[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

PRIVATE GRAMMAR AND MODERN SCHOOLS LTD.,
Appellants-Defendants,

v.

GARRET BENSON,
Respondent-Plaintiff.

(*Civil Appeal No.* 4793).

Master and Servant—Wrongful dismissal—Contract of service—Damages for breach thereof—Schoolmaster's services terminated for alleged incompetence—Incompetence of the nature entitling the employer to terminate the employment not established.

Wrongful dismissal—See supra.

Damages—General damages for breach of contract of service—Rightly assessed by the trial Court.

The facts sufficiently appear in the judgment of the Court dismissing the appeal taken by the employers-defendants against the judgment of the trial Court awarding general damages to the plaintiff-employee (now respondent) for wrongful dismissal; and dismissing also the cross-appeal by the successful employee (plaintiff-respondent) against the quantum of the damages so awarded to him as aforesaid.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D. JJ.), dated the 25th January, 1969 (Action No. 3555/68) whereby the defendants were ordered to pay to the plaintiff the sum of £1,565 by way of damages for breach of his contract of employment as a schoolmaster by the defendants.

A. Paikkos, for the appellants.

Chr. Artemides, for the respondent.

The judgment of the Court was delivered by:

1969
Nov. 18
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TRIANTAFYLLIDES, J.: This is an appeal by the appellants-defendants against the judgment of the District Court of Nicosia, in civil action 3555/68, by virtue of which they were ordered to pay to the respondent-plaintiff, a schoolmaster from England, £1,565 by way of damages (out of which £1,064 general damages) for breach of his contract of employment – for three years – as a school-master, in Cyprus, by the appellants.

During the hearing of this appeal before us, today, counsel for the appellants has limited his argument, that the termination of the services of the respondent was justified, to the contention that the respondent was incompetent as a schoolmaster; and he has argued that there is ample material on record which should lead to the conclusion that the dismissal of the respondent was, indeed, justified due to incompetence.

There is no doubt that there is on record evidence to the effect that to a certain extent the work of the respondent was unsatisfactory; but this fact had come to the knowledge of the headmaster of the appellants (who is, also, the Managing Director of the appellant company) during the first academic year when the respondent was teaching while being in the employment of the appellants, and, nevertheless, the headmaster, who was the person best able to judge the seriousness of any defects in the work of the respondent, did not feel that these defects were of such a nature as to prevent him from initially deciding to let the respondent continue for another academic year as a schoolmaster; eventually, the respondent's services were, instead, terminated, because he (justifiably, as the Court below found) refused to enter into a new contract with the appellants.

In the light of this we do fail to see how it was not reasonably open to the trial Court, on the whole of the material before it, to reach the conclusion which it reached, *viz.* that there was not established by the appellants incompetence of the respondent of such a nature as to entitle the former to terminate the services of the latter.

We, therefore, have decided that the appeal regarding the issue of liability of the appellants to compensate the respondent for breach of contract must fail.

Coming, next, to the question of general damages, it has been argued by the appellants that the amount awarded should

have been reduced by something like 15% in order to make allowance for the possibility that the respondent could have found other work during the academic year 1968/1969, immediately prior to which the respondent's services were terminated.

During the hearing of the case counsel for the respondent limited his claim for general damages to one academic year's salary – for 1968/1969 – and the trial Court was satisfied, on the evidence before it, including all the evidence regarding the efforts made by the respondent to find employment, that the respondent's chances of finding employment as a schoolmaster during the academic year 1968/1969 were practically nil; so the Court decided that he was entitled in full to the salary which he would have earned had he been employed for the said year.

We cannot find anything wrong with this approach of the trial Court Judges, nor do we find that, in any way they have based themselves on an incorrect view of the relevant facts.

Thus, this part of the appeal fails, too.

There remains the cross-appeal against the refusal of the Court below to take into account alleged consequential loss of increments of future salaries of the respondent, in England, due to the fact that he secured work there as a schoolmaster only as from the academic year 1969/1970, thus having had a break in service as a schoolmaster for a year (1968/1969), which, according to his contention, would result in the said loss of increments.

In our view there is not on record sufficient material establishing cogently the nature of such loss and the trial Court was, in our opinion, quite right in not making any provision in its award of damages in respect thereof. It was up to the respondent to establish to the satisfaction of the Court his claim under this head and he failed to do so.

In our the result we have to dismiss both the appeal and the cross-appeal; and we have decided to make no order as to the costs of the appeal and cross-appeal.

Appeal and cross-appeal dismissed. No order as to costs.