

1984 March 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS SOLOMOU.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 30/83).

Disciplinary Offences—Punishment—Choice of, is the peculiar province of the disciplinary board—And not within the province of the Court to make an evaluation thereof.

5 *Constitutional Law—Constitutionality of legislation—Public Service Law, 1967 (Law 33/67) section 83 making conviction for an offence involving dishonesty or lack of moral turpitude a disciplinary offence— Not contrary to Article 125.1 of the Constitution.*

10 The applicant, a public officer was convicted by a Criminal Court of the offences of, inter alia, forgery of official documents and theft by a public servant. Following his conviction disciplinary proceedings were instituted against him before the Public Service Commission. The Public Service Commission acting in conformity with the provisions of section 83(2)* of the Public Service Law, 1967 (33/67) sought the advice of the Attorney-General on the categorization of the offences who was asked to
15 opine whether the offences entailed lack of honesty or moral turpitude; and his answer was in the affirmative.

The Public Service Commission after hearing counsel for the

* Section 83 regards conviction for an offence fraught with dishonesty or involving an element of moral turpitude as denoting the commission of a disciplinary offence entitling the Commission to impose after affording an opportunity to the officer to be heard, any of the punishments provided by section 79 of Law 33/67.

applicant in mitigation decided to dismiss applicant from the service; and hence this recourse.

Counsel for the applicant mainly contended:

- (a) That the sub judice decision was not duly reasoned.
- (b) That the sentence of dismissal was excessive. 5
- (c) That section 83 of the Public Service Law, 1967 (Law 33/67) was unconstitutional because it was contrary to or inconsistent with the provisions of Article 125.1 of the Constitution as it deprived the person under investigation of the opportunity to disprove the commission of the offences for which he was convicted. 10

Held; (1) that mere perusal of the sub judice decision puts in doubt the contention that it lacks due reasoning whereas study of it conclusively persuades that this contention is altogether unfounded, and as such it is dismissed. 15

(2) That the choice of punishment for disciplinary offences is the peculiar province of the disciplinary board and it is not the province of the Court to make an evaluation of the punishment; accordingly contention (b) must fail.

(3) That as a matter of policy it was perfectly legitimate for the legislature to make conviction for an offence involving dishonesty or lack of moral turpitude a disciplinary offence; that section 83 is in no way violative of or inconsistent with the provisions of Article 125.1 of the Constitution; that, moreover, it is perfectly compatible with the mission and legitimate interests of the civil service; accordingly contention (c) must, also, fail. 20 25

Application dismissed.

Cases referred to:

- Papacleovoulou v. Republic* (1982) 3 C.L.R. 187 at p. 197;
- Republic v. Mozoras* (1970) 3 C.L.R. 210 at p. 221; 30
- Enotiadou v. Republic* (1971) 3 C.L.R. 409 at p. 415;
- Lambrou v. Republic* (1972) 3 C.L.R. 379 at p. 389;
- Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99 at p. 125;
- Koupepides v. Republic* (1980) 3 C.L.R. 256 at p. 263;
- Hadjianastassiou v. Republic* (1982) 3 C.L.R. 1173; 35
- Kazamias v. Republic* (1982) 3 C.L.R. 239.

Recourse.

Recourse against the dismissal of the applicant by the respondent Public Service Commission as a result of disciplinary proceedings instituted against the applicant.

5 *E. Efstathiou*, for the applicant.

G. Constantinou (Miss), Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 ΠΙΚΙΣ J. read the following judgment. Ioannis Solomou, a civil servant in the Medical Department of the Ministry of Health, was convicted by the District Court of Larnaca on five counts of forgery of official documents, two counts of theft by a public servant and five counts of making false entries with intent to defraud; and was sentenced to nine months' imprisonment. The offences were committed in the course of and in connection with his duties as officer in charge of the Larnaca Hospital laboratory. He held the post of Hospital Laboratory Technician, First Grade. The acts that gave rise to the offences disclose a serious case of abuse of office committed in flagrant disregard of the faith and devotion to duty expected of a civil servant.

15 Following his conviction disciplinary proceedings were instituted against him before the Public Service Commission. The Public Service Commission acting in conformity with the provisions of section 83(2) of the Public Service Law 33/67 sought the advice of the Attorney-General on the categorization of the offences. The Attorney-General was asked to opine whether the offences entailed lack of honesty or moral turpitude. As expected the answer was in the affirmative.

20 The Law as fashioned by section 83 regards conviction for an offence fraught with dishonesty or involving an element of moral turpitude as denoting the commission of a disciplinary offence entitling the Commission to impose after affording an opportunity to the officer to be heard, any of the punishments provided by section 79 of Law 33/67.

25 After hearing counsel for the applicant in mitigation and pondering the magnitude of the offence and implications of the conduct of the defendant they decided to dismiss him. The reasons leading to their conclusions are explained in their

fairly detailed decision. One of the grounds relied upon for the annulment of the decision is lack of due reasoning. Mere perusal of the decision puts in doubt this contention, whereas study of it conclusively persuades that this contention is altogether unfounded, and as such it is dismissed. As to sentence it is well settled that choice of punishment for disciplinary offences is the peculiar province of the disciplinary board. As I noted on a review of the Case Law in *Papakleovoulou v. The Republic* (1982) 3 C.L.R. 187, 197, "The administration is regarded in administrative law as the principal arbiter of the measure of discipline within its ranks. And it is not the province of the Court to make an evaluation of this measure". (See also *Republic v Mozoras* (1970) 3 C.L.R. 210, 221. *Enotiadou v The Republic* (1971) 3 C.L.R. 409, 415; *Lambrou v. The Republic* (1972) 3 C.L.R. 379, 389 and *Christofides v. CYTA* (1979) 3 C.L.R. 99, 125)

The only other substantive ground put forward in support of the application is that relating to the constitutionality of section 83 of Law 33/67. In the submission of counsel for the applicant it is unconstitutional because it is contrary to, or inconsistent with the provisions of Article 125 1 of the Constitution. The argument is that inasmuch as section 83 makes conviction by a criminal Court for the crimes envisaged therein, a disciplinary offence without need arising for proof of the acts giving rise to conviction by a criminal Court, it is unconstitutional because it deprives the person under investigation of the opportunity to disprove the commission of the offences for which he was convicted. In other words the categorization of conviction for certain criminal offences as ipso facto constituting disciplinary offences is unconstitutional

Counsel for the Republic submitted that the Public Service Commission created by the Public Service Law 33/67 is a new body separate and distinct from that provided for by the Constitution under chapter one of part VII of the Constitution, consequently the provisions of the Law need not be couched within the framework of the Constitution and Law 33/67 should not be constitutionally scrutinized from that perspective. She supported her submission by reference to two decisions of Triantafyllides, P., at first instance, namely *Dinos Koupepidis v. The Republic* (1980) 3 C.L.R. 256, 263 and *Hadjianastassiou v The Republic* (1982) 3 C.L.R. 1173.

The learned Judge subscribed to the view that the Public Service Commission created by Law 33/67, is an organ or body other than that provided for by Article 124 of the Constitution. It is only proper to point out there are powerful dicta of Savvides J., in *Kazamias v. The Republic* (1982) 3 C.L.R. 239 that lend support to the opposite view from that adopted by Triantafyllides, P., in the aforesaid cases. And speaking of myself I had recently an opportunity to express the view that the Public Service Commission provided for by Law 33/67 not only it is not a body different from the Public Service Commission envisaged by the Constitution but its composition and powers are subject to the Constitution. Departure from the dictates of the Constitution is justified only to the extent necessary to fill the gap left from the departure of the Turkish members of the Commission. Invocation of the doctrine of necessity is only permissible when dire necessity compels its application and then only to the extent strictly necessary to enable constitutional organs to carry out their constitutional functions. (See my dissenting judgment in Consolidated Revisional Jurisdiction Appeals 323, 324, 325, 326, delivered on 21st March, 1984, not yet reported. Relevant are also observations of A. Loizou, J., in the same case).

I shall not pursue further the submission of counsel of the Republic on the juridical basis of the Public Service Commission, for the matter is only of academic interest in this case. For, on any reading of Article 125.1 of the Constitution the submission that section 83 of Law 33/67 offends its provision is unfounded. Article 125.1 of the Constitution entrusts the Public Service Commission with the exercise of disciplinary control over the Public Service. It does not specify how it shall be exercised. On the contrary its exercises may, as specifically laid down therein be made the subject of legislation. The Public Service Law 33/67 is plainly a law that regulates in this respect the exercise of disciplinary power over civil servants. As a matter of policy it was perfectly legitimate for the legislature to make conviction for an offence involving dishonesty or lack of moral turpitude a disciplinary offence. In my judgment section 83 is in no way violative of or inconsistent with the pro-

* Now reported in (1984) 3 C.L.R. 241.

visions of Article 125.1 of the Constitution. Moreover, it is perfectly compatible with the mission and legitimate interests of the civil service.

Perusing the material before me it is fair to say that the Public Service Commission gave the applicant every reasonable opportunity to defend himself before the Commission within the limits and subject to the provisions of the Public Service Law. Their decision cannot, in my judgment, be faulted on any ground. 5

The recourse is dismissed; let there be no order as to costs.

Recourse dismissed with no order as to costs. 10