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REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)  
v.  
ANDREAS D.  
DRYMIOTIS

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, A. LOIZOU,  
MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE  
PUBLIC SERVICE COMMISSION,

*Appellant,*

*and*

ANDREAS D. DRYMIOTIS,

*Respondent.*

(*Revisional Jurisdiction Appeal No. 86.*)

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*Public Officers—Disciplinary offence—Absence from duty without leave—Section 60 of the Public Service Law, 1967 (Law 33 of 1967)—Disciplinary procedure applicable—The one prescribed in Part VII, particularly sections 80 and 82 of the Law.*

*Disciplinary offence—Disciplinary procedure—See above under “Public Officers”.*

This is an appeal by the Republic through the Public Service Commission against the judgment given, at first instance, by a Judge of this Court, whereby the learned Judge annulled the dismissal of the applicant (now respondent) from the public service by the said Commission, on the ground that before dismissing him they had not followed the usual procedure in disciplinary proceedings laid down in Part VII, and particularly by sections 80 and 82, of the Public Service Law, 1967 (Law No. 33 of 1967). (See this judgment, reported in this Part at p. 273 *ante*).

It is not in dispute that such procedure was not followed, though the applicant public officer (now respondent) had been given to understand that he was liable to be dismissed due to his continuing to be absent abroad after the expiry of his leave.

The dismissal of the respondent was based on section 60 of the said Law appearing in Part VI thereof ; it reads as follows :—

“ Any officer who absents himself from duty without leave or who wilfully refuses or omits to perform his duties becomes liable to dismissal from the service ”.

Dismissing the appeal the Supreme Court :—

*Held*, (1). In our view when section 60 (*supra*) is construed as a part of the whole structure of the Public Service Law, 1967 (Law No. 33 of 1967) and is read together with section 73 (*Note* : The full text of section 73 is set out *post* in the judgment), there can be no doubt that it was not intended to deprive thereby a public officer of the protection of the disciplinary procedure prescribed in Part VII of the Law ; the more so, as section 60 does not state that for being absent from duty without leave or for wilfully refusing or omitting to perform his duties a public officer *shall automatically* be dismissed in any case, but only that he is *liable* (“*υπόκειται*”) to dismissal from the service ; and his dismissal would inevitably entail the exercise, in the manner laid down by the said Law, of the relevant discretionary powers vested in the appelland Public Service Commission under that Law.

(2)—(a) In the absence of any express provision to that effect, we are unable to accept the proposition that, notwithstanding that the legislature has prescribed by Law No. 33 of 1967 (*supra*) a specific disciplinary process for disciplinary offences *generally*, a different disciplinary process not envisaged by such Law can still be resorted to.

(b) In Cyprus it is not open to us to apply relevant principles of law applicable in similar cases elsewhere (see, for example, regarding the position in France, *Silvera on “La Fonction Publique et ses Problèmes Actuels”*, 1969, p. 406, paragraph 376) because the matter in question has been expressly regulated by our own aforementioned enactment.

(3) Furthermore, we do not agree with the submission of counsel for the appelland that, in the particular circumstances of this case, the total failure to set in motion the disciplinary procedure prescribed under the said Law No. 33 of 1967, amounts to a mere irregularity which did not justify the annulment of the decision to dismiss the respondent from the public service.

*Appeal dismissed. No order as to costs in view of the novelty of the legal issue raised.*

### Appeal.

Appeal against a judgment of a Judge of the Supreme Court of Cyprus (L. Loizou, J.) given on the 23rd July, 1971 (Revisional Jurisdiction Case No. 44/70) whereby

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the decision of the Public Service Commission to dismiss applicant from the public service was declared null and void.

L. *Loucaides*, Senior Counsel of the Republic, for the appellant.

L. *Papaphilippou*, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLIDIS, P. : This is an appeal against a judgment\* given, at first instance, by a Judge of this Court, as a result of which the dismissal of the respondent from the public service, by the appellant Public Service Commission, was annulled on the ground that before dismissing the respondent the Commission had not followed the procedure laid down in Part VII, and particularly by sections 80 and 82, of the Public Service Law, 1967 (Law 33/67).

It is not in dispute that such procedure was not followed, though the respondent had been given to understand that he was liable to be dismissed due to continuing to be absent abroad after the expiry of his leave.

The dismissal of the respondent was based on section 60 of Law 33/67, which reads as follows :

“ Any officer who absents himself from duty without leave or who wilfully refuses or omits to perform his duties becomes liable to dismissal from the service.”

This section is to be found in Part VI of Law 33/67, which is headed “ Duties and Obligations of Public Officers ”.

In the immediately ensuing Part VII of the Law, which is headed “ Disciplinary Code ”—and in which there are to be found, *inter alia*, sections 80 and 82—there is section 73, which reads as follows :

“ (1) A public officer is liable to disciplinary proceedings if—

(a) he commits an offence of dishonesty or involving moral turpitude ;

(b) he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer.

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\* Reported in this Part at p. 273 *ante*.

(2) For the purposes of this section 'duties or obligations of a public officer' includes any duty or obligation imposed on a public officer under the law of the Republic or under this Law or any other law in force for the time being or under any public instrument made thereunder or under any order or direction issued."

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In our view when section 60 is construed as a part of the whole structure of Law 33/67 and is read together with section 73 there can be no doubt that it was not intended to deprive thereby a public officer of the protection of the disciplinary procedure prescribed in Part VII of the Law ; the more so, as section 60 does not state that for being absent from duty without leave or for wilfully refusing or omitting to perform his duties a public officer shall automatically be dismissed in any case, but only that he is *liable* ("ὀπόκειται") to dismissal from the service ; and his dismissal would inevitably entail the exercise, in the manner laid down by Law 33/67, of the relevant discretionary powers vested in the appellant Commission by means of such Law.

Counsel for the appellant did not appear to dispute that in a case such as the present one there had to be exercised the said discretionary powers and that the officer concerned should be afforded an opportunity of being heard in his own defence, in accordance with the rules of natural justice, but he stated that such a process need not, in view of the manner in which section 60 is framed, be the one prescribed in Part VII of Law 33/67, and in particular that provided by sections 80 and 82 thereof ; in effect, he invited us to find that, whereas for other disciplinary offences the disciplinary process prescribed in Part VII of Law 33/67 should be adhered to, for conduct which is prohibited by section 60 there could be followed a different disciplinary procedure, not envisaged specifically under Law 33/67, but affording sufficiently, in accordance with the rules of natural justice, an opportunity to the officer concerned to be heard in his own defence.

In the absence of any express provision to that effect, and on reading together the various relevant sections of Law 33/67, we, as already indicated, find no justification for accepting the proposition that when the Legislature has prescribed by Law 33/67, a specific disciplinary process for disciplinary offences *generally* there can be resorted to a *different disciplinary process not envisaged by such Law*. In Cyprus it is not open to us to apply relevant principles

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of law applicable in similar cases elsewhere (see, for example, regarding the position in France, Silvera on “ *La Fonction Publique et ses Problèmes Actuels* ” 1969, p. 406, paragraph 376) because the matter in question has been expressly regulated by our own aforementioned enactment.

Furthermore, we do not agree with the submission of counsel for the appellant that, in the particular circumstances of this case, the total failure to set in motion the disciplinary procedure prescribed by Law 33/67 amounts to a mere irregularity which did not justify the annulment of the decision to dismiss from the public service the respondent.

For the foregoing reasons we hold that the learned Judge of this Court, whose decision is appealed from, has correctly determined this case and, therefore, this appeal is dismissed.

In view of the novelty of the legal issue raised we deemed it fit not to make any order as to costs against the appellant.

*Appeal dismissed ; no  
order as to costs.*