

1980 February 6

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS LOUCAIDES AND ANOTHER,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF JUSTICE,

Respondent.

(Cases Nos. 32/78, 33/78).

5 *Public Officers—Termination of services—Temporary Prison Warders
—Termination of services under regulation 7(1) of the Prisons
(Prisons Service) Regulations, 1948—Within discretion of Director
of Prisons—Ground of termination, their non-selection by Public
Service Commission for a permanent appointment, a legitimate
one and in the public interest—Long temporary service does not
give a right for indefinite temporary stay in the service—Sub
judice decisions reasonably open to the respondent.*

10 *Equality—Discrimination—Principles of—Article 28 of the Constitu-
tion—Termination of services of two out of seventeen temporary
prison warders—Equality between equals, a necessary prerequisite
for the coming into play of the above principles, not established.*

15 The applicants in these recourses were serving as temporary
prison warders in the Central Prisons under regulation 3 of the
Prisons (Prisons Service) Regulations, 1948. On November 5,
1977 their services were terminated by the Director of Prisons
under regulation 7(1)* of the aforesaid Regulations by giving
them one month's salary in lieu of notice.

* Regulation 7(1) provides as follows:

"The engagement of a temporary warder may be determined at any time by the Director of Prisons without assigning any reason, upon his giving one month's notice therefor in writing or on paying one month's salary in lieu of notice".

On November 30, 1977 the applicants wrote to the Minister of Justice requesting that the decision terminating their services may be reviewed. The letter was referred to the Director of Prisons who in reply informed the applicants that as they had not been successful in their efforts to be appointed on a permanent basis by the Public Service Commission it was not thought expedient to continue for an indefinite period their temporary engagement; and hence these recourses. 5

• Counsel for the applicants contended:

- (a) That the respondent's decision has been taken in circumstances amounting to an abuse of power in that the real reason for the termination of applicants' services is extraneous to the one given by the Director of Prisons i.e. the political convictions of the applicants. 10
- (b) That the decision complained of is discriminatory against the applicants and conflicts with Article 28 of the Constitution in that although there were 17 prison warders serving for long periods on a temporary basis the Director of Prisons only terminated the services of the applicants keeping the others in the service. 15 20

Held, (1) that the termination of the services of the applicants was a matter within the discretion of the Director of Prisons and in the circumstances same appears to have been properly exercised; that the allegation that the real reason for the termination of the services of the two applicants was their political convictions, has not been substantiated in any way nor is there anything in the file to point to that direction; that, furthermore, the long service of the applicants as temporary Prison Warders does not give them a right that they should be retained indefinitely in the service in such temporary capacity; that their non-selection by the Public Service Commission for permanent appointment was a legitimate ground, and obviously in the public interest for bringing to an end their temporary employment; that the *sub judice* decisions were, in the circumstances, reasonably open to the Director of Prisons and there is no reason whatsoever to interfere with the exercise of the discretion given to him by the relevant regulations; and that, accordingly, contention (1) must fail. 25 30 35

(2) That, with regard to the ground of discrimination, in the circumstances of this case the necessary equality between equals which is a prerequisite to its coming into play has not been established; that the very nature of the issues pertaining to the engagement and service of different persons makes such equality naturally a difficult, if not an impossible proposition, as not all men and the nature of the service they render is, generally speaking, identical or the same; that, in fact, there is nothing before this Court to show that all matters were equal and therefore there should be equal treatment in the circumstances; and that, accordingly, contention (b) must, also, fail.

Applications dismissed.

Recourses.

Recourses against the decision of the respondent to terminate applicants' services as temporary Warders in the Department of Prisons.

L.N. Clerides, for the applicants.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. These two recourses have been heard together as they present common questions of Law and fact.

The applicant in recourse No. 32/78 was as from 1st July, 1970, engaged as a temporary Warder in the Central Prisons on a monthly basis under regulation 3 of the Prisons (Prisons Service) Regulations, 1948. The terms and conditions of employment are set out in Appendix A(1) attached to the opposition. In the course of his service he was sentenced by the Director of Prisons to five pounds fine for neglect of duty. On 5th November, 1977, the services of this applicant were terminated by letter of the Director of Prisons under regulation 7(1) which provides that the engagement "of a temporary warder may be determined at any time by the Director of Prisons without assigning any reason, upon his giving one month's notice therefor in writing or on paying one month's salary in lieu of notice."

In accordance with the said regulation, he was given one month's salary.

On November 30, 1977, this applicant wrote to the Minister

of Justice expressing his surprise at the sudden termination of his services and asked him "to examine with care the whole matter of the termination of his services and review the decision taken". The said letter was passed on to the Superintendent of Prisons within whose competence the whole matter came. 5

The Director of Prisons wrote on December 13, 1977, to this applicant and informed him that on account of the repeated rejection by the Public Service Commission of his application for appointment to the post of Prison Warder in the Department of Prisons and as the continuation of his temporary appointment for an indefinite period was not considered proper, it was thought expedient to terminate his temporary engagement. 10

The applicant in recourse No. 33/78 was first engaged on daily basis in February, 1964. On June 1, 1964, he was appointed as a temporary Prison Warder in the Central Prisons under regulation 3 of the aforesaid Regulations and on the further terms and conditions as appearing in Appendix A, attached to the opposition. 15

In September 1964 he was sentenced to four pounds fine for neglect of duty and on September 1, to a fine of 0.250 mils. The services of this applicant were terminated on January 22, 1972 by the Director of Prisons under regulation 7(1) of the aforesaid Regulations. 20

On July 18, 1974, the applicant was re-engaged by Mr. Onisiforos Antoniou who assumed the post of Director of Prisons during the Coup d'etat by letter of even date which reads as follows: "I was instructed by the President of the Cyprus Republic, His Excellency Mr. Nicolaos Sampson, to engage you in the Prison service and in the post which you held on the date your engagement was terminated." 25 30

On November 5, 1977, the Director of Prisons terminated also the services of this applicant under regulation 7(1) of the said Regulations. On November 30, 1977, he also wrote a letter to the Minister of Justice in almost identical terms as the one written by the applicant in recourse No. 32/78, likewise expressing his surprise and asking for a review of the decision for the termination of his services. The matter was also referred to the Director of Prisons who on December 13, 1977, wrote to the applicant a letter identical to the one addressed to the 35

applicant in recourse 32/78, to the effect that as he had not been successful in his efforts to be appointed on a permanent basis by the Public Service Commission it was not thought expedient to continue for an indefinite period his temporary engagement.

5 On January 21, 1978, the two applicants filed the present recourses, each seeking a declaration of the Court that the act and or decision of the respondent to terminate their services as temporary warders as from November 5, 1977, should be declared as null and void and of no effect whatsoever.

10 The grounds of Law relied upon in both recourses are the following:

“ It is contended that respondent’s decision should be declared null and void because:-

15 (i) It has been taken in circumstances amounting to an abuse of power in that:-

(a) The real reason for the termination of applicant’s services is extraneous to the one given in the letter of the Director of Prisons dated the 13.12.77 i.e. the political convictions of applicant.

20 (b) In any case the continuous service for 7 years of applicant as temporary prison warder and his non-appointment to the permanent post as such is not a valid reason for termination of his appointment.

25 (ii) The decision complained of is discriminatory against applicant and conflicts with Art. 28 of the Constitution in that:-

30 (a) Although there are 17 prison warders in the Central Prisons serving for long periods as temporary the Director of Prisons only terminated the services of the applicant and another prison warder Kyprianos Stylianou keeping the others in service.

35 (b) The Director of Prisons appointed two outsiders to fill the two posts left vacant as a result of the above termination of services of the applicant and P.W. Stylianou on a temporary basis again.”

Of course in recourse 33/78 the name of Kyprianos Stylianou in ground 2(a) and (b) above is substituted with that of Constantinos Loucaides.

The non selection of the applicants by the respondent Commission for permanent appointment in the Prisons service was the subject of recourses 135/78 and 136/78 which were filed by them seeking thereby annulment of that decision. On the 17th January last the President of this Court dismissed* these two recourses. By this judgment the decision of the respondent Commission in the matter was confirmed and consequently the reasoning of the *sub judice* decision stands undisturbed and valid. It was because of this great relation between the two sets of cases that learned counsel for the applicants requested me to await the outcome of the aforesaid two recourses before judgment was delivered in these recourses before me.

The termination of the services of the applicants was a matter within the discretion of the Director of Prisons and in the circumstances same appears to have been properly exercised. The allegation that the real reason for the termination of the services of the two applicants was their political convictions, has not been substantiated in any way nor is there anything in the file to point to that direction. Furthermore, the long service of the applicants as temporary Prison Warders does not give them a right that they should be retained indefinitely in the service in such temporary capacity. Their non-selection by the Public Service Commission for permanent appointment was a legitimate ground, and obviously in the public interest, for bringing to an end their temporary employment. The *sub judice* decisions were, in the circumstances, reasonably open to the Director of Prisons and I find no reason whatsoever to interfere with the exercise of the discretion given to him by the relevant Regulations.

Finally, with regard to the ground of discrimination invoked by the applicants, I find that in the circumstances of this case the necessary equality between equals which is a prerequisite to its coming into play has not been established. The very nature of the issues pertaining to the engagement and service of different persons makes such equality naturally a difficult, if not an impossible proposition, as not all men and the nature of the service they render is, generally speaking, identical or the same. In fact, there is nothing before me to show that all matters were equal and therefore there should be equal treatment in the circumstances.

* Vide p. 11 *ante*.

For all the above reasons these recourses are dismissed, but in the circumstances I make no order as to costs.

In view of this result the legality of the temporary engagement of the applicant in recourse No. 33/78 which in any event was not
5 made an issue in the case need not be examined.

Applications dismissed. No order as to costs.