdiction.

On the 2nd March, 1963, counsel for Applicant acknowledged receipt of the letters dated 5th February, 1963 and 28th February, 1963, and complained to the Chairman of the Commission that the way in which he was dealing with the matter led Applicant to think that he was "prejudiced against her from the very beginning and by far more after the decision of the Supreme Constitutional Court... in her favour".

It was also complained that the period between the 28th February, 1963, and the 8th March, 1963, (the date fixed for the appearance of Applicant before the Commission) was very short, taking into account the fact that it had taken the Commission a whole month to prepare its case against Applicant.

Counsel for Applicant, further, reserved Applicant's right to appear with counsel before the Commission on the 8th March, 1963, and complained that he had received no reply to his previous letter of the 2nd February, 1963—to which reference has already been made earlier in this judgment.

No reply appears to have been given to this letter of counsel for Applicant.

On the 8th March, 1963, Applicant appeared before the Commission with her counsel, but he was refused permission to represent her before the Commission and Applicant had to make her representations to the Commission on her own. This is admitted in paragraphs 9 and 10 of the Opposition.

Applicant's statement before the Commission was duly recorded. It has not been sought to have it produced before the Court during the hearing, by either party, and though it might be useful to have it from the point of view of formally completing the documentation of this Case I do not think it could be relevant to the determination of the issues in this Case; we are not concerned here with the merits of the matter but with the manner in which the Commission has dealt with it.

The appearance of the Applicant before the Commission on the 8th March, 1963, lasted about 2 1/2 hours. During that time, one of the members of the Commission, Mr. Try-

fonides, absented himself at first for a few minutes and then for over an hour, returning about half an hour before the conclusion of Applicant's appearance before the Commission. This has been testified by Applicant in evidence which, though not given before me but before a Rapporteur of the Supreme Constitutional Court, has been made, by consent, part of the record of this Case. It is a thing which has not actually been disputed by the other side.

On the 27th March, 1963, the Commission met and after a very thorough summing up of relevant facts by the Chairman, it decided to terminate Applicant's services "on grounds of inefficiency", as it appears from the relevant minutes.

On the 5th April, 1963, a letter was written by the Commission to Applicant informing her that, after considering her record of service and taking into account the representations which she was allowed to make before the Commission, it had been decided that her appointment should be terminated as from the 27th March, 1963, "on grounds of inefficiency".

On the 19th April, 1963, counsel for Applicant wrote to the Commission a letter acknowledging receipt on the 10th April, 1963, of the letter of termination of Applicant's services, stating, *inter alia*, that she protested against such decision and reserved all her rights, requesting an official copy of the relevant notes of proceedings as well as the reasons for the decision of the Commission, and protesting that she had not been given a month's notice and that the termination of her services had been made retrospectively.

On the 27th April, 1963, a letter was written by the Commission to counsel for Applicant, stating that although the Commission was not bound to afford her an opportunity to be heard in connection with the contemplated termination of her appointment, nevertheless the Commission had thought it proper to give her an opportunity to make representations. It was, further, stated that before reaching the decision to terminate her appointment the Commission had considered thoroughly the record of her service and the reports and all other oral evidence of the officers under whom she had served, as well as all the oral representations which she had made. It added that no further information could be supplied to Applicant in this matter.

On the 19th June, 1963, Applicant filed the present recourse.

In deciding this Case one must first determine what was, this time, the exact nature of the proceedings before the Commission: Whether they were disciplinary or whether they were merely an examination of the question of the alleged inefficiency of Applicant

There can be no doubt that when the Commission wrote to Applicant on the 5th February, 1963, it had in mind disciplinary proceedings This is also shown from the fact that she was interdicted and it is clear also from the relevant minutes of the Commission, of the same date

On the 12th February, 1963, however, as it appears from the minutes again of the Commission, of that date, the Commission decided, on reconsideration of the matter, to examine Applicant's case as a matter of inefficiency only and the institution of disciplinary proceedings was, thus, revoked.

As a result of this new decision a letter was written accordingly to Applicant on the 28th February and the new approach of the Commission to the matter in question is consistently borne out by its letter of the 5th April, 1963, terminating the services of Applicant for inefficiency, by the further letter of the Commission, to Applicant's counsel, dated 27th April, 1963, as well as by the relevant minutes and decision of the Commission, of the 27th March, 1963. The summing up of the Chairman of the Commission. contained in such minutes, is clearly orientated to the question of inefficiency.

I find, therefore, that the nature of the proceedings before the Commission was not disciplinary and that such proceedings amounted only to a full examination of the alleged inefficiency of Applicant.

The question next arises whether it was open to the Commission to treat the case of Applicant as a matter of inefficiency only, and not as a disciplinary matter, in the light also of the decision of the Supreme Constitutional Court in *Pantelidou and the Republic* (4 R.S.C.C. p 100) i.e. in the recourse of Applicant against her first dismissal.

It is not in dispute that Applicant did not work at all between her first dismissal, with effect from January, 1962,

which was annulled in the above case, and her second dismissal in April, 1963. Therefore, the material before the Commission, on both occasions, necessarily related, all along, to the conduct of Applicant before her first dismissal.

Such conduct, apart from the usual manifestations of inefficiency, appears to have included matters such as absence from the office on various pretexts, malingering and the use of the telephone for private affairs for long periods, things which were described in the judgment in the aforesaid case as being "clearly matters of a disciplinary nature" (at p. 106).

Could then such matters, along with other factors pointing to Applicant's inefficiency, be treated by the Commission as relevant only to inefficiency when the Commission came to examine the question of the second termination of the services of Applicant?

For the purpose of answering the above query it is necessary to ascertain the true nature of the judgment of the Supreme Constitutional Court in *Pantelidou and the Republic* (*supra*). There the first termination of the services of Applicant was set aside because it had been decided "in view of the complaints recorded against her", because such complaints comprised "both inefficiency and disciplinary matters" and because there existed "such a considerable element of doubt, regarding the essential nature and predominant purpose of the termination of the services of Applicant, as to lead to the result that such termination ought to have been treated by the Commission as a disciplinary matter". In this respect reference was made to an earlier case decided by the Supreme Constitutional Court, that of *Kalisperas and The Republic* (3 R.S.C.C. p. 146) where the Court had said (pp. 151-152), in dealing with a transfer:—

> "It is, of course, possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases is to ascertain the essential nature and predominant 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 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 particular transfers. There should be left no room for speculation when the application of the principles of natural justice is at stake".

In the later case of *Rallis and the Greek Communal Chamber* (5 R.S.C.C. p. 11), in which both the aforesaid cases of *Pantelidou and the Republic* and *Kalisperas and the Republic* were considered and applied, the Court said in its judgment (at p. 17):—

> "In the opinion of the Court.....so long as the termination of the services of the Applicant appears to have been based with equal force both on inefficiency and disciplinary reasons as well, such termination ought to have been treated as a disciplinary matter, to the extent concerning the Applicant's conduct towards his wife"—the Applicant in that case being an educationalist, his particular conduct was treated as relating to his office—
>
> "and the proper procedure ought to have been applied, a thing which it is common ground that it has not been done. The fact that Applicant's services could possibly have been terminated on the ground of inefficiency alone is not sufficient to save the validity of such termination once disciplinary reasons were relied upon also in a decisive manner, as in this Case. To put it at its lowest there has arisen such a considerable doubt as to the essential and predominant purpose of the termination of the services of Applicant as to lead the Court to the above conclusion".

The cases reviewed above i.e. of *Pantelidou*, of *Kalisperas* and of *Rallis*, have in common that doubt had arisen concerning the essential nature and predominant purpose of the administrative act or decision concerned in each of them. In none of those cases had the appropriate body, by clear decision, determined the nature and purpose of the proceedings before it, as it has happened in this present Case by decision of the Commission taken on the 12th February, 1963.

In my opinion it was open to a body, such as the Commission, in dealing with the question of the termination of the

services of an employee, such as Applicant, to decide clearly whether or not to treat such termination as a matter of inefficiency or as a matter of disciplinary proceedings, when the material before the Commission appeared to warrant either of such courses, as in this Case.

So long as the essential nature and predominant purpose of the action taken by the Commission was clear to it—as this is also clear to this Court in controlling now the exercise of its relevant discretion—the Commission in a Case, such as the present, was not bound, in my view, to proceed disciplinarily when it felt that it ought to proceed only on the question of inefficiency.

Actually, in certain cases, proceeding only on the question of inefficiency might turn out to be to the benefit of the particular officer concerned, if his services were to have been terminated in any case either for inefficiency or for disciplinary reasons, because if they were to be terminated for inefficiency he would not suffer any loss of salary through interdiction in the meantime.

Of course, the decision of the Commission as to whether to treat a matter as one of inefficiency or as one of a disciplinary nature is itself an exercise of discretion, which may come, in a proper case, under the control of this Court; it need hardly be stressed that it is not open to the Commission to choose on purpose to examine disciplinary charges under cover of an inquiry into inefficiency, merely in order to deprive an officer of any procedural safeguards to which he would, otherwise, have been entitled.

In this particular Case, having given due thought to all relevant circumstances, I am satisfied that there has not been any abuse of powers in so far as the decision of the Commission, to treat the matter as one of inefficiency only, is concerned. I do not accept that the purpose of the Commission in taking such a course was to camouflage, thus, disciplinary proceedings against Applicant and to deprive Applicant of any procedural safeguards which she would have enjoyed in case of such disciplinary proceedings. I am satisfied that the course followed by the Commission was reasonably open to it in view of the nature of the material before it. It is true that the Commission immediately after the judgment of the Supreme Constitutional Court, on the first dismissal of Applicant, was inclined to treat the matter of the second

termination of the services of Applicant as being disciplinary, but the Commission after further consideration of the matter and by a majority vote, which indicates that the relevant issue was discussed and sufficiently gone into, decided to treat the said matter as one of inefficiency only—and as stated, already, I think that such a course was reasonably warranted and does not amount to abuse of powers.

Nor was the decision of the Commission, to treat the matter as one of inefficiency only, barred by the judgment on the previous termination of Applicant's services.

I was myself a member of the Supreme Constitutional Court when it decided the recourse against the first termination of the services of Applicant, (*Pantelidou and the Republic, supra*). Fortunately a considerable period of time has elapsed since, which has erased any recollection of the process of reasoning behind the judgment given in that case. In any case, I have, for the purposes of this Case limited myself expressly to the four corners of such judgment and I have read it and applied it in this Case as in my opinion it should be read and applied when approached and read for the first time by someone who had nothing to do with pronouncing it.

Reading that judgment as a whole I cannot go to the extent of accepting that it amounts to a res judicata inevitably rendering the termination of the services of Applicant, on the material then before the Commission, a matter of a disciplinary nature. It merely went as far as to hold that, as the essential nature and predominant purpose of the then termination of Applicant's services was then in doubt and it appeared that such termination was based both on inefficiency and matters of disciplinary nature, the Commission ought to have treated such termination as a disciplinary matter; but I cannot read it as excluding the subsequent exercise of the discretion of the Commission as to whether the matter should be approached afresh as being disciplinary or only one of inefficiency, once the Commission, having had its attention directed by that judgment to such issue, had considered it and decided to limit itself to the aspect of inefficiency.

I am, therefore, of the opinion that treating the termination of the services of Applicant as a matter of inefficiency only was a course lawfully open to the Commission at the time of the second termination of the services of the Applicant.

I have examined the relevant proceedings before the Commission, and particularly the summing up of its Chairman on the decisive meeting of the 27th March, 1963, in order to see whether it could be said that, though deciding to treat the matter as one of inefficiency only, the Commission had, in effect, terminated the services of Applicant on disciplinary grounds or had relied equally on matters of inefficiency and matters of discipline in doing so. If that had been so then this Court might possibly have had to interfere, due to the fact that what had been intended by the Commission to be a consideration of the question of inefficiency had developed into consideration of disciplinary charges without the proper procedure being applied.

In this respect I have come to the conclusion that the basic and sole reason for the termination of the services of the Applicant was the inefficiency of Applicant as found by the Commission. Matters which had been described by the Supreme Constitutional Court in its judgment on the first dismissal of Applicant as being clearly matters of a disciplinary nature, were indeed referred to in the summing up of the Chairman of the Commission on the 27th March, 1963; viewed, however, in their proper context, such matters were referred to, in my opinion, as completing the general picture of inefficiency of Applicant and not as disciplinary matters in themselves. So, in this respect this case differs materially from that of *Rallis and the Greek Communal Chamber* (*supra*) in which inefficiency and disciplinary reasons were relied upon with equal force and in which disciplinary reasons were relied upon in such a decisive manner so as to lead to a doubt as to the essential and predominant purpose of the termination of the services of the officer concerned.

It is convenient, while at this stage, to deal with some of the submissions made by counsel for Applicant.

He has complained (*i*) that he has been refused permission to appear for Applicant before the Commission on the 8th March, 1963, (*ii*) that the statements made before the Public Service Commission on the 27th February, 1963, by the superior officers of Applicant, and which were communicated to her on the 28th February, 1963, were made in her absence and (*iii*) that copies of all documents relied upon by the Commission were not furnished to Applicant together with the

letter calling her to appear before the Commission on the 8th March, 1963.

There might have been some point in these submissions of counsel for Applicant had he succeeded in persuading me that the proceedings before the Commission ought to have been, or ought to have been treated as being, of a disciplinary nature; but as I have already explained I have found against Applicant on this issue. Therefore, once the said proceedings amounted to an inquiry by the Commission into the question of inefficiency and were not disciplinary proceedings, the Commission could not, in any case, have been bound to allow Applicant to be represented by counsel and, in my opinion, has not acted in excess or abuse of powers in disallowing in this particular matter representation by counsel.

Likewise the Commission was not bound to allow Applicant to be present and cross-examine her superiors, when deposing before the Commission. The Commission had called her superiors before it in order to obtain first-hand information in an effort to make as full an inquiry as possible into the question of Applicant's alleged inefficiency; there was no question of quasi-judicial proceedings being conducted in which Applicant was to be afforded an opportunity to cross-examine.

Nor was the Commission obliged to furnish Applicant with copies of all relevant documents; but in any case, practically all the material documents had come already to the knowledge of Applicant in the course of past events and proceedings.

Counsel for Applicant has further complained that she was not allowed sufficient time to prepare herself to meet the charge of inefficiency. The Commission had called Applicant to appear before it and to put her case to the Commission in the matter of her alleged inefficiency; this was not by way of answer to a disciplinary charge, but in order to make the relevant inquiry as complete and fair as possible; the Commission, in any case, had no duty to offer Applicant an opportunity to be heard (*see Pantelidou and The Republic, supra*, p. 105). I find no real substance in this complaint of Applicant that she has not been allowed sufficient time between being summoned to appear before the Commission and her actual attendance before the Commission. She was allowed about seven days and she was being called upon to state her

case in a matter in which she had already gone into litigation with the Commission, in respect of which all relevant circumstances must have been very well within her knowledge and contemplation in advance and in which she had been receiving already expert legal advice.

It has also been complained by counsel for Applicant at the hearing of this case that one of the then members of the Commission, Mr. Tryfonides, did not remain present for the whole of the time when Applicant was making a statement on the 8th March, 1963. But such statement was duly recorded and it was available to all the members by the time when they decided to terminate Applicant's employment on the 27th March, 1963. I do not, therefore, find, what has been complained of, to be a substantial defect calling for the annulment of the relevant decision of the Commission; had, of course, the proceedings been disciplinary, then such defect might have had more serious consequences.

Having found that it was open to the Commission to deal with the case of Applicant as a matter of inefficiency only and that the procedural objections raised by Applicant's counsel, in relation to the handling by the Commission of the matter, cannot be sustained, the next matter to be dealt with is whether or not the decision of the Commission to terminate Applicant's services for inefficiency was properly taken in other respects.

The Commission had before it an unestablished clerical assistant, on monthly employment; she had been employed on the terms of an offer of employment dated 4th March, 1959. In *Pantelidou and The Republic* (*supra*) it was found that the terms of such employment have to be read subject to the Constitution and that Applicant was a public officer, in the sense of Articles 122 and 125.

Otherwise, of course, her terms of employment have remained in force. One of such terms, term (*f*), provided about termination of her employment on a month's notice or on the payment of a month's salary in lieu of notice. A term of such nature has been found not to have been affected by relevant provisions of the Constitution, in the sense that an unestablished officer did not become permanent merely because he became a public officer in the sense of Articles 122 and 125 (see *Rossides and The Republic*, 3 R.S.C.C. p. 95).

The question that arises for determination is whether or not, in the light of the circumstances of this Case and of the Applicant's terms of employment, the termination of Applicant's services on grounds of inefficiency was a proper exercise of the Commission's discretion.

It may well be that in relation to the termination of the services of permanent public officers "inefficiency" has become a formal and distinct ground of dismissal. But in this Case, what was involved was not the inefficiency of a permanent public officer but of an unestablished public officer, whose employment could be terminated by a month's notice. In such a case inefficiency had not to be regarded as a formal ground of termination of a permanent employment but only as a ground rendering reasonable the decision to terminate a temporary, month to month, employment. For such purpose inefficiency had to be understood in its ordinary meaning as denoting 'inability to effect something, ineffectiveness, inefficient character' (Shorter Oxford English Dictionary p. 996).

Applicant had proved unable, in more than one Department, to deal efficiently with the work given to her. I am of the opinion that it was reasonably open to the Commission, on the basis of all the relevant material before it—to which I need not refer specifically—to draw the conclusion that she was an inefficient clerical assistant. Moreover, the burden of establishing abuse or excess of powers by the Commission in deciding on the termination of Applicant's services was on Applicant, as in every other case under Article 146 where abuse or excess of powers is alleged, and I find that such onus has not been discharged to my satisfaction. I am not, therefore, prepared to interfere with the relevant decision of the Commission which was reasonably open to it. (See relevant authorities reviewed in *Neophytou and The Republic* (1964 C.L.R. 280).

Counsel for Applicant in this Case has advanced a formidable array of arguments against the validity of the termination of the services of Applicant. With some I have dealt already; I am going to deal now with some others which, in my opinion, merit specific reference. I have, in any case, given due regard to all submissions made by him in a really exhaustive and able presentation of his client's case.

It has been alleged that the summing up of the Chairman

of the Commission, at its meeting on the 27th March, 1963, was not warranted, on some points, by the material on which it was based. Having examined fully this contention I find that, on the whole, the summing up of the Chairman was fairly and reasonably supported by the material concerned. In this respect it has been complained, *inter alia*, by counsel for Applicant:—

(*i*) that the Acting Chief Revenue Officer had not accepted to release Applicant from service in the Inland Revenue Department, Famagusta, even without being given an immediate replacement—a thing which was relied upon by the Chairman as indicating that the said Head of Department was anxious to get rid of Applicant's services.

In this connection counsel for Applicant has stated that the handwritten entry, appearing on exhibit 13—a letter of the Acting Chief Revenue Officer to the Commission dated the 14th November, 1960—and indicating readiness to release Applicant without an immediate replacement, is not to be found on two copies of exhibit 13 which were furnished to him in the course of the proceedings. He produced such copies, which became exhibits 21 and 22. He did so in an apparent effort to show that the aforesaid entry, which appears to have been made by way of record of a subsequent oral communication between the writer of exhibit 13 and the Commission, has not in fact been made at the time when it appears to have been made.

In my view the mere omission of such entry from the copies of exhibit 13 which were supplied to counsel for Applicant does not have, in the absence of other evidence which is entirely lacking, the sinister significance placed on it by counsel. The said entry must have been there all along, on *exhibit* 13, and it appears that it was omitted from the copies supplied to counsel for Applicant, *exhibits* 21 *and* 22, because what had been copied at the time from exhibit 13 was only the typewritten part of such exhibit, which was the whole of the letter of the Acting Chief Reve-

nue Officer. The said entry was not copied, together with another handwritten entry on such letter, because they were not actually part of the letter of the Acting Chief Revenue Officer to the Commission;

(*ii*) that the Chairman was wrong in saying in his summing up that it was not reasonable to expect Applicant's superiors to keep a detailed list of the big and small deficiencies of Applicant; much play has been made, in this respect, of the fact that no written warnings appear to have been administered to Applicant except on one occasion, as shown by *exhibits* 10 *and* 11.

But the Chairman of the Commission, in summing up the case for the Commission, was only commenting on the statements which Applicant's superiors had made to the Commission when called before it for the purposes of the inquiry into Applicant's inefficiency.

In my opinion the observation of the Chairman, which is complained of, was a perfectly legitimate observation, in the context in which it has been made. It was up to the Commission to weigh what Applicant's superiors had stated before it against Applicant, bearing in mind that their complaints did not always correspond to formal warnings for particular deficiencies, and to accept such complaints as true or to discard them. The Commission has decided to accept them and I see no sufficient reason for its decision to be interfered with.

All other complaints made by counsel for Applicant against the summing up of the Chairman of the Commission on the 27th March, 1963, are in my opinion not substantial enough so as to render it necessary for me to devote any particular part of this judgement to them. It suffices to say that I have considered them and I have found them to be unjustified.

In this respect, I would like to say that I find no merit at all in the allegation, contained in the letter of counsel for Applicant, dated 2nd March, 1963, that the Chairman of the Commission was prejudiced against her. On the basis of all

the material available I find such allegation entirely unfounded.

Counsel for Applicant has, further, argued that the Public Service Commission, in deciding to terminate Applicant's services for inefficiency, lost sight of the fact that the duties which Applicant was expected to perform in the District Court of Famagusta were not envisaged by the relevant scheme of service and that the Commission treated wrongly Applicant's lack of knowledge in certain specialized matters as lack of zeal and, therefore, as inefficiency. It may be true that the work at the District Registry was not free from its own complexities. But clerical assistants, posted at a Department, though naturally prone to meet with difficulties in adapting themselves to the nature of the work of the Department should be expected to be able to cope with the routine work of such Department within a reasonable period of time. The Commission had before it the fact that Applicant had first failed to render efficient service in the Inland Revenue Department and then had failed to adapt herself efficiently to the work of the District Court Registry of Famagusta; even her typing was not satisfactory. On all these considerations it reached the conclusion—which was, I think, reasonably open to it in the circumstances—that Applicant was an inefficient clerical assistant. I do not think that it can be validly held that the Commission in reaching such conclusion misread the relevant scheme of service, which burdened Applicant with "clerical duties of a routine nature which include filing of correspondence, typing, dispatch of correspondence, keeping of routine records, translation of letters, petitions and other simple documents from Greek or Turkish into English; routine accounting duties under the supervision of a more senior officer and any other suitable duties which may be assigned to him by the Head of his Department". Nor have I been satisfied that the Commission in deciding on Applicant's inefficiency had to draw rigid distinctions between lack of zeal and lack of knowledge. It was not expected to go into metaphysics. It had to evaluate Applicant's efficiency as a whole and I think it did so in a proper manner.

It has been complained further by counsel that the Commission did not seek the views of the superior officer of Applicant in the Public Works Department where she had worked originally. But in this matter the Commission was

seeking the views of those superiors who had *complained* of Applicant's inefficiency, and also of the more recent ones. It was after she left the Public Works Department that she had worked in the Inland Revenue Department and then in the District Court Registry. I see nothing wrong in the course followed by the Commission in this respect. It must be borne in mind that the personal file of Applicant was at the time before the Commission (see the Chairman's summing up, *exhibit* 16) and the Commission could have a complete picture of Applicant's public career.

In the light of all relevant considerations, I have no difficulty in holding that the decision of the Commission to terminate Applicant's services cannot be declared *null* and *void* and has to be confirmed.

Coming now to the date of the termination of the services of Applicant, I am of the opinion that in that respect Applicant rightly complains that such termination could not have been given effect before its communication to Applicant and that it had to be made in accordance with the terms of her employment, i.e. a month's notice had to be given to her, or a month's salary in lieu of notice. The date, therefore, of the effect of the termination could not have been the 27th of March, 1963, as stated in the Commission's letter dated the 5th April, 1963.

As stated in *Morsis and the Republic* (reported in this part at p. 1 *ante*) an administrative act takes effect on communication to the person concerned. This has also been properly accepted, in this Case, by counsel for Respondent. So the termination of the services of Applicant could not have taken effect before she received, on the 10th April, 1963, the relevant letter dated 5th April, 1963. But, furthermore, such termination had to be made in accordance with her terms of employment. In my opinion such terms, which have been already referred to, required that she should have been given a month's notice or been paid a month's salary in lieu of notice—and "month" I take it to mean a clear month of service. As she was employed, at first, from the 1st March, 1959, a clear month's notice after the 5th April, 1963, would have expired only on the 31st May, 1963, and I find accordingly that Applicant's services could not have been terminated with effect before 31st May, 1963, and that she is entitled to salary until then.

As it has been done in *Morsis and The Republic* (*supra*) it is possible, in a proper case, and this is one of them, to uphold a decision of the Commission regarding the question of the substance of termination of the services, but to annul it regarding the date of its effect. I, therefore, declare *null* and *void* the termination of the services of Applicant, to the extent only that it was to take effect on the 27th March, 1963, and it is up to the appropriate authorities to put the matter right.

On the question of costs, having regard to all the factors involved in this Case, I am not inclined to make any order as to costs and I direct that each party should bear its own costs.

Order in terms.
Each party to bear own costs.