[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, LOIZOU & HADJIANASTASSIOU, JJ.]

ANTIGONI PASCHALIDOU,

Appellant,

v.

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

Respondents.

(*Revisional Jurisdiction Appeal No.* 53).

Recourse under Article 146 *of the Constitution—Jurisdiction of the Court on such recourse—Matters within the domain of public law—Nursery school-teacher—Appointment of by contract—Under section* 4(2) *of the School-Teachers of Communal Elementary Schools Law,* 1963 (*Law No.* 7 *of* 1963 *of the Greek Communal Chamber*)—*A matter within the realm of public Law—The fact that such appointment was made by a contract does not alter its essential nature—Therefore a recourse under Article* 146 *of the Constitution lies against the termination of said appointment—Cf. also section* 4(2) *of said Law No.* 7 *of* 1963. *See, also, herebelow.*

Elementary Education—Nursery school-teacher—Termination of contractual appointment of said teacher by the Director of Education, in the Ministry of Education—Excess of power—Only organ competent to decide on the matter of such termination being the Educational Service Committee—The Greek Communal Chamber (Transfer of Competence) and Ministry of Education Law, 1965 (*Law No.* 12 *of* 1965) *sections* 7 *and* 8—*Therefore termination was made in excess of powers and must be annulled—See also hereabove—Cf. section* 29(2) *of the School-Teachers of Communal Elementary Schools Law,* 1963 (*Law No.* 7 *of* 1963 *of the Greek Communal Chamber*).

Public law—Matter within the domain of public Law—Jurisdiction of the Court on a recourse under Article 146 *of the Constitution.*

Contract—Appointment by contract of a school-teacher in the elementary education—Matter within the domain of public law—Termination of such appointment is therefore an act or decision

within Article 146.1 *of the Constitution and as such it can be challenged by a recourse under Article* 146—*See, also, hereabove.*

Excess of power—See above.

This is an appeal by the Applicant against the dismissal by a Judge of this Court of her recourse whereby the Appellant challenged the termination of her services as school-teacher, at a nursery school in Nicosia by a decision of the Director of Education in the Ministry of Education, dated May 31, 1965 with effect from August 31, 1965. The Appellant was appointed by contract dated November 18, 1964, as school-teacher "in schools of elementary education" as from September 1, 1964. The duration of the appointment was not fixed in the contract but under a clause therein it could be terminated by one month's notice by either side.

The trial Judge dismissed the recourse on the short point that its subject-matter was a contractual relationship within the domain of private law and therefore, a recourse under Article 146 of the Constitution could not lie. Having so held the trial Judge abstained from dealing with the merits of the complaint on the part of the Appellant.

Allowing the appeal, the Court:-

Held, I. On the question of whether or not a recourse under Article 146 *of the Constitution lies:*

(1) The Appellant's appointment was made under the appropriate legislation (section 4(2) of Law No. 7 of 1963, *supra*) and it was, on the face of it, made in the ordinary course of satisfying the needs of the educational service, which by its very nature is a public service; the Appellant being appointed to serve "in schools of elementary education".

(2) Moreover as stated in her contract of appointment, the Appellant's service as a school-teacher would be governed by the relevant Laws and Regulations of the Greek Communal Chamber and by any directives, circulars or other orders of the education authorities.

(3) Viewed in its proper context, the Appellant's appointment cannot be treated as anything other than a matter within the realm of public law; the fact that it was made on contract cannot alter its essential nature; this is not a case of a contract entered into between the Government and an individual in

such circumstances as to render the relationship thus created one of private law.

(4) It follows, therefore, that a recourse under Article 146 of the Constitution does lie in this case.

Held, II. As to the merits of the complaint:

(1) At the material time the only organ which was competent to decide regarding the termination of the services of the Appellant was the Educational Service Committee in the Ministry of Education (see The Greek Communal Chamber (Transfer of Competence) and Ministry of Education Law, 1965 (Law No. 12 of 1965) sections 7 and 8 (Cf. section 29(2) of the aforesaid Greek Communal Law No. 7 of 1963)).

(2) Consequently the termination of her services by the Director of Education was made in excess of powers and in an invalid manner and must be annulled.

Appeal allowed.

Appeal.

Appeal against the decision of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 28th December, 1965, (Case No. 142/65) dismissing Appellant's recourse against the decision of the Respondent terminating her services as a nursery school-teacher.

A. Triantafyllides, for the Applicant.

G. Tornaritis, for the Respondent.

The following judgments were delivered:–

VASSILIADES, P.: We have considered the matter and we have unanimously agreed on the result. I shall ask Mr. Justice Triantafyllides to deliver the first judgment.

TRIANTAFYLLIDES, J.: This is an appeal against the dismissal*, by a Judge of this Court, of recourse 142/65, which the Appellant has filed against the Respondent in this case, complaining of the termination of her services as a school-teacher, at a nursery school in Nicosia; such termination was made with effect as from the 31st August, 1965, and was communicated

* Judgment reported in (1968) 3 C.L.R. 746.

to the Appellant by a letter of the Director of Education, in the Ministry of Education, dated the 31st May, 1965.

The Appellant had been appointed as a school-teacher by a contract, dated the 18th November, 1964, and entered into between her and the Director of the Education Office of the then Greek Communal Chamber; such Chamber having been succeeded, after its dissolution in March 1965, by the present Ministry of Education.

By virtue of the said contract the Appellant was appointed as a school-teacher "in schools of elementary education" as from the 1st September, 1964. The duration of the appointment of the Appellant was not fixed in the contract, but there was a clause therein that it could be terminated by one month's notice by either side.

It is not in dispute that the letter of the Director of Education, which was dated the 31st May, 1965, gave to the Appellant more than one month's notice, because she was informed that her employment would come to an end on the 31st August, 1965. The complaint, however, of the Appellant, in the recourse in question, is not that the notice of termination was not adequate, but that such termination was made in excess or abuse of powers.

The trial Judge dismissed the recourse on the short point that its subject-matter was a contractual relationship in private law, between the Appellant and the Respondent; and, therefore, this not being a matter of public law, a recourse could not lie under Article 146 of the Constitution.

I find myself unable to share this view of the trial Judge:

The Appellant's appointment was made under the appropriate legislation which was in force at the time, namely, under section 4(2) of the School-Teachers of Communal Elementary Schools Law, 1963 (Law 7/63 of the Greek Communal Chamber) and it was, on the face of it, made in the ordinary course of satisfying the needs of the educational service, which, by its very nature, is a public service; the Appellant being appointed to serve "in schools of elementary education".

Moreover, as stated in her contract of appointment, the Appellant's service as a school-teacher would be governed by the relevant Laws and Regulations of the Greek Communal

Chamber and by any directives, circulars or other orders of the education authorities.

Viewed in its proper context, the appointment of the Appellant cannot be treated as anything other than a matter within the realm of public Law; the fact that it was made on contract cannot alter its essential nature; this was not a case of a contract entered into between Government and an individual in such circumstances as to render the relationship thus created one of private Law.

It follows, therefore, that a recourse under Article 146 did lie in this case.

As the learned trial Judge, who decided the case in the first instance, dismissed it for lack of jurisdiction, without dealing with the merits of the complaint of the Appellant, it is now up to this Court to proceed to decide thereon:

It is common ground that no decision of any organ has been traced, on the basis of which there was written to the Appellant the letter of the 31st May, 1965, terminating her services; it must be, therefore, that the Director of Education, who wrote that letter, acted on his own initiative.

But, at the material time, the only organ which was competent to decide regarding the termination of the services of the Appellant, on the basis of the legislation in force—see The Greek Communal Chamber (Transfer of Competence) and Ministry of Education Law, 1965, (Law 12/65) and particularly sections 7 and 8 thereof—was the Educational Service Committee in the Ministry of Education; and such Committee was never called up to deal with the matter in question.

The termination, therefore, of her services was made in an invalid manner and consequently she is entitled to succeed in the recourse which she has made against such termination; in the result the *sub judice* act of termination of her services is declared to be *null* and *void* and of no effect whatsoever.

As counsel for the Appellant has stated that he does not claim any costs there is no need to make an order for costs; the appeal should, therefore, be allowed without any order as to costs.

VASSILIADES, P.: I agree, I would like, however, to add the following observations. The employment of the Appellant

as a teacher in a public institution, is an employment of a public nature, governed by the appropriate statute; the statute which regulates the employment of teachers in public schools, it was made by a public officer acting for the public authority concerned; and it was made for the benefit of the public whom the statute was enacted to serve. To cloak such employment under the form of a private contract cannot, in my opinion, alter the nature of the employment; or its effect. It could be made temporary, as provided in the statute; but not outside the statute. There are very good reasons why the public service and the educational service of the State are of a permanent nature. This is so, not only for the benefit of the public servants. It is mostly in the interest of the public services as a whole; in which the general public have a very important vested interest. The case before us must, in my opinion, be viewed bearing into consideration the public interest involved in the performance of the duties which the Appellant was employed to perform as a teacher. The decision of this Court in the present case has been stated by Mr. Justice Triantafyllides with whose judgment I quite agree. I also agree to the declaration and order proposed.

JOSEPHIDES, J.: I also agree with the decision of my brother Triantafyllides, J. Firstly, this is a matter within the domain of public law for the reasons given; and, secondly, the letter of the Director of Education dated the 31st May, 1965, did not validly terminate the Appellant's appointment as no decision was taken by the competent organ under the Law.

LOIZOU, J.: I am in full agreement with the reasons already advanced that the contract of appointment in the present case comes within the domain of public Law.

Appellant's services could only be terminated under the provisions of the Law. Under sub-section (2) of section 29 of Communal Law 7/63, which was then in force, the services of school-teachers could be terminated, *inter alia*, under the terms of the contract of appointment. Such termination, however, could only be made in proper cases and by the appropriate authority after a proper decision. In this case no such decision appears to have been taken either by the appropriate authority, which at the time was the Committee of Educational Services, or at all.

For this reason alone I hold the view that the appointment

of the Appellant was wrongly terminated and that, therefore, such decision must be annulled. I would allow the appeal.

HADJIANASTASSIOU, J.: I am also of the opinion that the judgment of the learned trial Judge ought to be reversed but I would like to add a few words of my own.

The duty of the Education authority was to keep the schools efficient by employing teaching staff required under section 4 of the Greek Communal Law No. 7/63. The Appellant was appointed as a school teacher under a contract of service as from September 1, 1964, apparently under section 4(2) of the Law, to teach in a nursery school in Nicosia.

On May 31, 1965, the Director of Education addressed a letter to the Appellant, terminating her contract of service as from August 31, 1965.

The main question which I have really to decide in this appeal is whether the appointment of the Appellant, under the said contract of service, was a matter within the domain of public Law, or as the learned trial Judge found, it was within the provisions of the private Law.

Having given the matter my best consideration, I have reached the conclusion that this contract of service was governed by the provisions of public law for the reasons already advanced by my brother Triantafyllides, J.

With regard to the question of dismissal, after listening to the argument of counsel for the Appellant I am of the view that the services of a school–teacher can be properly terminated under the terms of the contract of appointment, in a proper case, and by the appropriate authority acting under the provisions of section 29(2) of Law 7/63.

Pausing there for a moment, it would be observed that under the contract of Appellant's service, the appropriate authority could properly terminate her services by giving a month's notice in writing.

I would, however, state that under section 7 of Law 12/65, the appointment and dismissal of a school-teacher was entrusted to a Committee of Educational Services. In the absence, therefore, of any evidence that a proper decision by this organ was taken in order to terminate Appellant's services, and that the Director of Education in addressing the letter dated May

31, 1965, was acting under the authority of such organ, I am of the opinion, that the termination of the appointment of the Appellant was wrongly made and was, therefore, *null* and *void* and of no effect whatsoever. In my view, counsel for the Respondents quite rightly conceded that no record of any kind was traced to that effect in the files of the Ministry.

For the reasons I have endeavoured to advance, I would allow the appeal.

VASSILIADES, P.: In the result this appeal is allowed without any order for costs.

Appeal allowed; no order as to costs.