

[Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SIMOS PILATSIIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF EDUCATION AND ANOTHER,

Respondents.

(Case No. 242/66).

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(MINISTER OF
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AND ANOTHER)

Public Officers—Elementary school-teachers—Transfer—Disciplinary Transfer—Rule applicable in case of doubt whether transfer is based on disciplinary grounds or not—In case of such doubt the transfer must be treated as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters—And in the present case the transfer complained of ought to be so treated as being disciplinary and has to be annulled because the Applicant was not given the opportunity to defend himself and, thus, was denied the minimum rights safeguarded by Article 12 of the Constitution and the rules of natural justice.

Elementary Education—Elementary school-teachers—Transfer effected by decision taken by the Committee of Educational Service through a procedure contravening Article 12 of the Constitution and the rules of natural justice.

Transfer—Transfer of public officers—Whether transfer is disciplinary or not—Rule applicable in case of doubt—Article 12 of the Constitution—The rules of natural justice—See above under Public Officers; Elementary Education.

Natural Justice—Rules of natural justice must be applied to transfers of public officers effected on disciplinary grounds—See, also, above.

Disciplinary Offence—Disciplinary transfer—Rules applicable—See above.

By this recourse under Article 146 of the Constitution the Applicant, an elementary school-teacher, challenges the decision of the Committee of Educational Service (Respondent 2) whereby he was transferred from Morphou to Famagusta.

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On the facts of this case the Court found that this was clearly a disciplinary transfer disguised as a transfer on educational grounds. But even if there was doubt left as to whether the transfer in question was disciplinary or not, the Court acting on the authority of *Kalisperas* and *The Republic*, 3 R.S.C.C. 146, at p. 151 letter E, held that such doubt must "be resolved by treating the transfer as disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters" (*Kalisperas* case *ubi supra*). Having thus reached the conclusion that the *sub judice* transfer should be treated as disciplinary, the Court proceeded to annul the decision complained of on the ground that the procedure followed by the Respondent Committee in arriving at it was clearly not in conformity with well established principles of natural justice, because the Applicant was never given the opportunity to defend himself and far from being allowed to examine the persons who gave information against him he, quite obviously, was not informed and was not aware what each of those persons had stated against him and he never had a chance to explain his case to the Committee in person (Cf. *Haros* and *The Republic*, 4 R.S.C.C. 39, at p. 44, and Article 12 of the Constitution).

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Kalisperas and *The Republic*, 3 R.S.C.C.146, at p. 151 letter E, *applied*;

Haros and *The Republic*, 4 R.S.C.C. 39, at p. 44, *applied*.

The facts sufficiently appear in the Judgment of the Court.

Recourse.

Recourse against the decision of Respondent 2, the Committee of Educational Service, to transfer Applicant from Morphou to Famagusta.

Chr. Artemides and *A. Triantafyllides*, for the Applicant.

G. Tornaritis, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

LOIZOU, J.: By this recourse the Applicant challenges the validity of the decision of the Committee of Educational Service to have him transferred from Morphou to Famagusta and seeks a declaration that such decision and transfer are *null* and *void* and of no effect whatsoever.

The Applicant is an elementary school-teacher and until August, 1966, he was posted at Morphou. By the decision complained of he was transferred to Famagusta. The reasons for the transfer appear in the letter dated 2nd August, 1966, (*exhibit 2*), by means of which the Committee's decision was conveyed to him, which reads as follows:

«Κοινοποιείται ὑμῖν ἡ κάτωθι ἀπόφασις τῆς Ἐπιτροπῆς Ἐκπαιδευτικῆς Ὑπηρεσίας 26/7/1966:

Ἴσιμος Πηλάτσης:

Ἡ Ἐπιτροπὴ λαβοῦσα ὑπ' ὄψει ἔκθεσιν τοῦ Ὑπουργείου Παιδείας, καθ' ἣν ὁ ἐν λόγῳ διδάσκαλος διὰ τῆς ἐν γένει συμπεριφορᾶς του συνετέλεσεν εἰς τὸ νὰ παρεξηγηθοῦν αἱ σχέσεις του μεθ' ἐνὸς τῶν γυναικείων μελῶν τοῦ Συνδέσμου Γονέων, ἀποφασίζει ὅπως, κατόπιν τῆς δημιουργηθείσης καταστάσεως, μετατεθῆ οὔτος ἐκ Μόρφου.»

The report of the Ministry of Education to which reference is made in the above decision is part of *exhibit 4* (this *exhibit* comprises seven documents which, for the sake of convenience, I have marked 4A-4G; the report in question is marked *exhibit 4E*) and is a confidential letter dated the 14th July, 1966, addressed to the Head of Elementary Education by Mr. A. D. Christodoulides an Inspector of Elementary Education. This letter is in fact a report on an investigation carried out by this Inspector at the request of the Head of Elementary Education in consequence of an accusation made against the Applicant by the President of the School Committee of Morphou dated 6th July, 1966. This is *exhibit 4A* and it reads as follows:-

«Ἐντιμὲ κ. Τμηματάρχα,

Αἱ κυρίαὶ Ἀγνή Βασιλειάδου καὶ Λένια Φ. Χριστοφίδου, μέλη τοῦ Συμβουλίου Γονέων τοῦ Ἀρρεναγωγείου, με παρεκάλεσαν νὰ διαβιβάσω καταγγελίαν ἐναντίον τοῦ διδασκάλου κ. Σίμου Πηλλάτση.

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Συμφώνως πρὸς τοὺς ἰσχυρισμοὺς των ὁ κ. Πηλλάτσης διὰ τῆς συμπεριφορᾶς του καὶ τῶν ὑπ' αὐτοῦ διαδιδόμενων συνετέλεσεν εἰς τὸ νὰ σχηματισθῆ ἡ ἐντύπωσις ὅτι ἡ κ. Χριστοφίδου συνδέεται μετ' αὐτοῦ ἔρωτικῶς.

Ἡ Σχολικὴ Ἐφορεία, ὡς εἶναι φυσικόν, ἀποδίδει μεγάλην σημασίαν εἰς τὴν καταγγελίαν ταύτην καὶ παρακαλεῖ Ἰμᾶς ὅπως δόσετε ἐντολὴν νὰ ἐρευνηθῆ τὸ ταχύτερον. Ἡ κ. Χριστοφίδου σύζυγος τοῦ ἱατροῦ τῆς Κ.Μ.Ε. κ. Φοῖβου Χριστοφίδη τῶρα διαμένει εἰς Πεντάγυιαν, εἶναι πρόθυμος ὁμως νὰ ἔλθῃ εἰς Μόρφου διὰ τοὺς σκοποὺς τῆς ἐρεύνης.»

It appears from the report itself that the way the Applicant is alleged to have contributed to the impression being formed in the village that he had love relations with the lady in question was by going round the village with her for the purpose of selling tickets for a cinematograph performance in aid of the poor students of the school, by taking her in his car to and from the meetings of the parents' committee at the school and by speaking and referring to her by her christian name and without using the word "Mrs."

It also appears that the Inspector who carried out the investigation interviewed eleven persons from whom he sought information and evidence regarding the case. The eleventh person on the list of the persons interviewed is "the accused Mr. S. Pilatsis". It is clear that the Inspector interviewed the various persons in private and in the absence of the Applicant. In fact he quite clearly states (at para. 2 of the report) that some of his informers did not wish the information divulged by them to be connected with their names, the matter being a delicate one, as he puts it, and for this reason he does not disclose what information each of the persons interviewed has given him. In his report he gives a summary of the information collected by him and at para. 7 he says this: "From his whole behaviour Mrs. Christofidou is of the opinion that the object of Mr. Pilatsis was not in fact to have a love affair with her, but to create the impression among the public in the village that he had love relations with her, for the purpose of exalting, as he may have thought, his own personal prestige. I am in complete agreement—the Inspector goes on to say—with this view especially in view of the fact that I know the character of Mr. Pilatsis". At paragraph 9 of the report

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the Inspector says that the case probably cannot be examined by the disciplinary board, because at least three vital witnesses would not like to testify before the Committee or before a Court, but he goes on to suggest that the case be examined on the basis of his report; and in the last paragraph of the report he suggests that apart from any other measures the Applicant should be transferred forthwith from Morphou, for educational reasons, because, irrespective of the degree of his guilt, his further stay at Morphou would injure the smooth functioning of the school in view of the rumours that had spread in the village.

By his letter dated the 21st July, 1966, (*exhibit 4F*), addressed to the President and Members of the Committee of Educational Service the Head of Elementary Education informs them that the Applicant has by his conduct contributed to his relations with one of the women members of the Parents' Committee to be misunderstood and goes on to suggest that in the circumstances Applicant's transfer from Morphou is necessary and that this view is also shared by the School Committee.

On the 26th July, 1966, the Committee of Educational Service decided, on the basis of the report, to transfer the Applicant from Morphou; and this is the decision challenged by this recourse.

The case was fought mainly on the issue of whether Applicant's transfer was based on disciplinary grounds. It was contended on the part of the Applicant that the transfer was clearly a disciplinary one and that in any case on the authority of *Kalisperas* and *The Republic*, 3 R.S.C.C. p. 146 in case of doubt as to the nature of the transfer such doubt ought to be resolved by treating the transfer as being disciplinary.

On the part of the Respondent it was argued that the decision of the Committee to transfer the Applicant was not of a disciplinary nature but was based on educational grounds. If the matter was of a disciplinary nature, learned counsel argued, the Applicant would have been charged under the 1962 Discipline Regulations (decision of the Greek Communal Chamber No. 13/62) but the Committee did not do so because it did not consider this a disciplinary transfer.

There seems to be some confusion about these Discipline

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Regulations. They were made under Law 7/60 (which was published in the Gazette of the 11th January, 1961). When Law 8/63 of the Greek Communal Chamber was enacted, it repealed section 10 of Law 7/60 (as set out in section 2 of Law 6/62) which is the section by virtue of which, *inter alia*, the Disciplinary Board was set up, but the Discipline Regulations were saved. Finally Law 12/65 repealed altogether Law 7/60 (see item 5 of the first Schedule to Law 12/65) and by virtue of section 7(2) thereof the Committee of Educational Service was constituted; the functions of this Committee are set out in sub-section (3) of the same section and they include the appointment, classification, establishment, promotion, transfer, secondment, posting and retirement of Inspectors of Education, schoolmasters and teachers and the exercise of disciplinary control over them including power to dismiss. Quite clearly then after the enactment of Law 12/65 the Committee of Educational Service was vested with the exercise of disciplinary control over teachers. But the question of whether the Discipline Regulations were or were not applicable in the present case, at the time, is only of academic interest really because, in any case, the procedure laid down thereunder was not followed.

As stated earlier on the first issue that falls for consideration in the present case is whether Applicant's transfer was made on disciplinary grounds.

It is interesting to quote a passage from *Kalisperas* and *The Republic* (*supra*) on this issue; the passage occurs at p. 151 letter E and runs as follows:

“It is, of course, possible for transfers to be made, in varying degrees both for reasons of misconduct and other reasons at the same time. In such cases it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases is to ascertain the essential nature and predominant purpose of the particular transfer. In case of doubt whether a transfer is disciplinary or not then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters”.

Turning now to the present case; here we have a school-

teacher who, it is alleged, has deliberately brought about a situation which has exposed a married woman and brought into disgrace both himself and the school where he was posted to such an extent that it was thought necessary to have him transferred, as otherwise the smooth functioning of the school would be seriously injured.

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It seems to me that in the light of all the circumstances this is clearly a disciplinary transfer disguised as a transfer on educational grounds mainly because, due to the unwillingness of vital witnesses to testify, there was no evidence to support disciplinary measures against the Applicant. But in any case, whichever way one looks at the case, it cannot in my view be said that the question whether the transfer was disciplinary or not can in any way be considered to be free from doubt and that, therefore, it should be treated as disciplinary.

Having reached this conclusion it now remains to consider whether the procedure followed by the Committee in arriving at the decision challenged by this recourse was in conformity with well established principles of natural justice.

It is quite clear from the minutes of the meeting of the Committee (*exhibit 4G*) that it relied merely on the confidential report (*exhibit 4E*) and acted on the recommendations made therein. Although a question of credibility was in issue, in view of the fact that the Applicant denies in his report *exhibit 3* that he had deliberately or intentionally caused the "misunderstanding" as a result of which he was transferred, the Committee, which only had competence, under the law, to deal with the matter, never saw any of the persons who gave information to the Inspector who prepared the report, or the Applicant; and in fact it does appear that they were not even aware what information each of those persons gave. Furthermore, it is quite clear that the Applicant was never given an adequate opportunity to defend himself and far from being allowed to examine the persons who gave information against him he, quite obviously, was not informed and was not aware what each of those persons had stated against him and he never had a chance to explain his case to the Committee in person.

In view of the foregoing, it is, to my mind, quite clear that the decision to transfer the Applicant was arrived at through a procedure which denied the Applicant the minimum rights

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safeguarded by Article 12 of the Constitution, the provisions of which have been held to be applicable to offences in general (see *Haros and The Republic*, 4 R.S.C.C. p. 39 at p. 44), and which was contrary to the rules of natural justice and has to be declared to be *null and void* and of no effect whatsoever.

In all the circumstances I have decided to make no order as to costs.

Order in terms.

No order as to costs.