

1984 March 31

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STALO KANTOUNA,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION,
2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 39/68).

5 *Practice—Recourse for annulment—Withdrawn and dismissed upon an undertaking by respondents to reconsider sub judice decision —Respondents ready to proceed with reconsideration but applicant chose not to pursue it—Reinstatement of recourse, on the ground that terms on which it was withdrawn not implemented, refused.*

10 Upon an undertaking by the respondents to reconsider the question of applicant's dismissal from the educational service, the applicant withdrew her recourse against her dismissal and the Court on the 1st December, 1969 dismissed the recourse; and though the respondents were ready to proceed with the reconsideration of the matter the applicant chose not to pursue it.

15 *Upon an application for the reinstatement of the recourse on the ground that the question of the cancellation of applicant's appointment was never re-examined as had been undertaken on the 1st December, 1969:*

20 *Held*, that since the respondents were ready to proceed with the reconsideration of the matter and the applicant chose not to pursue it the applicant is not entitled to have this case reinstated on the ground that the terms on which it was withdrawn were not implemented by the respondents; and that, therefore, this case continues to stand dismissed as withdrawn and, thus,

abandoned (*Dr. G. N. Marangos Ltd. v. The Republic* (1979) 3 C.L.R. 78 at p. 83 distinguished).

Application dismissed.

Cases referred to:

Marangos Ltd. v. Republic (1979) 3 C.L.R. 78 at p. 83. 5

Application.

Application for the reinstatement of applicant's recourse against the decision of the respondents to cancel applicant's appointment to the post of schoolmistress which had been withdrawn in view of the undertaking of the respondent to re-examine her case. 10

Ch. Ierides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 15

TRIANTAFYLIDIS P. read the following judgment. This recourse was filed on the 13th February 1968 and by means of it there was challenged the decision of the respondents to cancel the applicant's appointment to the post of schoolmistress.

On the 1st December 1969 counsel appearing for the respondents stated in Court the following: 20

"We are prepared to reconsider the question of the applicant's dismissal and in this connection to give applicant within three months from today a hearing at which she will be entitled to appear with counsel". 25

Then, counsel appearing for the applicant said:

"In view of this, we withdraw the application and claim no costs".

As a result the Court dismissed this case, without costs.

It appears from the material before me that the applicant was, subsequently, in 1971 reappointed as schoolmistress for the teaching of art and she served in that capacity until 1980 when she retired for health reasons. 30

As the issue of the validity of the cancellation of the appointment of the applicant, which had been challenged by means of this recourse, appeared to be relevant to the outcome of a later recourse of the applicant regarding the matter of the applicant's pension rights (No: 105/81) an application was filed; on the 26th October 1983, by counsel appearing for the applicant in those proceedings, for the reinstatement of this recourse on the ground that the cancellation of the applicant's appointment as a schoolmistress was never re-examined as had been undertaken on the 1st December 1969.

The said application for reinstatement was opposed by counsel for the respondents.

Actually, on the 28th April 1983, counsel for the applicant wrote to the respondent Educational Service Commission requesting to be heard in relation to the matter of the re-examination of the termination of the services of the applicant, through cancellation of her appointment, in 1967, which led to the filing of this recourse:

As it appears from a letter addressed to counsel for the applicant on the 31st May 1983, the Commission decided to refuse his said request. Actually, the Commission had called upon the applicant; and counsel who was acting for her at the time (and who is not the same as the one who is now appearing for her); to appear before it on the 26th March 1970 in order to express their views in relation to the matter of the cancellation of her appointment; then, on the application of counsel for the applicant, her appearance before the Commission was adjourned to the 7th April 1970, when the applicant and her counsel appeared and asked for a further adjournment which was granted; and, since then, no action at all was taken by the applicant; or by counsel on her behalf; to set in motion the re-examination of the matter in question.

As it appears, moreover, from its aforementioned letter of the 31st May 1983 the Educational Service Commission took the view that after sixteen years during which nothing was done by the applicant in order to pursue the matter of the re-examination of the cancellation of her appointment it was not possible for the Commission to revert to it now.

The attitude of the Commission in this respect was affirmed by a further letter which was addressed to counsel for applicant on the 10th June 1983.

There can be no doubt that the applicant has allowed the matter of the cancellation of her appointment in 1967 to remain in abeyance for a considerable period of time and the only possible conclusion which can be drawn from the whole of her conduct is that she had abandoned her claim to have reversed the relevant administrative decision.

In any event, whatever right she had to have the matter of the cancellation of her appointment re-examined after the withdrawal of this recourse in 1969 has to be treated as having been abandoned by her at the latest in 1971 when she accepted a new appointment without in any way appearing to insist on the reconsideration of the cancellation of her previous appointment.

Had the Educational Service Commission, on being asked by the applicant at the proper time to reconsider the matter of the cancellation of her appointment, refused to do so, then it could have been held that there had not taken place the implementation of the terms on which this recourse was withdrawn in 1969; but this is not so in the present case because the Educational Service Commission was ready to proceed with the reconsideration of the matter and the applicant chose not to pursue it and, thus, in this respect, the present case is distinguishable from *Dr. G. N. Marangos Ltd. v. The Republic*, (1979) 3 C.L.R. 78, 83.

In the light of all the foregoing I have decided that the applicant is not entitled to have this case reinstated on the ground that the terms on which it was withdrawn were not implemented by the respondents; and this case continues to stand dismissed as withdrawn and, thus, abandoned.

I am not making any order as to the costs of these proceedings for the reinstatement of this case.

Order accordingly.