

1983 April 25

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS,
SAVVIDES, STYLIANIDIS, JJ.]

PANAYIOTIS PAPAIOANNOU,

Appellant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 266*).

*Time within which to file a recourse—Article 146.3 of the Constitution
—Running of time—Disciplinary conviction of appellant by
respondent Commission pronounced in his presence—No legislative
provision requiring publication of the decision in the official
5 Gazette or rendering such publication a necessary material form-
ality for the completion of the relevant administrative process
—Time commenced to run from the moment appellant came
to know of the imposition on him of the disciplinary punishment
—Regulation 7 of Part III of the Second Schedule to the Public
10 Educational Service Law, 1969 (Law 10/69) does not prescribe
a material formality necessary for rendering effective and executory
the said decision.*

The appellant, an educationalist, challenged the validity of
the termination of his services which was imposed on him by
15 way of disciplinary punishment on the 13th July, 1981. The
trial Judge found that as the appellant was present when the
decision of the respondent Commission, regarding the said dis-
ciplinary punishment was pronounced on the 13th July 1981,
and as he, therefore, came to know of it then, his recourse,
20 which was filed on the 30th September 1981, was out of time*.

There was no legislative provision rendering the publication

* The question of time is governed by Article 146.3 of the Constitution which is quoted at p. 1313 post.

in the official Gazette of the aforesaid decision a necessary material formality for the completion of the relevant administrative process, nor was there any provision requiring the publication in the Official Gazette of such decision.

Upon appeal against the above finding:

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Held, that in the particular circumstances of this case it was rightly found by the trial Judge, on a correct application of Article 146.3 of the Constitution, that, as from the moment when the appellant in the present case came to know, on the 13th July 1981, of the imposition on him of the disciplinary punishment in question, the period of seventy-five days prescribed under the said Article 146.3 commenced to run and, therefore, when this recourse was filed on the 30th September 1981 it was out of time and was rightly dismissed; accordingly the appeal must be dismissed.

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Held, further, that regulation 7 of Part III of the Second Schedule to the Public Educational Service Law, 1969 (Law 10/69) cannot be regarded as prescribing a material formality necessary for rendering effective and executory the administrative decision imposing disciplinary punishment on the appellant.

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Appeal dismissed.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court (Pikis, J.) given on the 25th February, 1982 (Revisional Jurisdiction Case No. 345/81)* whereby appellant's recourse against the decision of the respondents to dismiss applicant from his post as an elementary school teacher was dismissed.

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L. Papaphilippou with *G. Papantoniou*, for the appellant.

R. Vrahimi (Mrs.), for the respondent.

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Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. In this case the appellant, by a recourse filed on the 30th September 1981, has challenged the validity of the termination of his services which was imposed on him, by way of disciplinary punishment, on the 13th July 1981.

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* Reported in (1982) 3 C.L.R. 103.

The Judge of this Court who has tried the recourse in the first instance has found that as the appellant was present when the decision of the respondent Commission regarding the said disciplinary punishment was pronounced on the 13th July 1981, and as he, therefore, came to know of it then, his recourse, which was filed on the 30th September 1981, was out of time.

The appellant appealed against the above finding of the trial Judge.

The time within which a recourse has to be filed is laid down in Article 146.3 of the Constitution, which reads as follows:

“Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse”.

This was not a case in which there was any provision in the relevant legislation, that is in the Public Educational Service Law, 1969 (Law 10/69), which rendered the publication in the Official Gazette of the aforesaid decision of the respondent Commission a necessary material formality for the completion of the relevant administrative process, nor was there any provision otherwise requiring the publication in the Official Gazette of such decision.

Our attention was drawn to regulation 7 of Part III of the Second Schedule to Law 10/69 which provides as follows:

“Any judgment of the Commission shall give reasons for the decision taken and shall be signed by the Chairman. Copy of such judgment shall be forwarded to the appropriate authority and another copy shall be given to the educationalist free of any charge”.

We do not regard the said regulation 7 as prescribing a material formality necessary for rendering effective and executory the administrative decision imposing disciplinary punishment on the appellant. Such decision became fully effective on the 13th July 1981 when it was pronounced, irrespective of the fact that it was, also, subsequently communicated to the appellant in writing by a letter dated 15th July 1981.

In the particular circumstances of this case we think that it was rightly found by the trial Judge, on a correct application of Article 146.3 of the Constitution, that, as from the moment when the appellant in the present case came to know, on the 13th July 1981, of the imposition on him of the disciplinary punishment in question, the period of seventy-five days prescribed under the said Article 146.3 commenced to run and, therefore, when this recourse was filed on the 30th September 1981 it was out of time and was rightly dismissed. 5

In the result this appeal is dismissed; but with no order as to its costs. 10

*Appeal dismissed with no order
as to costs.*