[TRIANTAFYLLIDES, J.]

1965
Aug. 31
Oct. 26,
Nov. 27
1966
June 8

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PANAYIOTIS TOMAZOU
and
1. THE GREEK COMMUNAL CHAMBER THROUGH THE OFFICE OF GREEK EDUCATION AND/OR
2. THE REPUBLIC OF CYPRUS THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS TOMAZOU,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER, THROUGH THE OFFICE OF GREEK EDUCATION, AND/OR
2. THE REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 125/64).

Administrative Law—Disciplinary punishment and control—Elementary Education—Schoolteachers—Decision of the Disciplinary Board to punish a schoolteacher disciplinarily by transfer and severe reprimand—For not discharging his duties promptly contrary to regulation 5 (θ), infra—Decision not properly reasoned—Therefore, it has to be annulled as contrary to law viz. to regulation 19 (2) of the Disciplinary Regulations (infra)—Also, for the additional reason that the Disciplinary Board has decided the matter defectively, in that it took into consideration factors which were not properly before them—The Disciplinary Regulations for Schoolmasters, Schoolteachers and Clerks of Communal Schools (made by the Greek Communal Chamber on the 22nd June, 1962), Regulations 5 (a) (η) (θ) and 19 (2).

By this recourse the applicant challenges the validity of the decision taken by the Disciplinary Board of the respondents to punish him disciplinarily by transfer and severe reprimand. The Board acquitted the applicant of all charges against him except the charge, under regulation 5 (θ) of the aforesaid Disciplinary Regulations *(supra)*, that he had not discharged promptly his duties (παρέλκυσιν ἐκτελέσεως ὑπηρεσίας); the Board found the applicant guilty of this disciplinary offence and imposed the punishments as aforesaid. Under regulation 19 (2) of the Disciplinary Regulations (*supra*), on the strength of which the applicant was tried by the Disciplinary Board,

the decisions of that Board have to be recorded in writing and have to be duly reasoned (ἠτιολογημέναι). The only existing record of the decision of the Board are the minutes of the 7th August, 1964 ; there, it is stated that the Board having heard a witness called against the applicant and a witness called in favour of the applicant, decided to acquit him on other charges mentioned therein, but found that applicant was guilty of the offence of not discharging his duties promptly ("εὑρίσκει ὅμως ὅτι ὁ διδάσκαλος εἶναι ἔνοχος παρελκύσεως ἐκτελέσεως ὑπηρεσίας") ; this is all that is stated in the relevant record of the Board regarding its decision to find the applicant guilty of the disciplinary offence in question. Exactly the same was communicated to the applicant by the letter of the 1st September, 1964, exhibit 1.

The learned Justice in annulling the decision complained of :—

Held, (1). Nothing is stated in the decision of the Board as to which are the particular duties which applicant had failed to discharge promptly ; and in my view paragraph (θ) of regulation 5 of the Disciplinary Regulations (*supra*), as framed, makes it a disciplinary offence for a teacher not to discharge promptly a particular duty.

(2) Nor is anything stated about the reasons for, or the evidence upon which the Board reached the conclusion that the applicant was guilty of the disciplinary offence in question.

(3) In the circumstances, I have no difficulty in holding that the relevant decision of the Board, as recorded in writing and as communicated to applicant by *exhibit* 1 (*supra*), contravenes regulation 19 (2) of the Disciplinary Regulations (*supra*) and it, therefore, has to be annulled as contrary to law ; and it is so declared accordingly.

(4) It appears that such punishment was imposed on applicant also because of the fact that he had admitted that he had been smoking in the classroom in the presence of the pupils. In the circumstances I am of opinion, therefore, that the disciplinary punishment in question was decided upon deffectively in that the Board had been influenced by a factor which was not properly before it in accordance with the relevant procedure under the Disciplinary Regulations

(*supra*). The decision complained of should be annulled on this ground too.

Decision complained of annulled. Part of his costs allowed to applicant.

Recourse.

Recourse against the decision of the Respondents to punish Applicant disciplinarily by transfer and severe reprimand.

K. Michaelides for the Applicant.

G. Tornaritis for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By this recourse Applicant seeks the annulment of the decision to punish him disciplinarily by transfer and severe reprimand, as such decision was communicated to Applicant by letter dated the 1st September, 1964. It is clear from the whole contents of the Application that Applicant challenges the validity of both the decision to punish him as well as the punishment which was imposed on him.

The relevant facts are as follows:-

During the school-year 1963/1964 Applicant was posted at Voroclini as a school-teacher of elementary education.

On the 27th March, 1964, the Director of the Office of Greek Education informed Applicant by letter (*exhibit* 3) that conduct of Applicant, described in such letter, about which the Director had received information, amounted to three disciplinary offences and that, before the matter would be referred to the Disciplinary Board, he would like to have, by the 9th April, 1964, the views of Applicant on the matter.

The three disciplinary offences, which were specified by the Director in his said letter, *exhibit* 3, were, in fact, disciplinary offences provided for under paragraphs (a), (η) and (θ) of regulation 5, of the "Disciplinary Regulations for School-Masters, School-Teachers and Clerks of Communal Schools"

which were made by the Greek Communal Chamber on the 22nd June, 1962.

Though the above letter of the Director of the Office of Greek Education could have been more precisely framed, and reference could have been made therein to the aforesaid provisions of the Disciplinary Regulations in force—a thing which was not done—I do not agree with the submission of counsel for Applicant that it is so vaguely framed as to render it a defective step in the disciplinary proceedings against Applicant.

Actually, Applicant himself did not seem to require any clarification of the contents of *exhibit* 3, and he wrote back on the 7th April, 1964, (see blue 103 in *exhibit* 4) refuting as ill-motivated and unfounded the accusations against him.

On the 14th April, 1964, the Director of the Office of Greek Education wrote to Applicant (see blue 104 in *exhibit* 4) requesting concrete particulars in support of Applicant's allegations, in his aforesaid letter of the 7th April, 1964.

Applicant failed to reply and, by letter dated 10th April, 1964, (see blue 108 in *exhibit* 4), he was summoned to appear before the Disciplinary Board on the 20th July, 1964, in order to answer the charges in question.

The hearing of the case took place before the Disciplinary Board on two dates, the 20th July, 1964 and the 7th August, 1964 (see the relevant minutes which are blues 112 and 113 in *exhibit* 4) and in the end the Board acquitted Applicant of all charges against him except the charge—under regulation 5 (θ) of the Disciplinary Regulations—that Applicant had not discharged promptly his duties (παρέλκυσις ἐκτελέσεως ὑπηρεσίας), the Board found Applicant guilty of this charge.

The Board, further, took serious notice of the admission of Applicant that he had been smoking in the classroom in the presence of pupils. As a result, the Board decided to punish the Applicant by transfer and severe reprimand.

This decision was communicated to Applicant by letter dated 1st September, 1964 (*exhibit* 1).

Applicant appealed to the Review Committee, functioning at the time in the Office of Greek Education, but his appeal was not dealt with because the Review Committee took

the view that it had no competence in the matter. A letter was written to Applicant accordingly, dated 10th September, 1964, (*exhibit* 2).

Applicant, as a result of his disciplinary punishment, was transferred to Sotera, as a school-teacher.

Both Voroclini and Sotera are villages in the Larnaca district but Voroclini is just outside Larnaca, where Applicant resides, whereas Sotera is 30 miles away.

Applicant alleges, inter alia, in this recourse that the decision of the Disciplinary Board should be annulled on the ground that it was not duly reasoned.

Under regulation 19(2) of the Disciplinary Regulations, on the strength of which Applicant was tried by the Disciplinary Board, the decisions of such Board have to be recorded in writing and have to be duly reasoned (ἠτιολογημέναι).

The only existing record of the decision of the Disciplinary Board are the minutes of the 7th August, 1964, (blue 113 in *exhibit* 4); there, it is stated that the Board, having heard a witness called against Applicant and a witness called in favour of Applicant, decided to acquit Applicant on other charges mentioned therein, but found that Applicant was guilty of the offence of not discharging his duties promptly ("εὑρίσκει ὅμως ὅτι ὁ διδάσκαλος εἶναι ἔνοχος παρελκύσεως ἐκτελέσεως ὑπηρεσίας"); this is all that is stated in the relevant record of the Disciplinary Board regarding its decision to find Applicant guilty of the disciplinary offence in question. Exactly the same was communicated to Applicant by means of *exhibit* 1 i.e. the letter of the 1st September, 1964.

Nothing is stated in the decision of the Board as to which are the particular duties which Applicant had failed to discharge promptly; and it may be pointed out, in this respect, that, in my view, paragraph (θ) of regulation 5 of the Disciplinary Regulations, as framed, makes it a disciplinary offence not to discharge promptly a *particular* duty. Nor is anything stated about the reasons for, or the evidence on the strength of, which the Board reached the conclusion that the Applicant was guilty of the disciplinary offence concerned.

In the circumstances, I have no difficulty in holding that the relevant decision of the Disciplinary Board, as recorded in writing and as communicated to Applicant, contravenes

regulation 19(2) of the Disciplinary Regulations and it, therefore, has to be annulled as contrary to law; and it is so declared accordingly.

It follows inevitably that the disciplinary punishment imposed on Applicant, as a result of such decision, should also be annulled, once the said decision has been annulled.

A further reason why I am of the view that the said disciplinary punishment has to be annulled is that, according to the relevant minutes of the Disciplinary Board (blue 113 in *exhibit* 4) and the letter written to Applicant, (*exhibit* 1), it appears that such punishment was imposed on Applicant also because of the fact that he had admitted that he had been smoking in the classroom in the presence of the pupils. This may have been very serious and very undesirable conduct on the part of a school-teacher; and the Board was quite properly justified in taking a severe view of such conduct. But, in my opinion, such conduct could not have been taken into account in the disciplinary proceedings in question, influencing, obviously, the punishment imposed on Applicant in such proceedings, unless it had been made the subject of a disciplinary charge against Applicant and unless Applicant had been found guilty of such charge in accordance with the relevant Disciplinary Regulations. Such a thing was not done in the present Case. In the circumstances, therefore, I am of the opinion that the disciplinary punishment in question was decided upon defectively, through the Disciplinary Board being influenced by a factor which was not properly before it in accordance with the relevant procedure under the Disciplinary Regulations, and that, consequently, it should be annulled on this ground too.

In view of my above conclusions, I need not deal with any other issue raised in these proceedings and going to the validity of the sub judice matters.

For all the reasons stated hereinbefore in this Judgment, Applicant is entitled to succeed in this recourse and his disciplinary conviction and punishment are declared to be null and void and of no effect whatsoever.

Regarding costs, I have decided, in the circumstances of this Case, to award to Applicant part of his costs which I assess at £12.

Decision complained of annulled.
Order as to costs as aforesaid.