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[L. LOIZOU, J.]

PANAYIOTIS
GAVRIEL
v.
REPUBLIC
(MINISTRY OF
EDUCATION)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
PANAYIOTIS GAVRIEL,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION,

Respondents.

(Case No. 72/74).

Administrative Law—Misconception of fact—Retirement of educational officer on grounds of health—By relying on contents of Medical report which contained the reasons that led to sub judice retirement—Applicant's personal file giving full picture of the condition and progress of his state of health—Nothing to indicate or suggest that respondents could have been labouring under any misconception of fact as to the material facts of the case.

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Educational Officer—Retirement of, on grounds of health—No misconception of fact.

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The applicant in this recourse challenged the validity of the decision of the respondents to retire him from the Educational Service of the Republic on grounds of health. The decision complained of was taken as a result of a report* of a Medical Board in which it was stated that applicant suffered from a psychic disease and was considered as unsuitable for the post of instructor.

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Counsel for the applicant contended that the respondents have acted in excess and in abuse of their powers and under a misconception of facts as to the condition of health of the applicant and, also, that the *sub judice* decision was not duly reasoned.

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Held, dismissing the recourse, that apart from the report of the Medical Board which in itself contains the reasons

* Quoted in full at pp. 408-409 *post*.

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5 which led to the decision challenged by the recourse there is the personal file of the applicant which gives a full picture of the condition and the progress of his state of health and there is nothing to indicate that the respondents could have been labouring under any misconception as to the material facts of the case; and that, accordingly, the recourse must be dismissed.

Application dismissed.

Recourse.

10 Recourse against the decision of the respondent to retire applicant from the Educational Service of the Republic on grounds of health.

D. Koutras for *E. Efstathiou*, for the applicant.

A. M. Angelides, Counsel of the Republic, for the respondents.

15 *Cur. adv. vult.*

The following judgment was delivered by:-

20 L. LOIZOU, J.: The applicant by this recourse challenges the validity of the decision of the respondents to retire him from the Educational Service of the Republic on grounds of health and prays for a declaration that such decision is illegal and of no effect.

The grounds of law upon which the application is based are the following:

25 "1. The respondents acted in excess and/or in abuse of their powers in that they took into consideration facts and/or situations based on personal impressions and/or on facts not corresponding to the provisions of the law.

30 2. When the respondents took the decision challenged by this recourse they were labouring under a misconception of the facts in that they did not take into consideration and/or were not aware and/or disregarded the abilities and the actual state of the health of the applicant.

35 3. The decision challenged is not duly reasoned".

The facts of the case as set out in the application are as follows:

The applicant is an instructor in general metal work and was serving at the Nicosia Technical School. He was first appointed at the Limassol Technical School for the school-year 1963-1964 and subsequently he served at the Technical Schools of Famagusta, Polis Chrysochous and Nicosia.

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On the 23rd November, 1973, he received a letter of even date from the Director-General, Ministry of Education, informing him that his retirement from the Public Educational Service on grounds of health had been approved with effect from the 1st February, 1974 and that until the date of his retirement he would be receiving his emoluments in full. This letter is blue No. 62 in his personal file *exhibit 2* in these proceedings.

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The decision complained of was taken as a result of the report of the Medical Board (*exhibit 1*) which was held on the 10th October, 1973 in consequence of a written request by the Head of the Technical Education contained in a letter dated 22nd September, 1973 (blue 57 in *exhibit 2*) addressed to the Director of Medical Services and informing him that the applicant showed psychicanomalies and that his condition was considered very dangerous for the safety of the students. The report of the Medical Board reads as follows:

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«Ὡς ἐμφαίνεται ἐκ τῶν παρ' ἡμῖν τηρουμένων ἀρχείων, ὁ ὡς ἄνω ἀναφερόμενος ἐνοσηλεύθη παρ' ἡμῖν, ὡς ἐσωτερικὸς ἀσθενὴς ἀπὸ 16.10.1964 μέχρι 6.3.1965, πάσχων ἐκ ψυχικοῦ νοσήματος. Ἐξελθὼν τῶν Ἰδρυμάτων κατὰ τὴν ὡς ἄνω ἡμερομηνίαν, ἱκανῶς βελτιωθείς, συνεχίζει παρακολουθούμενος ὡς ἐξωτερικὸς ἀσθενὴς καὶ τελεῖ ὑπὸ φαρμακευτικὴν θεραπείαν.

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2. Κατὰ τὴν σημερινὴν ἐξέτασιν, παρουσιάζεται ἡρεμος, πλὴν ὅμως δὲν ἔχει ἐπίγνωσιν τῆς καταστάσεώς του καὶ ἀρνεῖται τὴν ὑφ' ἡμῶν εἰσηγουμένην συνεργασίαν του πρὸς θεραπευτικὴν ἀντιμετώπισιν· παρουσιάζει ἐπίσης ἐκδηλὰ στοιχεῖα τῆς ὑποκειμένης ψυχικῆς του νόσου.

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3. Ὡς ἐκ τῶν ὡς ἄνω, θεωροῦμεν τοῦτον ἀκατάλληλον διὰ τὴν θέσιν ἐκπαιδευτοῦ, ἥτις προϋποθέτει ἐπα-

φὴν μετὰ νεαρῶν μαθητῶν, παρ' ὅλον ὅτι θὰ ἠδύνατο
κατὰ τὴν γνώμην μας, νὰ ἀσχοληθῆ με ἄλλου εἶδους
ἐργασίαν, ἥτις δὲν θὰ προὔπεδτε ἐπικοινωνίαν μετὰ
νεαρῶν μαθητῶν».

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5 ("As it appears from the material in our files the
above-mentioned was under treatment as an in-pa-
tient from 16.10.1964 to 6.3.1965 suffering from a
psychic disease. Having being discharged on the
10 above date and his condition having substantially
improved, he continues been followed as an out-pa-
tient and is under a medicinal treatment.

15 2. During to-day's examination he is calm but he
is not aware of his condition and refuses the co-ope-
ration suggested by us in order to confront his con-
dition curatively; he also presents manifest symptoms
of his psychic disease.

20 3. In view of the above we consider him as un-
suitable for the post of instructor, which pre-suppo-
ses contact with young students though he could, in
our opinion, be employed in another type of work,
which would not involve contact with young stu-
dents").

25 Learned counsel for the applicant in his short address
stated that the grounds of law upon which the applica-
tion is based are that the respondents have acted in excess
and in abuse of their powers and under a misconception
of facts as to the condition of the health of the applicant
and also that the decision complained of was not duly
30 reasoned. He contended that during the whole period of
his service he discharged his duties satisfactorily and that
the Directors of the schools where he served were satisfied
with the condition of his health. With regard to the re-
port of the Medical Board *exhibit* 1 he submitted that in
35 fact applicant's health was not bad to such a degree as to
justify his retirement on medical grounds. He added that
the state of his health at the time he was examined by the
Medical Board was due to mental fatigue which with the
passage of time has improved. He concluded by saying
40 that the applicant felt that an injustice had been done to
him and prayed that the decision complained of be de-
clared void.

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Learned counsel for the respondents on the other hand contended that the decision was lawfully taken and that it is fully reasoned. In addition he raised the question of time limit and submitted to the Court that the recourse was filed out of time.

With regard to the latter point according to my calculation the recourse was filed on the 75th day after the decision challenged was taken and it is not, therefore, out of time. With regard to the points raised by learned counsel for the applicant apart from the report of the Medical Board which in itself contains the reasons which led to the decision challenged by the recourse there is the personal file of the applicant which gives a full picture of the condition and the progress of the state of his health and there is nothing to indicate or suggest that the respondents could have been labouring under any misconception as to the material facts of the case.

In the circumstances it cannot in my view be said that any of the grounds raised or argued on behalf of the applicant have been substantiated. On the contrary, having regard to the material before them the respondents could hardly have reasonably reached any other decision.

In the result this recourse fails and it is hereby dismissed.

In all the circumstances there will be no order as to costs.

Application dismissed.
No order as to costs.