1982 September 24

[TRIANTAFYLLIDES, P., L. LOIZOU, A. LOIZOU, LORIS, STYLIANIDES, PIKIS, JJ.]

ANDREAS PARASKEVAS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF EDUCATION,
2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(*Revisional Jurisdiction Appeal No.* 257).

Educational Officers—Probationary service—Termination—Following preliminary decision to terminate his services appellant called upon by respondent Commission to make representations—Services terminated after such representations—Provisions of section 30(2) of *the Public Educational Service Law,* 1969 (Law 10/69) *complied with—Sub judice decision not taken by way of disciplinary punishment but due to the unsuitability of the appellant as an educationalist though fact that he had been disciplinarily punished in the past was a factor which could be weighed together with all other relevant matters.*

The appellant was serving on probation as a schoolmaster. On the 28th June, 1976 the respondent Commission considered whether or not to confirm his appointment; and because it was prima facie of the view that there were grounds which would justify its refusal to do so it called upon him to make representations in the matter in accordance with subsection (2) of section 30 of the Public Educational Service Law, 1969 (Law 10/69). At its meeting of the 28th June, 1976, the Commission had before it a report of the appropriate Inspector of Education dated 28th May, 1976, submitted under s.36(2) of Law 10/69, which was to the effect that the Inspector could not recommend the permanent appointment of the appellant. Following his calling upon by the respondent as above the appellant appeared before the

respondent on 25.8.76 together with an advocate, and after the respondent had heard what the appellant's advocate had to say it decided to terminate his services.

Prior to the decision to terminate his services as above the appellant was informed by a letter dated 13th May 1976 that having been found guilty of disciplinary offences he was to be transferred, by way of disciplinary punishment, from Nicosia to Paralimni as from 1st September 1976.

Upon appeal against the dismissal of his recourse, which was directed against the termination of his services, it was mainly contended by Counsel for the appellant:

(a) That the respondent Commission failed to comply with section 30 of Law 10/69; and

(b) that the appellant has been punished twice because prior to the termination of his services he was transferred by way of disciplinary punishment from Nicosia to Paralimni.

Held, that there was in this case substantial compliance with the provisions of section 30 of Law 10/69, since on 28th June 1976 the respondent did nothing more than to reach a preliminary decision, as it was empowered to do under the said section 30, regarding its intention to terminate the services of the appellant; and as a result of such decision the respondent called upon the appellant to make his representations, as envisaged, again, by the said section 30; that, moreover, it is quite clear from the relevant administrative records that the subsequent termination of the services of the appellant, in August 1976, was not further disciplinary punishment which was imposed on the appellant in relation to the disciplinary offences in respect of which he had already been punished by the decision to transfer him to Paralimni; that the fact that the appellant had been disciplinarily punished in the past was merely a factor which could be, and was, quite legitimately weighed together with all other relevant matters appearing in the personal file and confidential reports of the appellant, as well as in administrative records relating to the conduct of the appellant during the period of his probationary service; and in the light of all this material the sub judice decision was taken by the respondent, not by way

of disciplinary punishment, but because due to the unsuitability of the appellant as an educationalist it would not serve the interests of education to allow the appellant to remain in the service; accordingly the appeal must be dismissed.

Appeal dismissed.

Appeal.

Appeal against the judgment * of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 24th October, 1981 (Revisional Jurisdiction Case No. 261/76) dismissing appellant's recourse against the termination of his services as a teacher of secondary education.

L. N. Clerides, for the appellant.

A. S. Angelides, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. This is an appeal against the judgment of a Judge of this Court by which he dismissed the recourse of the appellant against a decision of the respondent Educational Service Commission by virtue of which it was decided to terminate his services as from 1st September 1976.

The appellant was initially appointed on probation as a schoolmaster for a period of two years as from 21st September 1972, but due to intervening events-with which we need not deal in this judgment since they are not really relevant to this case - his period of probationary service was interrupted and, as was found by the respondent Commission, such period did not come to an end, as it would normally have come, in September 1974, but went on for much longer.

On 28th June 1976 the respondent considered whether or not to confirm the appointment of the appellant; and because it was prima facie of the view that there were grounds which would justify its refusal to do so it called upon him to make representations in the matter in accordance with subsection (2) of section 30 of the Public Educational Service Law, 1969 (Law 10/69).

* Reported in (1981) 3 C.L.R. 420.

The appellant appeared before the respondent on 20th August 1976 and as he required more time to prepare his representations the matter was adjourned to the 25th August 1976.

We have been referred to the relevant minutes of the respondent for the 20th August 1976 in which there appears an allegation of the appellant that he was being politically persecuted. We must observe, at this stage, that, in our view, there is nothing before us to support such allegation and his counsel has very rightly, indeed, stated explicitly during the hearing of this appeal that he agrees with this view of ours.

On the 25th August 1976 the appellant appeared again before the respondent, together with an advocate, and after the respondent had heard what the appellant's advocate had to say it decided, as already stated, to terminate his services.

We have perused very carefully all the relevant administrative records and we find that there was in this case substantial compliance with the provisions of section 30 of Law 10/69, since on 28th June 1976 the respondent did nothing more than to reach a preliminary decision, as it was empowered to do under the said section 30, regarding its intention to terminate the services of the appellant; and as a result of such decision the respondent called upon the appellant to make his representations, as envisaged, again, by the said section 30. We are quite satisfied that on 28th June 1976 the respondent did not decide finally, in a manner inconsistent with the letter or spirit of section 30, as counsel for the appellant has contended, to terminate the services of the appellant.

Another argument which was put forward by counsel for the appellant was that in the circumstances of the present case his client has been punished twice. It is true that he was informed by a letter dated 13th May 1976 that having been found guilty of disciplinary offences he was to be transferred, by way of disciplinary punishment, from Nicosia to Paralimni as from 1st September 1976. At that time it was, of course, open to the respondent to punish the appellant by terminating his services but, as the punishment to be imposed on him had to be commensurate to the disciplinary offences of which he had been found guilty, the respondent did not, apparently, think that it was then necessary to go so far as to terminate his services.

It is quite clear from the relevant administrative records that the subsequent termination of the services of the appellant, in August 1976, was not further disciplinary punishment which was imposed on the appellant in relation to the aforementioned disciplinary offences in respect of which he had already been punished by the decision to transfer him to Paralimni. As it appears from the minutes of the respondent dated 28th June 1976 the matter of the probationary appointment of the appellant came up only later before the respondent because the respondent did not deal with it while there were pending against the appellant the disciplinary charges concerned and because until the disciplinary proceedings had been terminated no report of the appropriate Inspector of Education was submitted to the respondent under section 36(2) of Law 10/69. Such report is dated 28th May 1976 and it is to the effect that the Inspector could not recommend the permanent appointment of the appellant.

It can clearly be derived both from the initial preliminary decision of the respondent of 28th June 1976, which was reached, as aforesaid, for the purposes of section 30 of Law 10/69, as well from the final decision of the respondent of 25th August 1976, that what was taken into account in reaching such decisions was that the appellant was not suitable as an educationalist and, therefore, his services had to be terminated, as, in the circumstances, his probationary appointment period could not be extended and a fortiori he ought not to be offered a permanent appointment.

The fact that the appellant had been disciplinarily punished in the past was merely a factor which could be, and was, quite legitimately weighed together with all other relevant matters appearing in the personal file and confidential reports file of the appellant, as well as in administrative records relating to the conduct of the appellant during the period of his probationary service; and in the light of all this material the sub judice decision was taken by the respondent, not by way of disciplinary punishment, but because due to the unsuitability of the appellant as an educationalist it would not serve the interests of education to allow the appellant to remain in the service.

Having dealt with the main grounds which have been raised in this appeal, and which in our opinion merited specific con-

sideration, we find that there is no reason whatsoever for us to interfere with the judgment of the learned trial Judge and this appeal is dismissed accordingly; but with no order as to its costs.

Appeal dismissed with no order as to costs. 5