

1985 January 28

[L. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

GREGORIS ANDROKLI,

*Appellant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DISTRICT OFFICER OF LIMASSOL AND/OR  
THE DISTRICT OFFICER OF LIMASSOL UNDER  
HIS CAPACITY AS PRESIDENT OF YERMASOYIA  
IMPROVEMENT BOARD AND/OR THE MINISTER  
OF INTERIOR,

*Respondents.*

*(Revisional Jurisdiction Appeal No. 361).*

*Act or decision in the sense of Article 146.1 of the Constitu-  
tion—Which can be made the subject-matter of a  
recourse thereunder—Monthly paid water guard of the  
Government Water Works Polemidhia-Yermasoyia—  
5 Terms of appointment of, those of “Government Workers”  
Termination of his appointment by giving one month’s  
notice—Falls within the domain of public law and can  
be made the subject of a recourse under the above article,  
10 because he is a “regularly employed” workman in con-  
nection with “permanent works” of the Republic, in the  
sense of Article 122 of the Constitution.*

The appellant was on the 21st May, 1979, appointed by  
the District Officer Limassol, in his capacity as the Chair-  
man of the Government Water Works of Polemidhia-  
15 Yermasoyia, as water-guard of such water works. The  
terms of his employment were those of “Government  
Workers”. On the 20th April, 1977 his original terms  
of appointment were altered so that he became a month-  
ly paid waterguard. He served with the above water works  
20 continuously until the 27th August, 1981 when the Dis-

trict Officer, acting in his aforesaid capacity terminated  
 the services of the appellant, by giving him one month's  
 notice on the main ground that he refused to attend for  
 overtime work. The appellant protested against his dis-  
 missal and applied for re-examination of his case. On 5  
 the 6th October, 1981, he was informed by the District  
 Officer that "his case has been re-examined with due  
 care" but the original decision for dismissal could not be  
 altered. The trial Judge dismissed his recourse, which  
 challenged the validity of the termination of his services, 10  
 on the ground that his employment and the termination  
 of his services were not falling within the domain of  
 public law and they, could not, thus be made the  
 subject of a recourse under Article 146.1 of the Consti-  
 tution. Hence this appeal. Counsel for the respondents 15  
 conceded that the sub judice decision should be annulled  
 in case this Court rules that the sub judice decision falls  
 within the domain of Public Law.

*Held*, that taking into consideration the terms of the  
 appointment of the appellant, as well as the fact 20  
 that he was given a month's notice upon dismissal  
 by the respondent and all other relevant factors  
 pertaining the circumstances of the present case  
 this Court hold the view that the appellant was  
 "regularly employed" Waterguard of the Government 25  
 Water Works Polemidhia-Yermasoyia; that as re-  
 gards the works of Government Water Works Po-  
 lemidhia-Yermasoyia, taking into consideration that  
 they do exist and function for the last fifty years  
 and that they are obviously Government Water 30  
 Works created in the public interest this Court hold  
 the view that the Government Water Works Pole-  
 midhia-Yermasoyia are to be regarded as "perm-  
 anent works of the Republic" in the sense of Ar-  
 ticle 122; and that, therefore, the employment of 35  
 the appellant falls within the definition envisaged by  
 Article 122 as regards public service and there-  
 fore, his dismissal is a decision falling within the  
 domain of Public Law; accordingly the appeal  
 must be allowed. 40

*Held*, further, that the decision of 6.10.81 was reached

at, after a new and thorough enquiry into new additional facts and it is therefore of an executory character and therefore justiciable.

*Comments:*

We have not touched upon the amenity of anybody other than the Public Service Commission to concern itself with appointments and dismissals of permanent workers in the government service similarly positioned to the applicant. The matter has not been properly raised and nothing said in this judgment should be construed as expression of any opinion on the subject by this Court.

*Appeal allowed.*

Cases referred to:

10 *Loizou and Another v. C.Y.T.A.*, 4 R.S.C.C. 48.

**Appeal.**

15 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 20th December, 1983 (Revisional Jurisdiction Case No. 491/81) \* whereby appellant's recourse against the decision of the respondents to terminate his services as a Water-Guard of the Government Water Works at Polemidhia—Yermasoyia was dismissed.

*E. Efsthathiou*, for the appellant.

20 *A. Vladimirov*, for the respondents.

*Cur. adv. vult.*

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Loris.

25 LORIS J.: The present appeal is directed against the decision of a Judge of this Court whereby the recourse of the applicant was dismissed on a preliminary issue, the learned trial Judge having found that the object of the

\* Reported in (1983) 3 C.L.R. 1246.

recourse was not in the domain of Public Law and therefore non justiciable.

By means of the aforesaid recourse the applicant was impugning the decision of the respondents by virtue of which his services as Waterguard of the Government Water Works of Polemidhia and Yermassoyia were terminated. 5

The undisputed facts of the recourse in question may very briefly be thus stated:

The applicant-appellant on 18.5.76 applied to the District Officer Limassol for appointment as Waterguard of the aforementioned Government Water Works and was so appointed by the District Officer as from 24.5.76 on the terms which are set out in the letter to the District Officer addressed to the applicant on 21.5.76 (exh. 1—blue 3). 10

It is important to note at this stage that para. (e) of the aforesaid letter states the following: "Generally the terms of your employment (except those referred to herein-above) will be those of Government Workers except if otherwise decided in the future by the Committee of the Government Water Works of Polemidhia and Yermassoyia." 15 20

On 20.4.77 a letter was addressed to the applicant signed by the "District Officer-Chairman of the Committee of the Water Works of Polemidhia and Yermassoyia" (exh. 1—blue 4) whereby the decision of the Committee to alter the terms of remuneration and the hours of employment of the applicant was communicated to him and he was thereby invited to indicate his acceptance of the aforesaid alterations in writing up to the 1.5.77. 25

The applicant accepted the aforesaid alterations in writing; it should be noted here that para (a) of the aforesaid letter provides "that all Waterguards will be remunerated as from 1.5.77 on the basis of scale 245X12—305 plus the lowest cost of living allowance of £30.655 mils monthly." 30

On 27.8.81 the District Officer in his aforesaid capacity addressed a letter to the applicant (exh. 1—blue 8) terminating applicant's services as from 30.9.81 giving as 35

one of the main reasons the refusal of the applicant to attend for overtime work when so ordered by the Director of the said Water Works.

5 The applicant through his advocate addressed a letter dated 29.8.81 (exh. 1—blue 10) to the District Officer in his capacity as Chairman of the said Water Works, protesting against his said dismissal and applied for re-examination of his case. The District Officer replied by a letter dated 6.10.81 (exh. 1—blue 18) informing the  
10 applicant that “his case has been re-examined with due care” but the original decision for dismissal could not be altered

15 It is against this latter decision contained in the letter of 6.10.81 which is appendix A attached to the recourse that the applicant filed the present recourse on 19.12.81.

Applicant relied on several grounds of law which are set out in his recourse and mainly stressed two points as follows:

20 A. The termination of the services of the applicant was effected by the District Officer himself, as admitted by the respondents, contrary to the provisions of regulation 4(4) of the Government Water Works Polemidhia (Garilli) and Yermassoyia Regulations of 1975. (Vide C.G. 1230 of 31.10.75 part III Notification 200).

25 The applicant maintained that the District Officer was an organ of no competence as the relevant powers according to the aforesaid regulation were vested with the Committee and the Committee could not delegate its powers to the Chairman alone i.e. the District Officer.

30 B. The termination of the services of the applicant was made in direct violation of the rules of natural justice as the applicant was never called to state his version and put forward his own allegations.

35 The respondents in their opposition defended the decision in question as properly reached at according to the law, the provisions of the Constitution and the accepted principles of Administrative Law. It is significant to note

from the facts relied in opposition by the respondents the following two points:

(a) The statement of the respondents contained in para. (a) of the opposition whereby it is clearly stated that on the 26.9.77 the Committee of the Government Water Works Polemidhia and Yermassoyia delegated its power to appoint and terminate the services of Waterguards to the Chairman thereof i.e. the District Officer. 5

(b) The statement of the respondents contained in para. 14 of the opposition whereby reference is made to the re-examination of the complaint of the applicant advanced to the District Officer as Chairman of the Committee: the steps taken in re-examination and the inquiries carried out indicate that a new enquiry has been conducted before the decision, communicated to the applicant by virtue of the letter dated 6.10.81, was taken. 10  
15

Independently of the grounds of opposition relating to the merits of the recourse under consideration the respondents raised two preliminary objections which were fully argued in the written addresses of both sides before the trial Judge. 20

The first preliminary objection was to the effect that the trial Court did not possess jurisdiction under Article 146 of the Constitution to entertain the recourse of the applicant against the termination of his employment on the ground that the relationship between the applicant and his employers, the respondents, was not falling within the domain of Public Law and therefore, it was outside the ambit of Article 146 of our Constitution. 25

The second preliminary objection was to the effect that the decision of 6.10.81 was not of an executory nature being a confirmatory decision of a previous one, notably that of 27.8.81. 30

It is apparent from the record that what was mainly argued before the trial Judge was the preliminary issue as to whether the decision complained of was in the domain of Public or Private law.

The learned trial Judge having considered this preliminary 35

objection and having found that the subject matter of the decision complained of was within the domain of private law dismissed the reasons forthwith as not being justiciable.

5 During the hearing of the present appeal before us learned counsel appearing for the applicant-appellant invited us to rule that the subject matter of the recourse was within the domain of Public Law. He further went into the merits of the recourse but whilst at that stage, learned  
10 counsel appearing for the respondents conceded that the only issue which has to be decided in the present appeal is whether the decision complained of falls within the domain of Public Law or not; inspite of the fact that counsel for the respondents made it clear that he was adopting the  
15 view taken by the learned trial Judge on this issue, he conceded that the sub judice decision should be annulled in case this Court rules that the decision in question falls within the domain of Public Law.

20 Thus, our task is confined substantially on one issue, notably whether the decision complained of is within the domain of private law as found by the trial Judge or not. Article 122 of the Constitution reads as follows:

“For the purposes of this Chapter, unless the context otherwise requires—

25 ‘Public office’ means an office in the public service;

‘Public officer’ means the holder, whether substantive or temporary or acting, of public office;

30 ‘public service’ means any service under the Republic other than service in the army or the security forces of the Republic and includes service under the Cyprus Broadcasting Corporation, the Cyprus Inland Telecommunications Authority and the Electricity Authority of Cyprus and any other public corporate or unincorporate body created in the public interest  
35 by a law and either the funds of which are provided or guaranteed by the Republic or, if the enterprise is carried out exclusively by such body, its administration is carried out under the control of the Republic, but does not include service in an office the appointment to or the filling of which is, under this Constitu-  
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tion, made jointly by the President and the Vice-President of the Republic or service by workmen except those who are regularly employed in connection with permanent works of the Republic or any such body as aforesaid.” 5

It is abundantly clear from the definition of Public Service in Article 122 of our Constitution that generally service by workmen does not fall within the definition of “public service” unless such workmen are “regularly employed in connection with permanent works” of the Republic or of any other body referred to in the definition of the said article of the Constitution. Therefore, in the present appeal we have to consider (a) regular employment; (b) whether services in question could be regarded as permanent works in the sense of Article 122. 10 15

In the case of *Evleros Loizou and another v The Cyprus Inland Telecommunication Authority*, 4 R.S.C.C. 48 it was held that both the aforesaid issues are issues of fact.

In connection with regular employment the then Supreme Constitutional Court in the aforesaid case laid down several criteria as follows: “The period of his service, the security of tenure, the nature of the duties, the view taken of the status of such workman by his employing authority, are all relevant matters to be weighed, together, with other pertinent factors, in order to arrive at a proper conclusion.” 20 25

In the present appeal the applicant-appellant

(a) was appointed by the Government Water Works Polemidria-Yermassiya as a weekly paid water-guard as it may be inferred from the letter of appointment dated 21.5.76; according to the said letter generally the terms of his employment were those of “Government workers”, (vide para. (e) of the letter dated 21.5.76). 30

(b) In spite of his aforesaid appointment it is abundantly clear from letter dated 20.4.77 that his original terms of appointment were altered so that he became a monthly paid waterguard with a salary scale 245X12—305 plus costs of living allowance £30.365 mils; 35



(c) that he served with Government Water Works Polemidhia-Yermasoyia continuously for a period more than five years i.e. from 24.5.76—20.8.81 when he was dismissed with a month's notice.

5 Taking into consideration the above, as well as the fact that he was given a month's notice upon dismissal by the respondent and all other relevant factors pertaining to the circumstances of the present case we hold the view that the appellant was regularly employed Waterguard of  
10 the Government Water Works Polemidhia—Yermassoyia.

Now, as regards the works of Government Water Works Polemidhia—Yermassoyia, taking into consideration that they do exist and function for the last fifty years and that they are obviously Government Water Works created  
15 in the public interest we hold the view that the Government Water Works Polemidhia—Yermassoyia are to be regarded as permanent works of the Republic in the sense of Article 122.

In view of our aforementioned findings in connection  
20 with "regular employment" and "permanent works" we hold the view that the employment of the applicant-appellant falls within the definition envisaged by Article 122 as regards public service and therefore, the dismissal of the appellant is a decision falling within the domain of  
25 Public Law.

In spite of the fact that learned counsel appearing for the respondents conceded that the sub judge decision should be annulled in case we rule that the object of the decision in question is within the domain of Public Law,  
30 we felt it our duty to examine, acting ex proprio motu, whether the sub judge decision was of an executory character or whether it was merely a confirmatory decision of the original one of 20.8.81, an issue which (although originally raised by the respondents but not pursued further  
35 and/or abandoned) goes straight to the hypostasis of our jurisdiction.

Having carefully gone through the relevant material before us, we are satisfied that the decision of 6.10.81 was reached at, after a new and thorough enquiry into

new additional facts and it is therefore of an executory character and therefore justiciable.

We have not touched upon the amenity of anybody other than the Public Service Commission to concern itself with appointments and dismissals of permanent workers in the government service similarly positioned to the applicant. The matter has not been properly raised and nothing said in this judgment should be construed as expression of any opinion on the subject by this Court. 5

In the result the present appeal is allowed and the sub 10  
judice decision is hereby annulled.

*Appeal allowed.  
Sub judice decision  
annulled.*