[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS C. PAPALEONTIOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(*Case No.* 385/68).

*Public Service—Disciplinary offences—Disciplinary proceedings—Investigation into the commission of a disciplinary offence under section* 80 (*b*) *of the Public Service Law,* 1967 (*Law No.* 33 *of* 1967)—*Nomination of Investigating Officer under Regulation* 1 *of Part I of the 2nd Schedule to the said Law—Made contrary to the express provisions of said Regulation and furthermore, in a mode falling short of the minimum essential requirements of good administration—Nomination defective, therefore,* null *and* void—*Which invalidity renders all acts which follow, including the final one i.e. the demotion complained of in the present case, null and void and of no effect whatsoever.*

*Composite administrative act—Independent intermediate act, part of a wider composite administrative action, merging in the final act or decision—Such intermediate act being a legal prerequisite of such final act, its invalidity renders also null and void all acts which follow, including the final concluded act, in the present case the demotion challenged by this recourse.*

*Public officers—Demotion*—Supra.

*Disciplinary offences—Disciplinary proceedings*—Supra.

*Administrative act—Composite administrative act*—Supra.

By this recourse under Article 146 of the Constitution the Applicant seeks a declaration that the decision of the Respondent Public Service Commission to demote him from the post of Chief Village Road Foreman to the lower post of Foreman 1st Grade is *null* and *void.* The decision challenged

is the result of disciplinary proceedings instituted against the Applicant under the relevant provisions of the Public Service Law 1967 (Law No. 33 of 1967). The Applicant took, *inter alia*, the point that the said proceedings were vitiated as a result of the defective nomination of the officer nominated to conduct the required investigation into the alleged disciplinary offence in this case.

Regulation 1 of Part I of the 2nd Schedule to the Public Service Law 1967, which is applicable by virtue of section 80(b) of the said Law, provides that "the appropriate authority concerned shall, as expeditiously as possible, nominate one or more officers of its Ministry or Office..... to conduct the investigation.....".

"Appropriate authority" is defined in section 2 of the Law and in respect of a Ministry and any Department under a Ministry it means "a Minister usually acting through the Director-General of his Ministry".

In the present case the nomination of the investigating officer was either made by the District Officer with the approval of the Director-General of the Ministry of Interior or by the Director-General through the District Officer; it was not very clear which; it would appear that everything in connection with this nomination was done orally and no record of any kind exists in the relative files. Be that as it may, the Minister himself was only merely informed of what had been done at some subsequent time; and there is no suggestion that the Director-General had been authorised by the Minister to nominate the investigating officer himself.

Annulling the demotion complained of, the Court:-

*Held*, (1). In the light of the evidence it seems to me that the nomination of the investigating officer was made contrary to the express provisions of the Public Service Law (*supra*).

(2) Furthermore the mode of the appointment of the investigating officer and more particularly the complete absence of any record regarding such nomination falls short of the minimum essential requirements of good administration.

(3) In view of the above reasons the nomination of the investigating officer was, in my opinion, defective and, therefore, *null* and *void*.

(4) And although such appointment or nomination was only an independent intermediate part of the wider composite administrative action and has, so to speak, merged in the final act, which was the decision of demotion taken by the Respondent Public Service Commission, it was, nevertheless, a legal prerequisite of such final act and its invalidity renders all acts which follow including the final concluded act *null* and *void*. (See conclusions from the Jurisprudence of the (Greek) Council of State, 1929–1959 at p. 244).

(5) In the result this recourse succeeds and the demotion challenged has to be and is annulled.

*Decision complained of annulled.*
*No order as to costs.*

The facts sufficiently appear in the judgment of the Court annulling the *sub judice* decision.

**Recourse.**

Recourse against the decision of the Respondent to demote the Applicant from the post of Chief Village Road Foreman to the lower post of Foreman 1st Grade.

*L. Clerides* with *A. Poetis*, for the Applicant.

*M. Kyprianou*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:–

LOIZOU, J.: The Applicant seeks a declaration that Respondents' decision to demote him from the post of Chief Village Road Foreman to the lower post of Foreman 1st Grade is *null* and *void* and of no effect whatsoever.

The decision challenged by the recourse is the result of disciplinary proceedings instituted against the Applicant; it is dated 13th November, 1968, and was conveyed to the Applicant under cover of a letter under reference U.9914 of even date. It is *exhibit* 1 in these proceedings and I shall revert to it presently.

The charge against the Applicant is set out in *exhibit* 2; it contained three counts as follows:

'Επὶ τῷ ὅτι κατὰ ἢ περὶ τὴν 1.3.1968, 2.3.1968 καὶ 3.3.1968 ἐνηργήσατε κατὰ τρόπον ἰσοδυναμοῦντα πρὸς παράβασιν τῶν καθηκόντων σας ὡς δημοσίου ὑπαλλήλου, ἤτοι:

(α) 'Ενῶ ἤσθο 'Αρχιεπιστάτης χωριτικῶν ὁδῶν τῆς 'Επαρχιακῆς Διοικήσεως 'Αμμοχώστου διεταράξατε ἢ ἐπετρέψατε ὅπως κυβερνητικὸς λέβης διὰ τὸν ὁποῖον ἤσθο ὑπεύθυνος χρησιμοποιηθῇ κατὰ τὴν 1.3.1968, 2.3.1968 καὶ 3.3.1968 διὰ μὴ κυβερνητικὴν ἐργασίαν δηλαδὴ ὅπως χρησιμοποιηθῇ παρὰ ἰδιώτου ἐργολάβου ἢ διὰ λογαριασμὸν ἰδιώτου ἐργολάβου ἤτοι τοῦ 'Ανδρέα Βατυλιώτη ἐκ Βατυλῆς, διὰ μὴ κυβερνητικὴν ἐργασίαν εἰς τὸ χωρίον Παραλίμνι, ἄνευ τῆς ἀδείας τῆς προϊσταμένης 'Αρχῆς σας.

(β) "Οτι ἐνῷ ἤσθο 'Αρχιεπιστάτης χωριτικῶν ὁδῶν τῆς 'Επαρχιακῆς Διοικήσεως 'Αμμοχώστου διετάξατε ἢ ἐπετρέψατε εἰς τακτικὸν ἐργάτην τοῦ Γραφείου 'Επάρχου 'Αμμοχώστου ἤτοι εἰς τὸν Κώσταν Λούκαν Τσακμάτζιην διὰ τὸν ὁποῖον ἤσθο ὑπεύθυνος ὅπως ἐργασθῇ κατὰ τὴν 1.3.1968 καὶ 2.3.1968 εἰς μὴ κυβερνητικὴν ἐργασίαν ἤτοι εἰς ἐργασίαν τοῦ ἰδιώτου ἐργολάβου 'Ανδρέα Βατυλιώτη εἰς Παραλίμνι καὶ παρὰ ταῦτα διετάξατε ἢ ἐπετρέψατε ὅπως οὗτος περιληφθῇ εἰς τὴν λίσταν τῶν Κυβερνητικῶν ἐργατῶν τῶν ἐργασθέντων κατὰ τὰς ὡς ἄνω ἀναφερθείσας ἡμερομηνίας.

(γ) "Οτι ἐνῷ ἤσθο 'Αρχιεπιστάτης χωριτικῶν ὁδῶν τῆς 'Επαρχιακῆς Διοικήσεως, 'Αμμοχώστου διετάξατε ἢ ἐπετρέψατε ὅπως ἐργάτης τοῦ Γραφείου 'Επάρχου 'Αμμοχώστου ἤτοι ὁ Κώστας Λούκα Τσακμάτζιη πληρωθῇ παρὰ τῆς Κυβερνήσεως διὰ 2 ἡμερομίσθια ἤτοι διὰ τὰς ἡμέρας 1.3.1968 καὶ 2.3.1968 ἐνῷ ἐγνωρίζατε ὅτι οὗτος εἶχεν ἐργασθῇ εἰς ἰδιωτικὴν ἐργασίαν κατὰ τὰς ἀναφερθείσας ἡμερομηνίας καὶ οὐχὶ εἰς κυβερνητικὴν ἐργασίαν».

The hearing of the disciplinary proceedings commenced on the 22nd July, 1968; the Applicant who was present was represented by his counsel. Mr. Paralikis, the District Officer of Famagusta, was also present. Counsel appearing for the Applicant raised certain preliminary points regarding the procedure followed by the appropriate authority at the initial

stages of the inquiry made in connection with the disciplinary offences and submitted, *inter alia*, that the charge against his client should have been based on item 6 of the 1st Schedule to the law i.e. that the offences should have been dealt with summarily under section 81; and that for the case to be dealt with under the provisions of section 80(b) there should have been a duly reasoned decision by the appropriate authority why the case should be referred to the Commission. The case was then adjourned sine die for the Commission to consider the points raised.

At their meeting of the 4th October, 1968, the Commission having considered the submissions made came to the conclusion that there was no merit in any of the points raised and fixed the case for hearing on the 24th October, 1968. This ruling is that part of the minutes of the Commission which has been marked as *exhibit* 3*A*.

On the date fixed for the hearing of the case the Applicant was present and was represented by his counsel and the District Officer of Famagusta conducted the prosecution.

The Applicant was charged by the Chairman of the Public Service Commission and he pleaded guilty to the first count and not guilty to counts 2 and 3. The Commission then proceeded and heard two witnesses for the prosecution i.e. Costas Louca Tsakmadjis, a labourer, and Stavros Michael, a Foreman. The Applicant gave evidence in his own defence. At the conclusion of the case counsel for the Applicant addressed the Commission and submitted that the charge to which Applicant had pleaded guilty was only a formal one and that the charges contained in counts 2 and 3 had not been proved. The Commission then reserved judgment and having considered the case at their meeting of the 11th November, 1968, they found the Applicant guilty on all counts and imposed on him the punishment of demotion to the post of Foreman 1st Grade. The decision of the Commission was communicated to the Applicant by a letter dated 13th November, 1968, *exhibit* 1, with copy of the judgment duly signed by the President of the Commission attached to it. It reads as follows:

« ΑΠΟΦΑΣΙΣ:-

'Ο κατηγορούμενος παρεδέχθη ἤδη τὴν πρώτην κατηγορίαν. 'Αναφορικῶς πρὸς τὰς ἄλλας δύο κατηγορίας, ἡ 'Επιτροπὴ πιστεύει ὅτι ὁ κατηγορούμενος ἔδωσεν ἐντολὴν

νὰ περασθοῦν εἰς τὴν λίσταν καὶ νὰ πληρωθοῦν τὰ ἡμερομίσθια τοῦ ἐν λόγῳ ἐργάτου διὰ τὴν 1ην καὶ 2αν Μαρτίου, 1968, ἐνῷ ἦτο εἰς γνῶσιν του ὅτι ὁ ἐν λόγῳ ἐργάτης εἰργάσθη εἰς ἰδιωτικὴν ἐργασίαν καὶ ὄχι εἰς κυβερνητικήν.

Συνεπῶς εὑρίσκει αὐτὸν ἔνοχον καὶ εἰς τὰς τρεῖς κατηγορίας.

Ἡ Ἐπιτροπὴ θεωρεῖ τὰς πράξεις τοῦ κατηγορουμένου ἀρκετὰ σοβαρὰς καὶ ἐπιβάλλει εἰς αὐτὸν τὴν ποινὴν τοῦ ὑποβιβασμοῦ εἰς κατωτέραν θέσιν δηλ. εἰς τὴν θέσιν Ἐπιστάτου, 1ης τάξεως, Ἐπαρχιακῆς Διοικήσεως, ἀπὸ τῆς 1ης Δεκεμβρίου, 1968.

Ἀπὸ τῆς ἡμερομηνίας ταύτης θὰ τοῦ ἐπιτραπῇ νὰ λάβῃ £720 κατ' ἔτος εἰς τὴν μισθολογικὴν κλίμακα £516x24–540x30–720.»

As a result the present recourse was filed on the 13th December, 1968.

The grounds of law upon which the Application is based, as set out in the Application itself, are as follows:–

"It is contended that the above decision is *null* and *void* in that:–

(a) It was taken contrary to the provisions of s. 80(b) and 82 of Law 33 of 1967 and the 2nd Schedule PART I in that no investigating officer was appointed to enquire into the alleged disciplinary offence against Applicant, nor did anyone hear witnesses or take statements regarding the offence nor was the Applicant heard in his defence (excepting a letter addressed by him to the District Officer).

(b) The evidence adduced before the Commission did not establish the disciplinary offence for which Applicant was charged nor any other offence.

(c) The judgment of the Respondent is not duly reasoned and does not give the grounds upon which it is based.

(d) Taking into account the nature of the case and particularly the fact that Applicant never received any gain from his conduct, but acted bona fide, the punishment imposed on the Applicant was manifestly excessive and severe and should be reviewed."

With regard to ground (a) learned counsel for the Applicant submitted, in the course of the hearing of the recourse, that the procedure followed during the investigation stage was contrary to section 80(b) of the law in that it did not follow the provisions of Part I of the 2nd Schedule to the law in the following respects:

(i) The investigating officer was not appointed by the appropriate authority.

(ii) The investigation was too speedy.

(iii) The investigating officer did not take a statement from the Applicant and did not afford him an opportunity of being heard.

In so far as points (ii) and (iii) of this ground are concerned I may say at this stage that I find no merit in them. It is common ground that the investigating officer was appointed on the 29th March, and that it took him until the 4th April to complete his investigation. I do not think that, having regard to the circumstances of this case, it can be said that the investigation was so hastily carried out as to constitute a contravention of Part I of the 2nd Schedule; on the contrary it seems to me that there was full compliance with paragraph 2 of the said Schedule which provides that the investigation should be carried out as expeditiously as possible. Regarding point (iii) of this ground it was stated on the part of the Applicant that the investigating officer did not afford the Applicant an opportunity of being heard and that what happened was that the Applicant heard quite by chance, from other persons in the office, that an investigation was being carried out against him and upon that he wrote the letter *exhibit* 5. On the part of the Respondents, on the other hand, it was stated that the investigating officer saw the Applicant on the 1st April, 1968; he explained to him all about the case and the Applicant said that whatever he had to say he would say it in Court. In the course of his reply learned counsel for the Applicant stated, with reference to this point, that the investigating officer did, in fact, see the Applicant on the 1st April, but that it was the Applicant who approached the investigating officer without in fact knowing that he was the investigating officer in the case. In the absence of any proof to that effect I cannot accept Applicant's allegation; on the contrary, the statement made on his behalf on the 22nd

July, 1968, in the course of the disciplinary proceedings, to the effect that the investigating officer informed the Applicant of the case against him and asked him to put his explanations in writing (*exhibit* 3) far from supports the allegation made in this Court.

I now come to point 1 of this ground.

The statement made by the District Officer of Famagusta before the Commission on the question of the nomination of the investigating officer, which is contained in *exhibit* 3, reads as follows:

> " After I made the necessary investigation I was persuaded that there was a case against this officer. I then decided that there was a serious case against this officer and that an investigation should be carried out, and according to the law I proceeded to appoint an Investigating Officer. The appointment of the Investigating Officer was made after I received verbal instructions from the Ministry. The Investigating Officer submitted his findings and I forwarded them to the Ministry of the Interior for further action".

In view of the somewhat vague nature of this statement I thought it necessary to hear evidence on the question of the nomination of the investigating officer and gave directions accordingly. Learned counsel for the Respondents called as a witness the Director-General of the Ministry of the Interior. The gist of the evidence of this witness is to the effect that the District Officer of Famagusta rang him up one day towards the end of March, 1968, and reported the case to him and that during this telephone conversation it was decided to appoint Mr. Philippos Vassiliades, a District Inspector in the Famagusta District Office to investigate into the case. The witness could not remember whether the suggestion to appoint this District Inspector as investigating officer emanated from the District Officer or from himself, but in any case, he said, he knew the District Inspector and approved his appointment. The witness further said that he did not consult his Minister regarding the person who should be appointed, but that, later on, he informed him of the instructions he had given to the District Officer. It would appear that everything in connection with the appointment of this investigating officer was done orally and no record of any kind exists in the relative files.

The question now arises whether, in the circumstances, the appointment of the investigating officer was properly made.

Regulation 1 of Part I of the 2nd Schedule to the Public Service Law, which is applicable by virtue of the provisions of section 80(b) thereof, provides that "the appropriate authority concerned shall, as expeditiously as possible, nominate one or more officers of its Ministry or Office..... to conduct the investigation.....".

" Appropriate authority" is defined in section 2 of the law and in respect of a Ministry and any Department under a Ministry it means "a Minister usually acting through the Director–General of his Ministry".

The last words in quotation marks in my view imply some sort of delegation of powers by the Minister to the Director-General either generally with regard to all disciplinary proceedings or specifically with regard to any particular case. In order words the nomination of the investigating officer must either be made by the Minister himself or, if he so wills, he may entrust his Director-General to do it for him. In the present case the nomination was either made by the District Officer with the approval of the Director-General or by the Director-General through the District Officer; it is not very clear which. In any case the Minister himself was only merely informed of what had been done at some subsequent time; and there is no suggestion or the slightest hint that the Director-General had been authorised by the Minister to nominate the investigating officer himself.

In the light of the above it seems to me that the nomination was made contrary to the express provisions of the Public Service Law. Furthermore the mode of the appointment of the investigating officer and more particularly the complete absence of any record regarding such appointment falls short of the minimum essential requirements of good administration. In view of the above reasons the nomination of the investigating officer was, in my opinion, defective and, therefore, *null* and *void.* And although such appointment was only an independent intermediate part of the wider composite administrative act and has, so to speak, merged in the final act, which was the decision of the Commission, it was, nevertheless, a legal prerequisite of such final act and its invalidity renders all acts which follow including the final

concluded act *null* and *void*. (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 at p.244).

In the result this recourse succeeds and the decision challenged has to be annulled.

In view of the conclusion that I have reached on this point I do not consider it necessary to deal with the other points raised in the recourse.

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

*Decision complained of annulled.*
*No order as to costs.*