

1986 April 5

[MALACHTOS, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

VASOS MISOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER OF LARNACA.

Respondent.

(Case No. 88/77).

The Rural Constables Law, Cap. 287—Section 6(2)—Rural constable—Re-appointment—An outgoing rural constable has no vested right to be reappointed.

5 *Natural justice—Right to be heard—Termination of employment of a rural constable on ground of inefficiency—No right to be heard.*

10 The applicant was first appointed as rural constable of Ormidia village on 1.3.68. In May 1969 he was arrested for carrying a pistol and on 2.8.69 he was remanded in the psychiatric institutions of Athalassa for examination.

15 On 1.8.69 he resumed his duties, but on 6.5.70 he was taken again to the psychiatric institutions for treatment and on 25.8.70 he submitted his resignation. On 12.11.70 he was called upon to resume his duties as a rural constable.

The applicant accepted the offer and worked up to 17.12.71 when he was taken again to the psychiatric institutions where he stayed for treatment until 17.1.72, when he resumed his duties up to the end of 1976.

20 By letter dated 31.12.76 the District Officer of Larnaca

informed the applicant that he would not be reappointed after 31.12.76 as his services were not satisfactory.

Hence the present recourse. Counsel for the applicant argued that by virtue of 6(2) of Cap. 287 a right is vested in a rural constable, who carries out his duties satisfactorily, for reappointment for a further period of two years and that, therefore, the appointment of applicant was impliedly renewed for every two year period as from 1.3.70 and so his services could not be terminated before the 1.3.78. Counsel for the applicant also argued that the sub judge decision is not duly reasoned in that the applicant was not given the opportunity to be heard before it was taken. 5 10

Held, dismissing the recourse: (1) Section 6(2) of Cap. 287 merely lays down that an outgoing rural constable must be considered for reappointment if his services have been satisfactory. It does not vest such constable with a right to be reappointed. 15

(2) The applicant had no right to be heard as the termination of his service was not based on disciplinary reasons. 20

The sub judge decision was duly reasoned. Its reasoning appears in a report made by the Assistant District Inspector and, also, in the above letter dated 31.12.76 of termination of applicant's employment. 25

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Michael v. The Republic, 4 R.S.C.C. 53.

Rallis v. Greek Communal Chamber, 5 R.S.C.C. 11. 30

Recourse.

Recourse against the decision of the respondent whereby applicant's services as a rural constable were terminated.

E. Emilianides with Chr. Sozos, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur adv. vult.

5 MALACHTOS J. read the following judgment. The applicant in this recourse claims, as stated therein, a declaration of the Court that the decision of the respondent, dated 31.12.76, which was communicated to him on or about 4.1.77, by which his services as a rural constable of Ormidia village were terminated and/or his appointment was not renewed after the 31st December, 1976, is illegal and void and/or was taken in excess and/or in abuse of power and so is null and void and of no legal effect.

The relevant facts are the following:

15 The applicant was first appointed to the post of rural constable of Ormidia village on the 1st March, 1968, by the District Officer of Larnaca, under the provisions of the Rural Constables Law, Cap. 287. In May, 1969, the applicant was arrested for carrying a pistol and on 28.5.69, by virtue of a judicial warrant, he was remanded in the psychiatric institution of Athalassa for examination where he was kept for treatment up to 31.7.69. On 1.8.69, he resumed his duties as a rural constable but due to his mental condition he could not continue and so on 6.8.70 was taken again to the psychiatric institution for treatment where, he was kept up to 13.8.70.

25 On 25.8.70 the applicant submitted his resignation to the respondent authority being unable to continue exercising his duties, which resignation was accepted.

30 At the request of the relatives of the applicant the District Officer asked for a report on his mental condition and the mental specialist who treated him, issued on 5.11.70 a report where it was stated that the condition of the applicant had improved considerably and that he could resume his duties for a trial period.

35 By letter dated 12.11.70, the applicant was called upon to resume his duties as a rural constable. The applicant accepted the offer and resumed his duties and worked up to 17.12.71, when he was taken again to the psychiatric

institution where he stayed for treatment up to the 17th January, 1972, when he resumed duties again up to the end of 1976.

By letter dated 31.12.76, the applicant was informed that his services were terminated. This letter reads as follows:

"Reappointment of rural constables by virtue of section 6(2) of the Rural Constables Law, Cap. 287.

I would like to refer to the above subject and to inform you that I do not intend to reappoint you to the post of rural constable after the 31st December, 1976, as your services were not satisfactory.

You are hereby required to deliver to the mukhtar the rural constable's badge as well as all the other government documents in your possession."

As a result, the applicant filed the present recourse, which is based on the following two grounds of law.

1. The respondent acted in excess and/or abuse of powers, and illegally since by virtue of section 6(2) of the Rural Constables Law, Cap. 287, the appointment and/or reappointment of rural constables is of two years' duration and so the two-year duration of the appointment or reappointment of the applicant had not expired and was about to expire on 28.2.78. In view of this, the respondent had no right to terminate the services of the applicant on 31.12.76, and order him to deliver his badge, and

2. The decision of the respondent to terminate the services of the applicant is not duly reasoned.

As regards the first ground of law, counsel for applicant submitted that in view of section 6(2) of the Rural Constables Law, Cap. 287, which provides that every rural constable shall be appointed for a period of two years and shall, if he has carried out his duties to the satisfaction of the District Officer, be eligible for reappointment for a further period or periods of two years, the appointment of

the applicant, since it was never terminated, was impliedly renewed for every two year period as from the 1st March, 1970, and so his services could not be terminated before the 1st March, 1978. In other words, a right is vested in a rural constable who carries out his duties satisfactorily for reappointment for a further period of two years.

I must say straight away that I do not agree with this submission of counsel for applicant.

In the case of *Georghios Michael v. The Republic*, 4 R.S.C.C. 53, it has been decided that subsection 2 of section 6 of the Law, Cap. 287, merely lays down that an outgoing rural constable must be considered for reappointment if his services have been satisfactory, and it does not by any means go as far as vesting him with a right to be so reappointed.

As regards the second ground of Law, counsel for applicant submitted that the decision not to reappoint the applicant, is not duly reasoned, as he was not given the opportunity to be heard before such decision was taken. In support of this argument he relied on the case of *Rallis v. The Greek Communal Chamber*, 5 R.S.C.C. 11. In that case it was decided that where the termination of services was based with equal force both on inefficiency and on disciplinary reasons, so as to create doubts as to what was the essential and predominant purpose for such termination, irrespective of whether such services could possibly have been terminated on the ground of inefficiency alone, such termination should be treated as amounting to disciplinary action and so the applicant had a right to be heard.

So, that case is clearly distinguishable from the case in hand where the termination of employment is based only on inefficiency, as stated in the letter of 31.12.76, addressed to the applicant. As it appears from the file of the case, the District Officer based his decision not to reappoint the applicant on a report prepared by the Assistant District Inspector responsible for the Ormidia village. It was, therefore, duly reasoned and the reasons appear also,

as I have already stated, in the letter of termination of employment addressed to the applicant.

Finally, I must say that the applicant had no right to be heard as the termination of his service was not based on disciplinary reasons.

5

Therefore, this recourse fails and is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*