

1985 February 13

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Applicant,

v.
:

CHRISTOS HJIEFTYCHIOU,

Respondent.

(Application in Case No. 314/79).

Appeal—Revisional Jurisdiction Appeal—Practice—Stay of execution of an annulling decision pending appeal to the Full Bench of this Court—The Civil Procedures Rules, Ord. 35, rules 18 and 19—Applicable mutatis mutandis, by virtue of The Appeals (Revisional Jurisdiction) Rules, 1964—In the circumstances of this case there would be an order staying execution as aforesaid. 5

Applicant's disciplinary punishment was annulled by a first instance decision of this Court. The Educational Service Commission filed an appeal and the present application for an order staying the execution of the aforesaid annulling decision pending appeal. 10

Held, granting the application for stay of execution:

(1) The present application has to be dealt with on the strength, in'er alia, of Ord. 35, rules 18 and 19 of the Civil Procedure Rules which are applicable, mutatis mutandis, in virtue of rule 3 of the Appeals (Revisional Jurisdiction) Rules, 1964. 15

(2) The argument of counsel for the respondent that if the stay applied for is not granted, the disciplinary proceedings will have to be pursued before the outcome of 20

the appeal cannot be accepted because the Commission may await the outcome of the appeal.

5 (3) If the stay applied for is not granted, considerable and extensive financial adjustments will have to be made as a result of the annulling decision. Such adjustments will be found to have been made in vain, if the appeal is successful. If the stay is granted, the situation will remain as it is and, if the appeal is successful, full restitution may be made to the respondent. In the light of
10 the foregoing the application will be granted.

Application granted.

Cases referred to:

Veis v. The Republic (1979) 3 C.L.R. 537;

The Republic v. Petrides (1981) 3 C.L.R. 246;

15 *Christou v. The Republic* (1982) 3 C.L.R. 634.

Application.

Application for the stay of execution of a judgment in recourse No. 314/79, whereby the sub judice decision of the applicants by means of which the disciplinary conviction and punishment imposed on applicant was annulled, until
20 the final determination of an appeal filed against such judgment.

A. S. Angelides, for the applicant.

C. Hadji Pieras, for the respondent.

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Cur. adv. vult

TRIANAFYLLIDES P. read the following decision. By means of the present application there is, in effect, being sought an order staying the execution of the judgment which I delivered in a recourse under Article 146 of the Constitu-
30 tion and by means of which there was annulled the disciplinary conviction of the respondent, and the disciplinary punishment which was imposed on him as a result of such conviction, by the applicant Educational Service Commission.

As the Commission has appealed against my sa'id judgment by means of Revisional Jurisdiction Appeal No. 389 the stay of execution is being sought until the determination of such appeal.

The respondent, who was the successful applicant in the said recourse, has opposed the application for stay of execution. 5

I am dealing with this application on the strength, inter alia, of my powers under rules 18 and 19 of Order 35 of the Civil Procedure Rules, which are applicable, mutatis mutandis, to revisional jurisdiction appeals by virtue of rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court, 1964 (see No. 2 in the Second Supplement to the Official Gazette of the Republic of the 19th November 1964). 10 15

As I have explained in a decision given on a similar occasion in *Veis v. The Republic*, (1979) 3 C.L.R. 537, 543. 544, I consider that a Judge of this Court who has delivered a first instance judgment in a recourse possesses jurisdiction to stay, in a proper case, the execution of such judgment pending the determination of a revisional jurisdiction appeal which has been made against it under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64); and I have adopted the same view later on in *The Republic v. Petrides*, (1981) 3 C.L.R. 246, 248. 20 25

The case of *Christou v. The Republic*, (1982) 3 C.L.R. 634. which was referred to in the course of the arguments of counsel, is distinguishable from the present case because in the *Christou* case there was not being sought stay of execution of a first instance judgment in a recourse but a provisional order, under rule 13 of the Supreme Constitutional Court Rules of Court, suspending, pending the determination of a revisional jurisdiction appeal, the effect of the administrative decision in relation to which there was delivered the appealed from first instance judgment, which had dismissed a recourse made against such decision. 30 35

I have considered the present application for stay of execution in the light of the relevant principles which guide the exercise of the discretionary powers in relation to staying the execution of a first instance judgment while an appeal against it is pending, as such principles have been applied in the *Veis* and the *Petrides* cases, supra, and, of course, bearing always in mind that the said discretionary powers should be exercised in the light of the particular circumstances of each individual case; and, indeed, the circumstances of the present case are substantially different from those in the *Veis* case and in the *Petrides* case.

The respondent has, in the present case, been successful, in the first instance, in his recourse against his disciplinary conviction and punishment, which though they did not result in the termination of his services they entail serious adverse for him financial consequences.

I do not agree with counsel for the Educational Service Commission that if I refuse the applied for stay of execution then the disciplinary process against the respondent should be pursued all over again before the outcome of the revisional jurisdiction appeal which has been made against my first instance judgment in this case; because, as in the case of *Petrides*, supra, the Commission may await the outcome of such appeal before deciding whether or not it is necessary to embark once again upon the disciplinary process against the respondent.

On the other hand, unlike the position in the *Veis* case, supra, considerable and extensive financial adjustments will have to be made as a result of my first instance judgment if its execution is not stayed pending the determination of the revisional jurisdiction appeal which has been filed against it; and all these adjustments will be found to have been made in vain if my first instance judgment is reversed on appeal. On the other hand if the applied for stay of execution is granted the situation will remain as it is and full restitution may be made in favour of the respondent to the present application if the appeal against my first instance judgment in this case is eventually dismissed.

I have, consequently, decided, in the light of all the foregoing, to grant an order staying the execution of my first instance judgment until the determination of the revisional jurisdiction appeal which is now pending against it.

Application granted. 5