

1982 May 27

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY
CHRISTOS KALATHAS FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI,
MANDAMUS AND PROHIBITION

(Civil Application No. 8/82).

Certiorari—Mandamus—Prohibition—Disciplinary proceedings against public officer before Public Service Commission—Come within the exclusive jurisdiction under Article 146.1 of the Constitution—No order of certiorari or prohibition or mandamus can be issued in relation thereto.

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The applicant in this case sought leave to apply for orders of certiorari, mandamus and prohibition, in relation to disciplinary proceedings against him before the Public Service Commission on the ground that in the course of such proceedings he has been denied enjoyment of constitutional rights of his, in that the Commission on 14th May 1982 decided to turn down an application of applicant's counsel that it should direct that witnesses who were going to be called to testify before the Commission against the applicant and who were, eventually, not so called should be tendered for cross-examination by applicant's counsel.

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Held, that the disciplinary proceedings against the applicant before the Public Service Commission including its aforementioned decision of 14th May 1982 - irrespective of whether a recourse could be made now or only at the conclusion of the disciplinary proceedings as a whole - come within the exclusive jurisdiction under Article 146, above, and, therefore, no order of certiorari or prohibition or mandamus can be issued in relation thereto (*Zenios v. Disciplinary Board* (1978) 1 C.L.R. 382 and *Papasavvas v. Educational Service Committee* (1979) 1 C.L.R. 681 distinguished).

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Application dismissed.

Cases referred to:

Vassiliou v. Disciplinary Committees (1979) 1 C.L.R. 46 at pp. 52-54;

Economides v. Military Disciplinary Board (1979) 1 C.L.R. 177
at p. 181;

In re Frangos (1981) 1 C.L.R. 311 at p. 313;

In re Frangos (1981) 1 C.L.R. 691 at p. 696;

Ramadan v. Electricity Authority of Cyprus, 1 R.S.C.C. 49 at 5
pp. 53, 54;

Zenios v. Disciplinary Board (1978) 1 C.L.R. 382;

Papasavvas v. The Educational Service Committee (1979) 1 C.L.R.
681.

Application.

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Application for leave to apply for orders of certiorari, mandamus and prohibition in relation to disciplinary proceedings before the Public Service Commission on the ground that applicant has been denied enjoyment of constitutional rights of his.

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A. Eftychiou, for the applicant.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. The applicant seeks leave to apply for orders of certiorari, mandamus and prohibition, in relation to disciplinary proceedings before the Public Service Commission, on the ground that in the course of such proceedings he has been denied enjoyment of constitutional rights of his.

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The Commission on 14th May 1982 decided to turn down an application of applicant's counsel that it should direct that witnesses who were going to be called to testify before the Commission against the applicant and who were, eventually, not so called should be tendered for cross-examination by applicant's counsel.

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The disciplinary trial is fixed for continuation, before the Commission tomorrow, the 28th May 1982, and the applicant filed the present application on 25th May 1982.

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There is no doubt in my mind that, in spite of certain quasi-judicial attributes of theirs, the disciplinary proceedings before the Public Service Commission do not amount to the exercise of judicial powers, but to the exercise of administrative powers

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(see, inter alia, in this respect, *Vassiliou v. Disciplinary Committees*, (1979) 1 C.L.R. 46, 52-54, *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177, 181, *In re Frangos*, (1981) 1 C.L.R. 311, 313, and, also, *In re Frangos*, (1981) 1 C.L.R. 691, 696).

It has been held in, inter alia, the *Vassiliou* and *Economides* cases, supra, on the strength of *Ramadan v. The Electricity Authority of Cyprus*, 1 R.S.C.C. 49, 53, 54, that whenever any act or decision is within the exclusive jurisdiction under Article 146 of the Constitution then the matter cannot be treated as being within the ambit of Article 155.4 of the Constitution and in such a case an order of certiorari or an order of prohibition or an order of mandamus cannot be granted in respect of it.

I am of the view that the disciplinary proceedings against the applicant before the Public Service Commission including its aforementioned decision of 14th May 1982 - irrespective of whether a recourse could be made now or only at the conclusion of the disciplinary proceedings as a whole - come within the exclusive jurisdiction under Article 146, above, and, therefore, no order of certiorari or prohibition or mandamus can be issued in relation thereto.

My attention has been drawn to the case of *Zenios v. Disciplinary Board*, (1978) 1 C.L.R. 382, where leave was granted to apply for orders of certiorari and prohibition in relation to proceedings which appeared, at first sight, to be of a disciplinary nature and the issue of the jurisdiction of the Supreme Court to issue, eventually, such orders was left to be determined later at the stage when the merits of the application for orders of certiorari and prohibition would be considered. I think that the present case is distinguishable from the *Zenios* case, supra, since in *Zenios* case there appear to have existed good reasons for granting the leave applied for in view of the very novel and special nature of the legislation under which the proceedings concerned, which seemed only prima facie to be of a disciplinary nature, had been instituted.

Also, it has been stressed by counsel for the applicant that leave was granted to apply for orders of certiorari and prohibition in *Papasavvas v. The Educational Service Committee*,

(1979) 1 C.L.R. 681, in relation to disciplinary proceedings which were pending before the said Committee. In that case it was, however, made absolutely clear, when leave was granted, that such a course had been adopted in view of very special and exceptional circumstances; and, therefore, the *Papasavvas* 5 case, *supra*, is distinguishable from the present case.

In the light of all the foregoing I have to dismiss this application.

Application dismissed.