

1981 September 9

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS AVRAAM,

Applicant,

v.

THE PORTS AUTHORITY OF CYPRUS,

Respondent.

(Case No. 196/79).

Port workers—Licensed porters—Holders of professional licence which cannot be cancelled at will without any cause—Cancellation of licence for alleged misconduct—Reason of cancellation being the result of disciplinary powers the case was of a disciplinary nature or of such a nature as to be similar to disciplinary and applicant should have been given chance to contradict any averments against him—Failure to afford him an opportunity to be heard or to put any factors in mitigation amounts to contravention of the rules of natural justice—Port Workers Law, Cap. 184 and the Port Workers (Regulation of Employment) Regulations, 1952 regulation 12—Cyprus Ports Organization Law, 1973 (Law 38/73 as amended by Law 59/77).

Natural justice—Rules of—Right to be heard—Suspension of licence of porter for alleged misconduct as a result of disciplinary powers—Proceedings of a disciplinary nature or of such a nature as to be similar to disciplinary proceedings—Applicant should have been given a chance to contradict any averments against him—Failure to afford him an opportunity to be heard or to put any factors in mitigation amounts to a contravention of the rules of natural justice.

The applicant was a licensed* porter employed in the Limassol port since the 11th April, 1955, under the provisions of the Port

* The terms of his appointment appear at pp. 382–84 *post*.

Workers Law, Cap. 184 and the Port Workers (Regulation of Employment) Regulations 1952. The powers of appointment and dismissal of porters were originally vested in local boards under the provisions of the Port Workers Law, Cap. 184 but
5 following the enactment of the Cyprus Ports Organization Law, 1973 (Law 38/73 as amended by Law 59/77) such powers were transferred to the Cyprus Ports Authority. The licensed porters in the Limassol port have been organised into a Union and the applicant was the elected Treasurer and Secretary of the Union.
10 On or about September, 1978 the respondent Authority came to know that there was a misappropriation of money in the above Union, amounting to £3,120.—for which the applicant, as the treasurer, was involved and the Director-General of the respondent authority by a memorandum dated February
15 7, 1979, recommended to the Authority that due to the seriousness of the misappropriation and the responsibility of the applicant his licence should be suspended. The respondent Authority at the meeting of March 22, 1979, after taking into consideration all material facts and the recommendation of the
20 Director-General decided to cancel the licence of the applicant to work as a licensed porter in the Limassol port. Hence this recourse.

Counsel for the applicant mainly contended that though the applicant was not an employee of the respondent Authority
25 he was subject to disciplinary control over him by the Authority; that the cancellation of his licence arose out of the alleged misappropriation and, therefore, the *sub judice* decision was a disciplinary action and the applicant could not be condemned for alleged misconduct without being heard.

Held, that since the licence was not an ordinary licence which could be cancelled at will without any cause whatsoever but it was a professional licence issued by the respondent enabling
30 the applicant to carry out his occupation within the area of the port, an occupation which was of a specialised nature; that since the reason for which the licence was suspended was
35 the result of disciplinary powers exercised by the Licensing Authority by virtue of powers vested in it under the Regulations annexed to Cap. 184 and, in particular, under regulation 12 the present case is clearly a case of a disciplinary nature or of
40 proceedings of such a nature as to be similar to disciplinary proceedings and a chance should have been given to the applicant

to contradict any averments against him; that, therefore, the respondent Authority by failing to afford the applicant an opportunity to be heard to contradict any accusations against him or to put forward factors in mitigation, acted in contravention of the rules of natural justice; accordingly the *sub judice* decision must be annulled. 5

Held, further, that in view of the provisions of regulation 12* and the powers vested in the respondent Authority as to the punishment which may be imposed on a port worker who contravenes the provisions of the Regulations or misconducts himself in the course or in connection with his work which vary from a warning, to suspension for a limited period or cancellation of his registration, the applicant was entitled to be heard at least for putting forward factors in mitigation which might have led the respondent Authority to reach a different decision concerning the punishment which it was going to impose on the applicant as against the maximum one of cancelling his registration which they decided to impose without hearing the applicant. 10 15

Sub judice decision annulled. 20

Cases referred to:

HjiLouca v. The Republic (1969) 3 C.L.R. 570;

Co-Operative Stores of Famagusta v. Republic (1974) 3 C.L.R. 295;

Constantinou v. Republic (1972) 3 C.L.R. 116. 25

Recourse.

Recourse against the decision of the respondent to terminate applicant's employment as a licensed porter in Limassol port.

P. Tsiridou (Mrs.) with Chr. Pourghourides, for the applicant. 30

P. Ioannides, for the respondent.

Cur. adv. vult.

* Regulation 12 provides as follows:

"If a port worker contravenes or fails to comply with any provisions of these Regulations or misconducts himself in the course of or in connection with his work then, without prejudice to any other liability he may incur under these Regulations or any other Law, the Board may—

(a) warn him; or
 (b) suspend him from work for a period not exceeding three months and suspend his registration card accordingly; or
 (c) give him fifteen days notice of cancellation of registration; or
 (d) cancel his registration and registration card forthwith".

SAVVIDES J. read the following judgment. The applicant is a licensed porter employed in the Limassol port since 11th April, 1955 under the provisions of the Port Workers Law, Cap. 184 and the Port Workers (Regulation of Employment) Regulations, 1952 which were published as a Schedule at the end of Cap. 184. The powers of employment and dismissal were vested under the provisions of Cap. 184 in local boards established under the provisions of Cap. 184. Later, the Cyprus Ports Organisation was established by Law 38/73 to which all the powers vested in the local boards were transferred. Such transfer is provided by section 10(3) of the said Law. By Law 59/77 the word "Organization" was substituted by the word "Authority" and, thus, the Cyprus Ports Authority came into existence. The term "port worker" as defined in Cap. 184, was replaced by the term "licensed porter" by Law 55/68, but the Regulations regulating the employment of licensed porters are still the ones which appear as a Schedule to Cap. 187.

The procedure for the registration of a person as a licensed porter and the method of striking out such person from the Register of licensed porters is prescribed by the Rules and it is shortly as follows:-

The respondent Authority is empowered under the Regulations to keep a Register for the registration of licensed porters. A person who wants to be so registered has to apply to the respondent Authority for his name to be entered on the Register. No person is allowed to work as a port worker or be employed by anybody in any port without such person being registered as a licensed porter under the provisions of the Law and the Regulations.

Regulation 12 provides the mode of striking the name of a licensed porter from the Register. Such provision reads as follows:

"If a port worker contravenes or fails to comply with any provisions of these Regulations or misconducts himself in the course of or in connection with his work then, without prejudice to any other liability he may incur under

these Regulations or any other Law, the Board may—

- (a) warn him; or
- (b) suspend him from work for a period not exceeding three months and suspend his registration card accordingly; or 5
- (c) give him fifteen days notice of cancellation of registration; or
- (d) cancel his registration and registration card forthwith".

The licensed porters in the Limassol port have been organised into a union under the name Limassol Licensed Porters Association and the applicant was a member of such Union and was elected as the Treasurer and Secretary of the Union. The employment of port workers is done through their Union and anybody who requires the services of port workers has to apply to the Union and the payment of their remuneration is made to them through this Union. 10 15

On or about September, 1978 it came to the knowledge of the respondent Authority that there was misappropriation of money in the Limassol Licensed Porters Association for which the applicant, as the Treasurer, was involved. On 19th September, 1978 the Committee of the Association sent to the General Manager of the respondent the following letter (*exhibit 1* attached to the opposition). 20

"Διά της παρούσης μας επιθυμούμεν να φέρωμεν εις γνώσιν υμών τὰ κάτωθι:— 25

Τὴν 11.9.78 πάντα τὰ μέλη τοῦ Συνδέσμου μας συνήλθον εἰς ἑκτακτον Γενικὴν Συνέλευσιν διὰ νὰ ἐπιληφθοῦν ὠρισμένων ἀτασθαλιῶν ποὺ προέκυψαν εἰς τὸ Ταμεῖον τοῦ Συνδέσμου ἐκ μέρους τοῦ κυρίου Ἀνδρέα Ἀβραάμ, Ταμείου καὶ Γραμματέως τοῦ Συνδέσμου μας. 30

Κατὰ τὴν ὡς ἄνω συνέλευσιν ὁ κύριος Ἀνδρέας Ἀβραάμ ἔθεσεν ἑκουσίως τὴν παραίτησιν τοῦ ἐνώπιον τῆς Συνελεύσεως ἀπὸ Ταμείου καὶ Γραμματέως καὶ αὕτη ἐγένετο ὁμοφώνως ἀποδοκτὴ ὑπὸ τῆς Συνελεύσεως.

Ἐσαύτως ὁ κύριος Ἀνδρέας Ἀβραάμ ἀνέλαβεν τὴν ὑποχρέωσιν νὰ ἐπιστρέψῃ εἰς τὸ Ταμεῖον τοῦ Συνδέσμου τὸ ποσὸν 35

τῶν Α.Κ.600 —τὸ ὁποῖον ἀπεγνώρισεν ὅτι ἐλλείπει ἐκ τοῦ Ταμείου καὶ ἡ ὀλομέλεια τῆς Συνελεύσεως ἀπεδέχθη ὁμοφώνως τὴν ἐπιστροφὴν τοῦ ἐν λόγῳ ποσοῦ εἰς τὸ Ταμεῖον τοῦ Συνδέσμου.

5 Τὴν ἐπομένη τῆς ὡς ἄνω Συνεδριάσεως μέλος τῆς Ἐπιτροπῆς τοῦ Συνδέσμου ἀνέφερεν ὅτι ὠρισμένα μέλη τοῦ Συνδέσμου εἰσηγήθησαν τὸν ἐκ νέου ἔλεγχον τῶν λογιστικῶν βιβλίων τοῦ Συνδέσμου ἀπὸ τῆς 1ης Ἰουλίου, 1977 καὶ ἐντεῦθεν ὑπὸ τῶν Λογιστῶν—Ἐλεγκτῶν τοῦ Συνδέσμου, τὸ ἐν λόγῳ θέμα
10 ὁμως δὲν ἠγέρθη κατὰ τὴν Συνέλευσιν καὶ δὲν ἐλήφθη ἀπόφασις, ἀπλῶς τὸ ἀναφέρομεν.

15 Λόγῳ τῆς εὐδοκίμου ὑπηρεσίας τοῦ κυρίου Ἀνδρέα Ἀβραάμ ἐπὶ πολλὰ ἔτη εἰς τὸν Σύνδεσμον καὶ τῶν πολλαπλῶν ὑπηρεσιῶν ποὺ προσέφερον χάριν τῆς προόδου τοῦ Συνδέσμου μέχρι σήμερον ἡ Συνέλευσις τῶν μελῶν τοῦ Συνδέσμου ἀπεφάσισεν ὁμοφώνως ὅπως τὸ ὅλον θέμα παραμένει ὡς ἐσωτερικὸν θέμα τοῦ Συνδέσμου καὶ παράκλησις ὅλων τῶν μελῶν εἶναι ὅπως μὴ λάβῃ ἄλλην περαιτέρω ἔκτασιν”.

(“We hereby wish to bring to your notice the following:—

20 On the 11th September, 1978 all the members of our Union assembled at an extraordinary general meeting in order to consider certain irregularities which appeared in the accounts of the Union on the part of Mr. Andreas Avraam, Treasurer and Secretary of the Union.

25 During the meeting Mr. Andreas Avraam voluntarily submitted his resignation to the meeting from Treasurer and Secretary and which was accepted unanimously by the meeting.

30 Mr. Andreas Avraam also undertook the obligation to refund to the fund of the Union the sum of C£600.— which he acknowledged that it was missing from the fund and all the members of the meeting accepted unanimously the refund of the said amount into the fund of the Union.

35 The day after the above meeting a member of the Union stated that some members of the Union suggested a new audit of the books of accounts of the Union but the said matter was not brought up at the meeting and no decision was taken, and we simply refer to it.

Due to the satisfactory services of Mr. Andreas Avraam for many years in the Union and the many services which he rendered for the progress of the Union until today, the meeting of the members of the Union decided unanimously that the whole matter remain as an internal affair of the Union and the request of all the members is that it should not be pursued further").

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The respondent Authority by letter dated 23.9.1978 addressed to the Limassol Licensed Porters Association, asked for the examination of the books of accounts of the Union and that a copy of the audited accounts be sent to the respondent. By letter dated 2.2.1979 (*exhibit 4* attached to the opposition) the Port Manager of the Limassol port sent to the General Director of the respondent Authority a report of the auditors, Messrs. Metaxas Loizides Syrimis Christofides & Co., dated 28.12.1978 (*exhibit 5*) concerning the inquiry which they carried out in connection with the financial deficiencies which disclosed a deficiency of C£3,120.—in the accounts kept by the applicant. He also enclosed a letter dated 1.2.1975 (*exhibit 6*) sent through him and addressed to the General Director of the respondent Authority by the Secretary of the Limassol Licensed Porters Association in connection with the case.

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The contents of *exhibit 4* read as follows:

“ Έσωκλείω άναφορά τών λογιστών κ.κ. Μεταξά, Λοϊζίδη, Συρίμη, Χριστοφίδη & Σία, προς την Έπιτροπή του Συνδέσμου Άδειούχων Λιμενικών Άχθοφόρων της Λεμεσοῦ, ή όποία άναφέρεται σε άτασθαλίες του πρώην ταμία κ. Άνδρέα Άβραάμ που άνέρχονται σε ύψος £3,120.350 μίλς για την περίοδο 12/1-18/5/78.

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Έπίσης έσωκλείω έπιστολή ύπογεγραμμένη από τον κ. Φαντομά προς έσάς, με την όποία γνωστοποιεί ότι, κατόπιν έκτακτης γενικής συνέλευσης που έγινε στις 20/11/78, άποφασίστηκε όπως έπιστραφεί τó ποσόν από τον Άνδρέα Άβραάμ και ό ίδιος νά παραμείνει μέλος του Συνδέσμου.

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Δέν θα ήθελα στο παρόν στάδιο νά έπεκταθώ έπί του θέματος, θα ήθελα όμως νά σάς άναφέρω ότι στο παρελθόν ό τέως Διευθυντής Τμήματος Λιμένων έδιωξε από τον Σύνδεσμο ένα μέλος του για κλοπή 25 σελινιών μόνον. Έπίσης είμαι τής γνώμης ότι δέν έναπόκειται στην Γενική Συνέλευση νά

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ἀποφασίζει ἄν. τὸ θέμα θὰ θεωρεῖται λήξαν, ἀλλὰ στὴν Διεύθυνση τῆς 'Αρχῆς Λιμένων".

5 ("I enclose the report of the accountants Messrs. Metaxas, Loizides, Syrimis, Christofides & Co., to the committee of the Limassol Licensed Porters Association which refers to deficiencies of the ex-treasurer Mr. Andreas Avraam, which amount to £3,120.350 mils for the period 12/1-18/5/78.

10 I also enclose a letter signed by Mr. Fantoma to you, whereby he is informing that after an extraordinary general meeting, which took place on 20/11/78, it was decided that the money be refunded by Mr. Andreas Avraam and that he will remain a member of the Union.

15 I would not like at this stage to say more on the subject, but I would like to state that in the past the ex-Director of the Department of Ports has expelled from the Union one of its members for stealing 25 shillings only. I am also of the view that it is not for the general meeting to decide if the matter will be considered as ended, but for the Management of the Ports Authority").

20 And the contents of exhibit 6 are as follows:-

" Διὰ τῆς παρουσίας μας ἐπιθυμοῦμεν νὰ σᾶς πληροφορήσωμεν ὅτι τὴν 20.11.78 ἐπραγματοποιήθη ἑκτακτὸς γενικὴ συνέλευσις τῶν μελῶν τοῦ Συνδέσμου μας καὶ ἐπελήφθη τοῦ θέματος τοῦ πρώην Ταμεία τοῦ Συνδέσμου κυρίου 'Ανδρέα 'Αβραάμ.

25 Κατὰ τὴν ὡς ἄνω συνέλευσιν ἐνημερώθησαν τὰ μέλη λεπτομερῶς ὑπὸ τῶν ἐλεγκτῶν τοῦ Συνδέσμου περὶ τοῦ ἐλλείματος τὸ ὁποῖον προέκυψε κατὰ τὸν χρόνον τῆς διαχειρήσεως ὑπὸ τοῦ προαναφερθέντος Ταμείου.

30 'Ο παριστάμενος εἰς τὴν συνέλευσιν κύριος 'Ανδρέας 'Αβραάμ ἀπεδέχθη νὰ ἐπιστρέψῃ εἰς τὸν Συνδεσμον ὀλόκληρον τὸ ποσὸν ἀνερχόμενον εἰς £3120 πρᾶγμα τὸ ὁποῖον ἔκαμεν ἐντὸς ἐνὸς μηνὸς ἀπὸ τῆς ἡμέρας τῆς Συνελεύσεως.

35 Κατόπιν τούτου ἡ Συνέλευσις ἀπεφάσισε ὁμοφώνως ὅπως τὸ θέμα θεωρηθῆ λήξαν καὶ ὅπως ὁ κύριος 'Ανδρέας 'Αβραάμ παραμείνῃ ὡς μέλος τοῦ Συνδέσμου".

("We hereby wish to inform you tha ton 20.11.78 an extra-

ordinary general meeting of the members of our Union took place and studied the subject of the ex-treasurer of the Union Mr. Andreas Avraam.

During the above meeting the members were informed in detail by the auditors of the Union about the deficiency which resulted during the period of management by the above treasurer. 5

Mr. Andreas Avraam who was present at the above meeting accepted to refund to the Union the whole sum amounting to £3,120.-, which he did within one month from the day of the meeting. 10

After this the meeting decided unanimously that the matter be considered as having come to an end and that Mr. Andreas Avraam remain as a member of the Union").

The General Director of the respondent Authority, by a memorandum dated 7.2.1979 addressed to the respondent and which is *exhibit 7* attached to the opposition, recommended that due to the seriousness of the misappropriations and the responsibility of the applicant, his licence should be suspended. The respondent Authority at its meeting of the 22.3.1979, after taking into consideration all material facts and the recommendation of the General Director, decided to cancel the licence of the applicant to work as a licensed porter in the Limassol port and authorised the General Director to send a letter in that respect to the applicant. As a result, the General Director of the respondent on 26.3.1979 sent to the applicant the letter which is attached to the opposition as *exhibit 9* and which reads as follows:- 15
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“Πληροφορούμαστε από τον Σύνδεσμο των Άδειούχων Άχθοφόρων του λιμανιού της Λεμεσού του οποίου είσαστε μέλος, ότι κατά την διάρκεια της διαχείρισης του ταμείου του Συνδέσμου από σας έχει προκύψει έλλειμα £3,120 λιρών και ότι ύστερα από σχετική έρευνα έχει διαπιστωθεί ότι το έλλειμα προέκυψε από δικές σας ενέργειες, η ή ευθύνη γι’ αυτό οφείλεται σε σας. 30
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2. Λυπούμαι να σας πληροφορήσω ότι η Αρχή, ύστερα από προσεκτική μελέτη του θέματος και αφού έστάθμισε όλους τους παράγοντες αποφάσισε να μην σας έπιτρέψει

νά ἀπασχολεῖστε πιά σάν ἀδειοῦχος ἀχθοφόρος στοῦ λιμάνι τῆς Λεμεσοῦ.

3. Παρακαλῶ νά φροντίσετε νά τακτοποιήσετε ὅλες τίς τίς ἐκκρεμότητες ποῦ ἔχετε μέ τόν Σύνδεσμο τῶν Ἀδειούχων Ἀχθοφόρων καί νά σταματήσετε σάν ἀδειοῦχος Ἀχθοφόρος μέσα στοῦ λιμενικό χῶρο ἀπό τήν 1η τοῦ Μάη 1979”.

“(We are informed by the Limassol Licensed Porters Association of which you are a member, that during the management of the accounts of the Union by you a deficiency of £3,120 has resulted and that after the relative investigation it has been ascertained that the deficiency has resulted from your actions or the responsibility for this is due to you.

2. I regret to inform you that the Authority, after a careful examination of the matter and after weighing all the factors has decided not to allow you to work any more as a licensed porter in the Limassol port.

Please try to arrange all outstanding matters which you have with the Limassol Licensed Porters Association and stop as a licensed porter in the port area as from 1st May, 1979”).

In consequence thereof, the applicant filed the present recourse whereby he prays for a declaration of the Court that the decision of the respondent Authority to terminate his employment as a licensed porter in Limassol port is null and void and of no legal effect.

The grounds of law set out in support of the application, are as follows:—

(1) The decision of the respondent was taken in violation of the Constitution because the applicant was dismissed from his post as a licensed porter without having been invited to offer an explanation and without the legal procedure being followed.

(2) By the decision of the respondent Authority the applicant was found guilty of an offence without having given him the right to defend himself.

(3) The decision of the respondent Authority was taken in

excess and in abuse of power because they did not take into consideration all the facts and they ignored facts which could lead to the acquittal of the applicant from any responsibility.

- (4) The decision of the respondent Authority was taken in violation of the rules of natural justice. 5

By its opposition the respondent Authority denies that the decision was taken illegally or wrongly and alleges that the said decision was taken lawfully and in the proper exercise of the powers vested in the respondent. 10

Counsel for the applicant in arguing his case, submitted that the applicant, though not an employee of the Cyprus Ports Authority, nevertheless was subject to disciplinary control over him by the Authority. Such disciplinary control is not unrestricted and it is governed by the Regulations. In deciding whether there is a cause as provided by the Regulations, the Authority, in the same way as all other bodies exercising disciplinary control over professional people, was under a duty to act fairly and impartially, that is to say, it had a duty to offer to the accused a hearing. He went on to say that though the Regulations are silent as to any procedure for a hearing, nevertheless it has been established that nobody can be tried without being given a chance to be heard. In the present case, it is clear that the cancellation of the applicant's registration arose out of an alleged deficit in the accounts of the Limassol Porters Association. So, the decision of the respondent Authority was a disciplinary action, and, being so, the applicant could not be condemned for alleged misconduct without making his defence. And, he concluded his argument by submitting that if the applicant was called by the respondent Authority to make his defence, there were many possibilities open. He could have been warned or he could have been suspended for a certain period or indefinitely, and nobody can say with certainty that if he was heard, inevitably he would have been dismissed. 15
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Counsel for the respondent Authority contended that the principles of natural justice had not been violated in the present case because the respondent Authority had before it all material facts which were uncontested and, therefore, there was no violation of the rule "audi alteram partem". Counsel further alleged 35

that the respondent Authority, by virtue of the powers vested in it under the Law, was authorized to issue permits for entrance in the harbour or for carrying out any work within a port. By virtue of the Regulations, the respondent Authority has absolute
5 authority to grant or refuse entry permits or employment permits to any person within the port area, and he referred to rules 15 and 125 of the Regulations made by the Authority under the provisions of Law 38/73. He further submitted that it is a general principle of Administrative Law that the person
10 who is authorised to give a licence is also authorised to withdraw such licence at any time and that, in any event, the violation of any conditions under which the licence is issued are a sufficient legal ground for suspending such licence, and, even without any special terms, a licence may be suspended on grounds of
15 public interest; furthermore, that there is no relationship of employer and employee between the applicant and the respondent. The applicant is not occupying a post giving him a right of hearing before the exercise of any disciplinary power over him. Article 122 of the Constitution expressly refers to who
20 are considered as public servants, and the applicant does not fall within any of the said categories. He concluded by submitting that in cases where the relationship of master and servant does exist and, in particular, in cases where the question of licence comes into play, the Authority is bound to act fairly. The
25 Authority is empowered to grant licences for work in the ports and revoke such licences and, by doing so it is not exercising any disciplinary authority over the persons to whom the licences are issued. In any event in the present case the Authority acted after a due inquiry in all circumstances of the case and
30 after it was satisfied that the applicant was guilty of serious misconduct.

Once reference has been made by counsel for the respondent to the Regulations made under Law 38/73 by which the respondent Authority has been established, I shall deal briefly with
35 such Regulations. The said Regulations were published in the official Gazette No. 1249 of 16th January, 1976, (Supplement No. 3) Notification No. 8 and are referred to as "The Ports Authority (Operation of Port Areas) Regulations, 1976", and provide as to the mode of the exercise of the powers of the
40 respondent Authority concerning the operation of the ports, its powers over the property of the Authority, its licensing of

visitors and other persons to enter the port areas, regulation and control of vessels within a port area, the mode of arrival and departure of ships and of navigation and anchoring of ships within the ports, discharge of dangerous goods and generally any matters connected with the safe and proper operation of the ports in the exercise of the powers vested in the Authority by Law 38/73. 5

The said powers are contemplated by section 10(2) of Law 38/73. In addition to such powers by section 10(3) of the said Law, provision is made that irrespective and without prejudice to the provisions of the previous sub-sections of section 10, any powers vested in the Ports Department or the Director thereof by the provisions of the laws which are mentioned in the first schedule set out in the said Law, would, as from a date to be published in the Gazette and which would be fixed by the Council of Ministers, vest in the Director of the Ports Authority. One of the said laws set out in such schedule is "The Licensed Porters (Regulation of Employment) Law", Cap. 184 as amended by Laws 5/60 and 55/68. By Notification in the Gazette under No. 131 in Supplement 3 to the Cyprus Gazette of the 12th May, 1977, the decision of the Council of Ministers is published whereby the provisions of section 10(3) of Law 38/73 come into operation, and the powers which were vested till that day in any other Authority by virtue of the said laws would, as from such date, be exercised by the respondent Authority. 10
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Furthermore, by the provisions of section 40 of Law 38/73, certain laws which are set out in the third Schedule to the said Law will be deemed as repealed to such extent and as from such date as by special law provision would be made. One of the laws which is set out in the Third Schedule is the Licensed Porters Regulation Law, Cap. 184. No publication has so far been made that such law is repealed. The only modification that has been effected is that the powers under sections 2 and 2(a) of the said Law, as subsequently amended, were transferred to the respondent Authority as from 12th May, 1977 when Notification 131 was published. 30
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It is within the powers of the Authority under section 10(2) of Law 38/73 to prohibit the entry into any port of any person or impose any conditions for such entry. Under section 30, sub-section (1) of Law 38/73 the respondent Authority is autho- 40

5 rised to make regulations in the following respect: Under paragraph (γ) concerning the entrance, stay and exit of persons or animals within the port areas or the doing of any act within such area; under sub-paragraph (η) concerning the customs
 10 porter and other labourers employed within the port areas and the granting of permits for the exercise of such occupations, and, under sub-paragraph (δ) the regulation of the safe and methodic exercise of works within the port area and provision for the exclusion of any lazy, troublesome or other undesirable
 15 person.

Regulation 15, to which reference has been made by counsel for the respondents, refers to the exercise of the powers under sections 10(2) and under sections 30(1)(γ) and (δ) which read as follows:

15 “30(1) Τῆ ἐγκρίσει τοῦ Ὑπουργικοῦ Συμβουλίου ὁ Ὅργανισμὸς κέκτηται ἐξουσίαν νὰ ἐκδίδη Κανονισμοὺς διὰ τὴν καλυτέραν ἐφαρμογὴν τῶν διατάξεων τοῦ παρόντος Νόμου καὶ τὴν ἀσκησιν τῶν ἀρμοδιοτήτων αὐτοῦ, ἰδίᾳ δὲ, καὶ ἄνευ ἐπιηρασμοῦ τῆς γενικότητος τῆς ἀνωτέρω ἐξουσίας, καθ’ ὅσον ἀφορᾷ εἰς ἅπαντας ἢ τινὰς τῶν κάτωθι σκοπῶν:

20 (γ) ρύθμισιν τῆς εἰσόδου, παραμονῆς καὶ ἐξόδου προσώπων ἢ ζώων εἰς τὰς περιοχὰς λιμένων ἢ τὴν τέλεσιν οἰασδήποτε πράξεως ἐντὸς τῶν τοιούτων περιοχῶν

25 (δ) ρύθμισιν τῆς ἀσφαλοῦς καὶ μεθοδικῆς ἀσκήσεως ἐργασιῶν ἐντὸς τῶν περιοχῶν λιμένων καὶ πρόνοιαν διὰ τὸν ἀποκλεισμόν ἢ τὴν ἀπομάκρυνσιν ἐκ τῶν τοιούτων περιοχῶν παντὸς ἀργοῦ, ταραξίου ἢ ἐτέρου ἀνεπιθυμήτου προσώπου”.

30 (“30.—(1) The Organization may, with the approval of the Council of Ministers, make regulations in respect of the exercise of its functions and, in particular, and without prejudice to the generality of the foregoing power, may make regulations in respect of all or any of the following matters—

35 (c) regulating the entry and exit of persons or animals within port precincts or the performance of any act therein;

(d) regulating the safe and orderly discharge of business

within port precincts and providing for the exclusion and removal from port precincts of idle or disorderly or other undesirable person;”).

Regulation 125 provides that the Authority may at any time cancel, amend or impose any additional conditions to any licence issued by it, for any cause or without any cause and without any obligation to give any reason for so doing.

Reading the Regulations made under the provisions of Law 38/73, one can see that no express provision is made as to the power which is given to the Authority under section 30, paragraph (η) of Law 38/73, that is, concerning the employment of Customs porters and other labourers employed within the harbour. The reason for not including any provision in that respect is obvious, because the already existing Regulations made by virtue of the Licensed Porters (Regulation of Employment) Law CAP 184 were in force and made ample provision concerning the licensing and dispensation of licences of licensed porters. Therefore, the provisions of regulations 15 and 125 have no direct application in the case of licensed porters but they apply to cases of all other persons who may be licensed to enter or stay in the harbour for a limited purpose. In the case of the licensed porters, what is applicable is Cap. 184 and the Regulations made by virtue thereof.

It is material for the purposes of the present action for one to look into the nature of the licence held by the applicant. Such licence was issued to him in 1956 and is embodied in a letter sent to the applicant by the Director of the Department of Ports which was the appropriate authority at the material time. Such licence is Appendix 'A' attached to the Opposition of the respondent and it reads as follows:

“Sir,

I have much pleasure in informing you that you have as from today been approved by me to handle, and engage in handling, within the Customs or Port Area of any goods upon their discharge from any ship, or other vessel to a pier or wharf, until delivery of such goods out of customs control in the following conditions:

(a) You will be examined immediately and produce to

me a certificate by a Government medical officer of physical fitness.

5 (b) Your appointment is subject to a probationary period of 2 years and upon my satisfaction that you are of good police report.

(c) Your duties will include the usual obligations of a Licensed Porter, but you may be called upon to perform any other duties that may be allotted to you in respect of handling the goods in the Port Area.

10 (d) You will abide faithfully and diligently by the rules and regulations which will be made and approved by me. Copy of these rules and regulations is available for your perusal at any Port or Customs station.

15 (e) Acceptance of this appointment is acknowledgment on your part that you read the said rules and regulations for strict observance.

(f) Your earnings will be based on equal shares with the remaining porters.

20 (g) You will contribute according to a scale approved by me to the guarantee Fund and any other fund which may from time to time be prescribed by me.

25 (h) You will be required on appointment to pay to the porters association your proportion of the value of the gear used by them as this is estimated at the time of your engagement.

30 (i) You will abstain from any malpractice, contravention of customs and port regulation, and upon your proving within the probationary period a useful man to your Association, I will confirm you as a permanent porter with all rights and responsibilities that this appointment may imply.

(j) You will be compelled to retire on your attaining the age of 65 provided you are medically fit to carry out the duties of a porter.

35 (k) You will be required to produce a birth certificate attesting your correct age at the time of your appointment.

(l) This appointment is conditional to your being always

obedient and willing to carry out the duties allotted to you by your superiors.

2. If you are prepared to accept this engagement on the terms and conditions hereinbefore stated, you may signify your acceptance on the enclosed copy of this letter which should be returned to me". 5

It is clear from the contents of such licence that it was not an ordinary licence for entering the port on casual occasions or for a specific purpose but a licence to carry out a specialised profession within the port area for an unlimited period subject to the conditions which were endorsed on the said licence. One of such conditions was that the appointment was subject to a probationary period of two years and then becoming permanent and extending till the 65th year of age of the licensed porter when he had to retire. It was also one of the conditions of the licence that before the licence was granted, the applicant had to contribute to the Porters Association his proportion in the value of the gear used by them for their work in the harbour assessed as at the time of his engagement. There is no reservation that the said licence or document of appointment was to be cancelled for any cause other than what is described in the document itself, that is, under para. No. 1, which states that "the appointment is conditional to your being always obedient and willing to carry out the duties allotted to you by your superiors". Of course the licence was granted subject to compliance by the porter to the various conditions under paras. (a)—(k) which were defining the duties and responsibilities of the applicant and breach of which might give a right to the Director of the Department of Ports, as he then was, to terminate the employment of the applicant as a licensed porter. 10
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Counsel for the respondent did not dispute that the Regulations under Cap. 184 and any subsequent amendment, were and still are in force together with the Regulations made under the provisions of Law 38/73 and, in fact, he submitted that the powers of the respondent to issue licences to porters to work in the harbour are exercised by virtue of the provisions of Cap. 184 as well as under the provisions of Law 38/73 and the Regulations made thereunder. 35

Having dealt with the facts of the case, I am coming now to

consider the legal issues which pose for consideration in the present case. The first question which I have to consider is whether the action of the respondent Authority was of a disciplinary nature or not. To determine such issue, I find it necessary to consider first the nature of the licence by virtue of which the applicant was exercising his occupation. Having examined the contents of such licence and the nature of the conditions embodied therein, I have come to the conclusion that the licence was not an ordinary licence which could be cancelled at will without any cause whatsoever but it was a professional licence issued by the respondent enabling the applicant to carry out his occupation within the area of the port, an occupation which was of a specialised nature having to do with the proper loading and unloading of ships and the careful handling of goods of whatever nature unloaded from the ships. Furthermore, under the conditions of the licence he had to contribute his share in the cost of the gear and equipment belonging to the Licensed Porters Association thus becoming a co-owner of such equipment.

The decision of the respondent to suspend such licence is of vital importance to this particular worker. If in an ordinary contract of service a man is dismissed from his employment, it is open to him to obtain employment in the same or another line of work with another employer, but the dismissal from employment of a man who is doing skilled work, is wholly to remove this man as a dock worker.

Counsel for the respondent Authority referred the Court to the cases of *Georghios HjiLouca v. The Republic of Cyprus* (1969) 3 C.L.R. 570, *Co-operative Stores of Famagusta v. The Republic of Cyprus*, (1974) 3 C.L.R. 295 and *Constantinou v. The Republic* (1972) 3 C.L.R. 116, on the question of non-requirement of compliance with the rule "audi alteram partem". Counsel contended that on the strength of such authorities when there is no legislative provision for hearing the other party, then there is no duty on the Authority to do so and that in the present case there is no legislative authority giving a right to the applicant to be heard, before the Authority had to decide as to whether his licence is to be revoked.

The case of *HjiLouca v. The Republic (supra)* is a case where the applicant complained against a decision of the Council

for Reinstatement of Dismissed Public Servants for his reinstatement. The extract on which counsel for the respondent Authority sought to rely, is the extract from page 574 of the judgment (per Triantafyllides, J., as he then was) which reads as follows:

“In my opinion in a case of this nature, and in the absence
of any legislative provision for the purpose, there was no
need to invite the applicant to be present at the proceedings
before the Respondent (see Conclusions from the Juris-
prudence of the Greek Council of State, 1929–1959 p. 112;
also, the decision of the Greek Council of State 1262(46)
reported in Zacharopoulos Digest of the Decisions of the
Greek Council of State, 1935–1952, p. 313, para. 136);
likewise, it was not necessary to afford him an opportunity
to question the two witnesses who were heard by the
Respondent”.

I wish, however, to point out what is said further in the said judgment and which is material for the present case (at page 575):

“This was not an instance of a disciplinary or other proceed-
ings of such a nature as would render it necessary to give
the applicant the opportunity to contradict averments
against him and to question witness (useful reference in
this connection may be made, also, to Odent on Contentieux
Administratif, Vol. IV (1965–1966) p. 1, 165 et seq.)”.

The case of *Constantinou v. The Republic (supra)* was also
a case based on similar facts, that is, a claim for reinstatement
by a public officer who was retired compulsorily during the
colonial rule in Cyprus. Counsel for the respondent Authority
relied on what was said by A. Loizou, J., at p. 126 of the said
judgment which reads as follows:

“The principles governing the duties of administrative
organs, regarding the holding of a proper inquiry before
arriving at a decision, have been considered and expounded
in a number of decisions. I find the cases of *HjiLoukas*
v. The Republic (1969) 3 C.L.R. 570, *HadjiPetris v. The*
Republic (1968) 3 C.L.R. 702, as well as the second *Consta-*
ntinou case, *supra*, as being very relevant to this issue. The
position may be summed up in this way. By section 3(2)
of Law 48/61 ‘the council regulates its procedure.....’.

5 In the absence, therefore, of legislative provision, there is no need to allow an applicant to be present, nor is it necessary to afford him an opportunity to question witnesses who are to be heard by an administrative organ at the applicant's request; nor is it obligatory to allow the appearance of an advocate there being no specific provision to that effect".

The following, however, is stated further down in this judgment:

10 "The present case was not one of a disciplinary nature, or where the administrative decision to be reached would assume the character of a sanction and have a sufficiently adverse effect on the position of the individual; or, that
15 it was destined to punish or reprimand the attitude or conduct of the applicant".

Both these cases are cited with approval in the case of *The Co-operative Stores Famagusta Ltd., etc. v. The Republic* (*supra*) which was a case where an application to remove a parking sign was refused, and Malachos, J. at p. 302, had this to say:-

20 "The last point that falls for consideration is the argument of learned counsel for applicants that the respondents acted in breach of the rules of natural justice as they did not give the opportunity to the applicants to be heard.

25 In considering a case of this nature the Licensing Authority is regulating its own procedure and is not bound to hear the applicants since there is no obligation imposed on it by any law or regulation. So, no infringement of the rules of natural justice has been committed by the respondent Authority".

30 The Judge in this case as in the other similar cases adopts the view that the case for consideration before him was not a case of a disciplinary or other proceeding of such a nature as would render it necessary to give the applicant the opportunity to be heard.

35 It is clear from all the above decisions that the cases were decided on the assumption that the element of a disciplinary proceeding was not in existence in any one of them and it was

said in all these cases that where the case is one of a disciplinary nature as would render it necessary to give the applicant the opportunity to contradict averments against him, the Authority is bound to give a chance to the applicant to be heard and argue his case before the Authority. 5

Therefore, in the present case I have to consider whether the element of disciplinary proceeding does exist. Going through the various documents which were attached to the application and the opposition, there is no room for any doubt that the reason the applicant's licence was suspended was because there were suspicions against him for misappropriation of funds of the Licensed Porters Association which were entrusted to him. There was evidence to that effect in the hands of the respondent Authority coming from the auditors of the accounts of the Limassol Licensed Porters Association which were kept by the applicant. 10 15

The reasons for the termination of his employment appear in *exhibits 7, 8 and 9*. *Exhibit 7*, which is a note of the General Director of Ports to the respondent Authority where, after reporting about the deficiency which was found in the accounts and irrespective of the fact that such deficiency was paid by the applicant, he recommends that in view of the seriousness of the offence which has been committed by the applicant, it is not possible for him to continue as a licensed porter, and, therefore, his licence should be suspended. And the Council at its meeting of 22.3.1979 decided, for the reasons mentioned in the report of the General Director, to suspend the licence of the applicant to be employed as a licensed porter in the Limassol port as from 1.5.1979 and authorised the General Director to inform the applicant accordingly. As a result, the General Director sent the letter (*exhibit 9*) whereby the applicant is informed that his licence is suspended on the ground that a deficiency was found in the money which he was handling for the account of the Limassol Licensed Porters Association. 20 25 30

As I said before, there is no room for any doubt that the reason for which the licence was suspended was the result of disciplinary powers exercised by the Licensing Authority. Such power was vested in the respondent Authority under the Regulations annexed to Cap. 184 and, in particular, under Regulation 12 referred to earlier in this judgment. 35 40

In the result, I have come to the conclusion that the present case is clearly a case of a disciplinary nature or of proceedings of such a nature as to be similar to disciplinary proceedings, and a chance should have been given to the applicant to contradict any averments against him.

Furthermore, in view of the provisions of regulation 12 and the powers vested in the respondent Authority as to the punishment which may be imposed on a port worker who contravenes the provisions of the Regulations or misconducts himself in the course or in connection with his work which vary from a warning, to suspension for a limited period or cancellation of his registration, the applicant was entitled to be heard at least for putting forward factors in mitigation which might have led the respondent Authority to reach a different decision concerning the punishment which it was going to impose on the applicant as against the maximum one of cancelling his registration which they decided to impose without hearing the applicant.

In consequence, in the circumstances of the present case, the respondent Authority by failing to afford the applicant an opportunity to be heard to contradict any accusations against him or to put forward factors in mitigation, acted in contravention of the rules of natural justice. Having found so, I consider it unnecessary to deal with any other matter raised in the present recourse.

In the light of the above, the *sub judice* decision is hereby set aside. Having regard, however, to the circumstances of the case, I make no order for costs.

Sub judice decision annulled. No order as to costs.

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