[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTIGONI PASCHALIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF EDUCATION,

Respondent.

(Case No. 142/65*).*

Administrative and Constitutional law—Recourse under Article 146.1 *of the Constitution—Only matters of "public law" cognisable thereunder—Nursery-school teacher—Contractual service —Termination of such service—Within the domain of "private law"—Therefore such termination of employment or dismissal is a matter outside the competence of the Court under Article* 146.1 *of the Constitution—"Executive or administrative function" under said Article* 146.1*—But the subject decision to terminate Applicant's said employment cannot be said to have been taken in the exercise of such "executive or administrative function".*

Recourse under Article 146 *of the Constitution—Termination of contractual service—A matter of "private law" outside the domain of "public law"—Therefore it is not cognisable by the Court by a recourse under Article* 146.1 *of the Constitution.*

Private law—Domain of—Termination of contractual service—Not cognisable by the Court on a recourse under Article 146 *of the Constitution—See above.*

Public law—Domain of—See above.

"Executive and administrative function"—Article 146.1 *of the Constitution—See above.*

Elementary Education—Nursery-school teacher service on a contractual basis—Termination of—The Transfer of the Exercise of the Competence of the Greek Communal Chamber and The Ministry of Education Law, 1965, *(Law* 12 *of* 1965*) sections* 3(1), 5(1) *and* 14*—Such termination not within the competence of the Court on a recourse under Article* 146 *of the Constitution —See above.*

Held, (1). These proceedings being in the nature of an application under Article 146.1 of the Constitution, the application cannot succeed unless the subject decision was one taken in the exercise of "an executive or administrative function" within that provision.

(2) In the case *Pantelidou* and *The Republic*, 4 R.S.C.C. 100, the Court, which had already decided in a number of cases that for a matter to be cognisable under Article 146.1 it must be one of "public law", proceeded on the basis that dismissal from contractual employment in the public service is not cognisable under that provision, not being a matter of "public law".

(3) In the present case the Applicant at the time of her dismissal complained of was employed on the basis of *Exhibit* 3 *(i.e. a contract)*, so that her service was purely contractual. Consequently her dismissal is a contractual matter in the domain of "private law" and not within the competence of this Court under Article 146.1 of the Constitution.

Recourse dismissed.

Cases referred to:

Pantelidou and *The Republic*, 4 R.S.C.C. 100, *reasoning followed.*

Recourse.

Recourse against the decision of the Respondent terminating Applicant's services as nursery school teacher with effect from 31.8.65.

A. Triantafyllides, for the Applicant.

G. Tornaritis, for the Respondent.

Cur. adv. vult.

The following Judgment* was delivered by:-

STAVRINIDES, J.: The Applicant is a nursery-school teacher and holds a certificate from a college near Athens known as Callithea Nursery-School Teacher Training College. She is unmarried. For twenty-five years down to 1960 she ran a nursery school of her own. In September, 1960, she was "appointed" by the Greek Communal Chamber to work at a nursery school here known as "Mana". "In January, 1964, while working for the Greek Communal Chamber," she was sent two copies of a document headed

* For final decision on appeal see (1969) 8 J.S.C. 1030 to be published in due course in (1969) 3 C.L.R.

"Greek Communal Chamber of Cyprus (Communal Parliament)" followed in separate lines by "Education Office" and "Contract" in that order. That document (*exh.* 6) begins with the words:

> "Between the Director of the Education Office, acting lawfully on behalf of the Greek Communal Chamber (hereafter called 'Director') and Mrs. (sic) Antigoni Paschalides of ... (hereafter called 'the person engaged') it has been agreed as follows:".

It has five clauses, of which the first reads:

> "The Director offers to the person engaged and the person engaged accepts a post as elementary school teacher (sic) on contract in the elementary schools from September 1, 1963, until August 31, 1964."

Clauses 2 and 3 deal respectively with hours of work and emoluments. Clause 4 states:

> "During her service the person engaged is subject to the laws and regulations of the Greek Communal Chamber and also to the instructions, circulars and other provisions of the educational authorities."

Finally, clause 5 states:

> "This document was made in duplicate and each of the parties received a copy."

Exhibit 6, which is dated January 13, 1964, was accompanied by a letter (*exh.* 5) dated January 17, 1964, stating that

> "Two copies of the document whereby you are offered a post as elementary-school teacher (sic) on contract are sent to you herewith. Acceptance is implied by your filling in and signing one copy and sending it to the Central Educational Office as soon as possible."

"Shortly after November 18, 1964", the Applicant was sent two copies of a document (*exh.* 3) with the same heading and (except that "the person engaged" is stated to be *Miss* Antigoni Paschalides) the same introductory part as *exhibit* 6. This too has five clauses. Of these, clause 2, dealing with emoluments, is identical with clause 3 of *exhibit* 6,

except that it fixes a lower salary; clauses 3 and 5 are identical with clauses 4 and 5 respectively of that *exhibit*, while clauses 1 and 4 read:

"1. The Director offers to the person engaged a post of elementary-school teacher (sic) on contract in the elementary schools from September 1, 1964.

4. This contract may be terminated by a month's written notice by either party".

Exhibit 3, which is dated November 18, 1964, was accompanied by a letter (*exh.* 4) dated the 19th of that month, which is in identical terms with *exhibit* 5.

On May 31, 1965, "or a day or two later," the Applicant received a letter (*exh.* 1) from the Ministry of Education bearing the date first-mentioned, which reads:

"We remind you that the contract between you and the Education Office for employment in the elementary schools is terminated on August 31, 1965, when the obligations on either side flowing from it are terminated.

The possibility of using your services afresh and renewal of the contract may be considered at the commencement of the next school year in the light of the staffing requirements of the schools at that time. In such a case the posts will be advertised and it will be necessary for you to submit an application for that purpose."

On the 15th of the following month she replied to that letter by one (*exh.* 2) written by "advocates", which is in these terms:

"We have been instructed by our client Miss Antigoni Paschalides to inform you of the receipt of your letter of May 31, 1965, to the contents of which she objects reserving all of her rights.

Our client since 1960 has been serving continuously in the post held by her own at the 'Mana' Nursery School not having signed any contract and not having in her hands any copy of a contract. We shall be obliged if you will let us know whether such a contract was signed and when, at the same time supplying us with a copy of it. On receipt of the above information we shall revert to the matter."

No reply to *exhibit* 2 having been received down to August 6 of that year, on that date she applied to this court asking for a declaration

> "that the decision of the Respondent contained in *exhibit* 1 attached hereto to terminate as from August 31, 1965, Applicant's services as nursery-school teacher is *null* and *void* and of no effect whatsoever."

The application is

> "based on the following grounds of law:
>
> The decision complained of discriminates against Applicant and has been taken in excess or abuse of powers in that, without any reason and without there being redundancy Applicant's services have been terminated in spite of the fact that Applicant had been continuously employed in her post since 1960."

The opposition is

> "based on the following grounds of law:
>
> (a) the decision to terminate the Applicant's service as from the 31/8/65 was rightly made;
>
> (b) the Applicant was a substitute teacher and/or working on contract and upon the expiry of her term of service her services were terminated."

By s. 3(1) of the Transfer of the Exercise of the Competence of the Greek Communal Chamber and the Ministry of Education Law, 1965, which was published in the Official Gazette of the Republic on March 31, 1965, and came into force at once, that Chamber was, in effect, abolished; by s. 5(1) of that Law a Ministry of Education was established

> "to which is entrusted the exercise hereafter of the entire competence exercised until the coming into force of this Law in all educational cultural and teaching matters ......";

and by s. 14

> "(1) The obligations, responsibilities and rights subsisting immediately before the date of the coming into force of this Law, which immediately before that date related to matters falling within the competence of the Chamber, as from that date are deemed to be obligations, responsibilities and rights of the Republic.

(2) For the purposes of this section, obligations, responsibilities and rights include obligations, responsibilities and rights of a contractual or any other nature."

It has not been disputed that the Applicant received in due course both *exhibits* 5 and 6 and *exhibits* 3 and 4. She did not return to the Central Education Office a copy of either *exhibit* 6 or *exhibit* 3, whether signed or unsigned. Indeed, it is not suggested that she did anything about any of those *exhibits*. But she continued working at the Mana nursery school. In the circumstances the only reasonable inference is that she accepted them; and since, as is clear, those documents were intended as contracts of employment at a nursery school, it follows that at the time when the decision complained of (hereafter "the subject decision") was taken she was working for the Ministry of Education as a nursery-school teacher on the basis of *exhibit* 3.

The statement in the first paragraph of this Judgment about the Applicant having been "appointed" by the Chamber in September, 1960, was taken from her counsel's opening speech. Counsel further stated that that had been done by a document which was not with him at the time but he would produce later. However, no such document has been produced, nor have any particulars of the "appointment" been vouchsafed to the court. Thus there is nothing to show what the legal nature and effect of that "appointment" was. Now a person may be "appointed" to a teaching post by a "unilateral act" or by a contract; and in view of the later acceptance by the Applicant of the contracts *exhibits* 6 and 3 the 1960 appointment had been probably effected by a contract. Be that as it may, for the reasons already stated, at the time of the subject decision she was employed on the basis of *exhibit* 3, so that her service was purely contractual.

Various arguments have been put forward by counsel for the Applicant. However, these proceedings being in the nature of an application under Art. 146.1 of the Constitution, the application cannot succeed unless the subject decision was one taken in the exercise of "an executive or administrative function" within that provision. This then is what I now have to consider. In this connection counsel for the Applicant referred to *Pantelidou* v. *Republic,* 4 R.S.C.C. 100. That was a case in which the Applicant, who also had complained of having been dismissed from the public

service, was a Clerical Assistant employed "on a month-to-month basis". However, she had been appointed by an unilateral act, not by a contract; and in that very case the court, which had already decided in a number of cases that for a matter to be cognisable under Art. 146.1 it must be one of "public law", proceeded on the basis that dismissal from contractual employment in the public service is not cognisable under that provision, not being a matter of "public law". It said, at p. 104:

> "The main issues arising in this case are as follows:
>
> 1. Whether the termination of the services of Applicant is a matter in the domain of public law, and, therefore, a proper subject for a recourse to this court under Art. 146, or merely a contractual matter, in the domain of private law, and not within the competence of this court."

On this ground the application must fail, and therefore it is unnecessary to deal with any of the other matters raised.

Application dismissed without costs (counsel for the Respondent having stated that he does not claim any).

Application dismissed without costs.