

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DR. MICHAEL CH. POYATZIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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DR. MICHAEL
CH. POYATZIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 327/74).

Public Officers—Disciplinary conviction and one sentence for two charges—Facts not constituting at the same time both offences—Applicant only guilty of offence in the first charge—Reasoning of sub judge decision not showing which of the two charges particularly weighed with the minds of the respondent Public Service Commission regarding the punishment that was imposed—Sub judge sentence annulled—Matter sent back to the Commission for reconsideration of the sentence to be imposed on the first charge only.

10 *Administrative Law—Public Officers—Disciplinary conviction and punishment—Reasoning of administrative decision by which the disciplinary sentence was imposed based on two legs—One of which could not constitute a disciplinary offence—Sub judge sentence annulled.*

15 The applicant, a Medical Officer, Class I, in the Department of Medical Services, serving in the Nicosia General Hospital, after examining medically in his office a char woman working in the Government laboratory and charging her £1 was reported and tried disciplinary by the Public Service Commission
20 as he was not entitled to such remuneration.

25 He pleaded guilty to two, out of three, charges brought against him and the third charge was withdrawn. The first charge was for private employment, contrary to section 64 of the Public Service Law, 1967, the particulars of which were that on the 21st November, 1973, whilst on duty at the X-Ray Department of the Nicosia General Hospital, did practise the profession of

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a doctor that is, he examined on payment, a patient. The second charge was for receiving a gift, contrary to section 67 (1) of the above law, the particulars of which were that on the date he received from the said patient, as a gift, the sum of £1.

Having been found guilty on both Counts, on his own plea, a fine of £200 was imposed on the applicant. 5

Counsel for the applicant contended that the facts before the commission could not at the same time constitute both offences to which the applicant pleaded guilty. Counsel for the respondent conceded that the facts of the case could not constitute at the same time both offences and the only disciplinary offence committed, in the circumstances, was the one contained in the first charge, to which counsel for the applicant also agreed. 10

Held, (1). The reasoning of the administrative act by which the disciplinary sentence was imposed, is based on two legs, one of which could not constitute a disciplinary offence in the circumstances, as the applicant had either received remuneration for private employment, which is our case, or he did receive a gift which could not be at the same time remuneration for services rendered. In such a case, it had to be shown that it was the correct leg of the reasoning that weighed particularly with the respondent Commission in deciding the nature and the severity of the punishment imposed. (See Decision of the Greek Council of State No. 1909/53 reported in Zacharopoulos, Digest of Case Law (1953–1960) Vol. I, L–W, p. 417, paragraph 2748). There is, however, nothing in the reasoning to show that the first count was the one that particularly weighed with the minds of the Commission regarding the punishment that was imposed. 15
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(2) The *sub judice* decision by which the sentence complained of was imposed, has to be annulled and the matter sent back to the respondent Commission for a reconsideration of the sentence to be imposed on the first charge only, disregarding completely the second charge which is not substantiated by the facts of the case. 30
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Sub judice punishment annulled.

Cases referred to:

Decision of the Greek Council of State No. 1909/1953.

Recourse.

Recourse against the decision of the respondent to impose on the applicant a fine of £200.— as a disciplinary punishment after finding him guilty, on his own plea, of two charges.

5 *K. Talarides*, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 The facts sufficiently appear in the judgment of the Court delivered by:—

 A. LOIZOU, J.: The applicant is a Medical Officer; Class I, in the Department of Medical Services serving in the Nicosia General Hospital. On the 21st November, 1973, Andriani Georghiou, a char woman in the Government Laboratory, was
15 ill and as she could not be examined by the doctors at the Out-Patients Department of the Hospital and having received information that the applicant was examining patients at his office, went to him for examination. He examined her, gave her a prescription for drugs and a sick-leave certificate. She
20 informed him of her status in the Government Laboratory and asked him what were the fees for his medical attendance. The applicant charged £1.— which Andriani paid. He was, in the circumstances, not entitled to such remuneration.

25 The applicant was reported for this and an inquiry was then carried out under the provisions of section 80 (b) and Part I of the Second Schedule to the Public Service Law, 1967.

30 After the completion of the investigation the appropriate authority referred the report, with all documents submitted, to the Attorney-General of the Republic together with its views thereon, for his advice. The Attorney-General of the Republic advised the appropriate authority as to the charges to be brought against the officer, and drafted same. They were then, together with all relevant documents, transmitted to the Chairman of the respondent Commission. A date was fixed by the
35 Commission for the hearing of the case.

 Out of the three charges brought against the applicant who appeared in person, he pleaded guilty to the first two which were—(a) private employment, contrary to section 64 of the Public Service Law, the particulars of which were that on the
40 21st November, 1973, whilst on duty at the X-Ray Department

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of the Nicosia General Hospital, did practise the profession of a doctor, that is, he examined on payment, the patient Andriani Georghiou. (b) Receiving a gift, contrary to section 67 (1) of the said Law, the particulars of which were that on the same date he received from the said patient, as a gift, the sum of £1.— 5

The third charge was withdrawn.

The facts were explained to the Commission and the applicant was heard in mitigation. The Commission having found the applicant guilty, on his own plea, of both counts, proceeded to impose disciplinary punishment on him, under the provisions of section 79 of the Law. In doing so, it said:— “..... The Commission considers the disciplinary offences to which the accused pleaded guilty and of which he has been found guilty, as very serious. Having in mind the aforesaid, the Commission decides by majority of four to one (the Chairman dissenting) to impose on the accused a fine of £200.— payable by four monthly instalments commencing at the end of June, 1974. The Chairman bearing in mind the circumstances of the case, considers the punishment as very high. The Chairman is of the opinion that a fine of £50.— was the proper one in the circumstances”. 10 15 20

The applicant filed the present recourse seeking the annulment of the decision whereby the said disciplinary punishment was imposed on him.

One of the grounds of law relied upon by the applicant is that the facts before the Commission could not at the same time constitute both offences to which the applicant pleaded guilty. 25

Learned counsel for the respondent Commission who has been very helpful to this Court, has fairly conceded, and rightly so in my view, that the facts of the case could not constitute at the same time both offences and the only disciplinary offence committed, in the circumstances, was the one contained in the first charge, to which counsel for the applicant also agrees. 30

This being so, the reasoning of the administrative act by which the disciplinary sentence was imposed, is based on two legs, one of which could not constitute a disciplinary offence in the circumstances, as the applicant had either received remuneration for private employment, which is our case, or he did receive a gift which could not be at the same time remuneration for 35 40

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5 services rendered. In such a case, it had to be shown that it
was the correct leg of the reasoning that weighed particularly
with the respondent Commission in deciding the nature and the
severity of the punishment imposed. Support for this pro-
position may be derived from the decision of the Greek Council
of State, No. 1909/53 reported in Zacharopoulos, Digest of
Case Law (1953-1960) Vol. I, L-W, p. 417, paragraph 2748.
10 There is, however, nothing in the reasoning to show that the
first count was the one that particularly weighed with the minds
of the respondent Commission regarding the punishment that
was imposed.

15 Consequently, the *sub judice* decision by which the sentence
complained of was imposed, has to be annulled and the matter
sent back to the respondent Commission for a reconsideration
of the sentence to be imposed on the first charge only, dis-
regarding completely the second charge which is not sub-
stantiated by the facts of the case.

In the result there will be order accordingly.

Respondent to pay £20.- against applicant's costs.

20 *Sub judice decision annulled.*
Order for costs as above.