1968
July 25
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PANOS PAPANICOLAOU (No. 2) v. REPUBLIC (MINISTER OF HEALTH AND OTHERS)

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANOS PAPANICOLAOU (No.2),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF HEALTH AND OTHERS,

Respondents.

(Case No. 1/68).

Public Officers—Disciplinary proceedings—The Public Service Law, 1967 (Law No. 33 of 1967), sections 2, 58(1)(e), 73(1)(b), 80(a) proviso, 80(b), proviso to para. 1 of the 1st Part of the Second Schedule to the said Law, 81 and 1st Part of the First Schedule to the same Law—Alleged improper behaviour of Applicant towards Respondent 1 (Minister of Health) allegedly constituting a disciplinary offence under section 58(1)(e)—Reference of the matter by Respondent 1 to Respondent 3 (The Public Service Commission), via Respondent 2 (The Council of Ministers) for inquiry to be carried out by the latter under section 80(b) before the matter would be dealt with by Respondent 3 (The Public Service Commission)—The Minister (Respondent 1) was properly entitled, in law, to act as he did under section 80—It was, also, right for him, as a matter of proper administration and natural justice, to act as he did as the appropriate authority in a matter in which he was involved personally—And not to dispose himself of the matter summarily under section 80(a), section 81 and the 1st Part of the First Schedule to the said Law—Because in the latter case he would be acting as a judge in his own cause—See, also, below.

Minister—A Minister is a superior of a public officer working in the Ministry, within the ambit of section 58(1)(e) of the Public Service Law, 1967—See, also, Article 58 of the Constitution—"Appropriate authority", defined in section 2 of the said Law—A Minister is an "appropriate authority" by virtue of such definition, but he acts "usually" through his Director-General—A Minister, therefore, is an appropriate authority entitled to act under section 80 of the aforesaid Law.

Appropriate authority in section 2 of the Public Service Law, 1967.

Words and Phrases—"Appropriate authority" as defined in section 2 of the Public Service Law, 1967.

Disciplinary proceedings—See above under Public Officers; Minister.

Public Service Commission—Reference to the Commission of a disciplinary matter—See above.

Administrative Law—Administrative decision—Reasoning—The seriousness of the accusation against the public officer in this case rendered really unnecessary any reasoning as to why the sub judice *reference to Respondent 3 had to be made—This is an instance where the reason for the course adopted was patently obvious on the face of things.*

Reasoning—Reasoned administrative decision—See immediately above.

The Applicant is a public officer, in the Ministry of Health. It is alleged against him that on the 1st November, 1967, he behaved improperly towards the Minister of Health (Respondent 1) by insulting him—in breach of his duty under section 58(1)(e) of the Public Service Law, 1967 (Law No. 33 of 1967). The Minister decided to refer this disciplinary matter under section 80 of the Law to the Public Service Commission (Respondent 3) through the Council of Ministers (Respondent 2). The Applicant by this recourse challenges the validity of the said decision of the Minister of Health. For the purposes of this case it has been assumed that the accusation made against the Applicant is a correct one.

It was argued by counsel for the Applicant that:

(1) The conduct attributed to the Applicant could not constitute a disciplinary offence under section 58(1)(e) of the said Law, because Respondent 1, being a Minister and not a public officer, could not be considered to be a "superior" of the Applicant in the sense of the aforesaid statutory provision.

(2) The Minister (Respondent 1) is not the "appropriate authority" which could act under section 80 of the said Law, such authority being the Director-General of the Ministry of Health.

In dismissing with costs the recourse, the Court:-

Held, (1). Under section 58(1)(e) of the Public Service Law, 1967 a public officer has a fundamental duty to behave in a proper manner towards his superiors, his colleagues and the public; and by virtue of section 73(1)(b) of the same Law, disciplinary proceedings may be instituted against him if he acts in breach of such duty.

(2) It would be an untenable interpretation of section 58(1)(e) of the aforesaid Law to hold that a Minister is not a superior of a public officer working in his Ministry; a Minister is the Head of his Ministry and is responsible for its proper functioning (see Article 58 of the constitution).

(3) The "appropriate authority" is defined in section 2 of the Public Service Law, 1967; by virtue of such definition a Minister is an appropriate authority, but he acts "usually" through his Director-General.

(4) It follows, therefore, that the Minister of Health (Respondent 1) was properly entitled, in law, to act as he did under section 80; and in my view it was right for him, as a matter of proper administration and natural justice, to act as he did, as the appropriate authority, in the present matter, in which he was involved personally. Had the conduct in question of the Applicant been dealt with by Respondent 1 (the Minister), summarily under the provisions of section 80(a) section 81 and the 1st Part of the First Schedule to the Public Service Law, 1967, I would have unhesitatingly have found that Respondent 1 acted in contravention of the rules of natural justice as nobody can be a judge in his own cause. But, instead, Respondent 1 has chosen to let the matter be decided by Respondent 3 (The Public Service Commission), an independent organ of the Republic; and this was the only proper course which he could have taken in the circumstances.

(5) The seriousness of the accusation against the Applicant rendered really unnecessary any reasoned decision of Respondent 1 (the Minister) as to why the *sub judice* reference to Respondent 3 (The Public Service Commission) had to be made; this is an instance in which the reason for the course adopted was patently obvious on the face of things.

Recourse dismissed. Order for £15 towards the costs of Respondents.

Recourse.

Recourse against the validity of the decision of Respondent 1 to refer to Respondent 3 the matter of certain conduct of the Applicant.

L. Clerides with *A. Paikkos,* for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: On the 27th April, 1968, the Court gave, in this case, a decision* on preliminary legal issues; its contents need not be repeated in this Judgment; they should be read together with it.

As a result of such decision the case proceeded to a hearing regarding, only, the validity of the decision of Respondent 1 (the Minister of Health) to refer to Respondent 3 (the Public Service Commission), via Respondent 2 (the Council of Ministers), the matter of certain conduct of the Applicant, towards Respondent 1, on the 1st November, 1967.

It is being alleged, against the Applicant, that on the said date, and in the presence of, *inter alia,* the Director-General of the Ministry of Health and other senior officers thereof, he behaved improperly towards Respondent 1—by insulting him—in breach of his duty under section 58(1)(e) of the Public Service Law, 1967 (Law 33/67).

For the purposes of this case, and of this Judgment, it has been assumed that the accusation made against the Applicant is a correct one; but such assumption should not, of course, prejudice, in any way, the issue of whether or not the Applicant did *in fact* misconduct himself on the 1st November, 1967.

It has, first, been submitted by counsel for the Applicant that the conduct attributed to the Applicant could not constitute a disciplinary offence, under section 58(1)(e) of Law 33/67, because Respondent 1, being a Minister, and not

* *Note:* Decision reported in this Vol. at p. 225 *ante.*

a public officer, could not be considered to be a superior of the Applicant in the sense of such provision.

Under this provision a public officer has a fundamental duty to behave in a proper manner towards his superiors, his colleagues and the public; and, by virtue of section 73(1)(b) of the same Law, disciplinary proceedings may be instituted against him if he acts in a manner amounting to a breach of such duty.

It is correct that, for many purposes, a distinction has to be drawn between a public officer and a Minister, but it would be an untenable interpretation of section 58(1)(e) of Law 33/67 to hold that a Minister is not a superior of a public officer working in his Ministry; a Minister is the Head of his Ministry and is responsible for its proper functioning (see Article 58 of the Constitution). It would, indeed, lead to an absurd situation to interpret section 58(1)(e) as not including a Minister within the ambit of the superiors of a public officer, because this would mean that, though such an officer if he insults his Director-General may be faced with disciplinary proceedings, he can insult his Minister without being subject to any disciplinary sanction.

The first submission of counsel for the Applicant cannot, therefore, be sustained.

The next submission of counsel for the Applicant was that Respondent 1 was not the appropriate authority which could act under section 80 of Law 33/67; it has been contended that such authority was the Director-General of the Ministry of Health.

The "appropriate authority" is defined in section 2 of Law 33/67; by virtue of such definition a Minister is an appropriate authority, but he acts "usually" through his Director-General.

It follows, therefore, that Respondent 1 was properly entitled, in law, to act as he did under section 80; what remains to be examined is whether it was right for him, as a matter of proper administration and natural justice, to act as he did, as the appropriate authority, in the present matter, in which he was involved personally;

Had the conduct in question of the Applicant been dealt with by Respondent 1, summarily, under the provisions

of section 80(a), section 81 and the 1st Part of the First Schedule to Law 33/67, I would have unhesitatingly have found that Respondent 1 acted in contravention of the rules of natural justice, as nobody can be a judge in his own cause.

But, instead, Respondent 1 has chosen to let the matter be decided by Respondent 3, an independent organ of the Republic; and in my opinion this was the only proper course which he could have taken in the circumstances.

Also, in view of the nature of the matter, Respondent 1 could not, consistently with the notions of proper administration, instruct the Director-General of the Ministry, a subordinate of his and a person who had witnessed the events of the 1st November, 1967, to deal with such matter summarily, under the aforesaid provisions, or to decide whether to refer it for decision by Respondent 3.

Another submission made on behalf of the Applicant has been that it was necessary to conduct an inquiry into the matter, in the Ministry of Health, under the provisions of section 80(a) of Law 33/67, before deciding to refer it to Respondent 3, under the proviso to section 80(a).

In my opinion the proper construction of section 80 leads to the conclusion that an inquiry under section 80(a) was only necessary if the matter were to be dealt with summarily in the Ministry; otherwise, as the matter was to be referred to Respondent 3, an inquiry had to be carried out, not under section 80(a), but under section 80(b); and as Respondent 1 was, himself, the complainant, I am of the view that it was, indeed, proper, in the present instance, to refer the matter to Respondent 2, for the purpose of carrying out the necessary inquiry under section 80(b); the course adopted was clearly warranted by the proviso to paragraph 1 of the 1st Part of the Second Schedule to Law 33/67.

For all the foregoing reasons, and bearing in mind the seriousness of the alleged misconduct of the Applicant, I have no difficulty in finding that Respondent 1 has in no way acted improperly in deciding to refer the matter to Respondent 3, via Respondent 2; and the said seriousness of such matter rendered really unnecessary any reasoned decision of Respondent 1, as to why the reference to Respondent 3 had to be made; this is an instance in which the reason

for the course adopted was patently obvious on the face of things.

During the course of the argument certain issues were raised regarding the validity of the action taken by Respondent 2 in the matter; such issues cannot, however, be pronounced upon in this Judgment, because, as already held in the decision on preliminary legal issues, the action taken by Respondent 2 is not of an executory nature and could not, therefore, be the subject-matter of this recourse; being of a preparatory nature its validity can be tested if and when a recourse is made against the eventual decision, in the matter, of Respondent 3.

For all the foregoing reasons this recourse is hereby dismissed.

Regarding costs I have decided to award to Respondents part of their costs, which I assess at £15.

Application dismissed.
Order for costs as aforesaid.