1965
March 5, 13, 15

NITSA HADJIGEORGHIOU
*and*
THE REPUBLIC OF CYPRUS THROUGH THE MINISTER OF FINANCE

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NITSA HADJIGEORGHIOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

*Respondent.*

*(Case No. 68/63).*

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*Administrative Law - Public Service—Dismissal of a casual employee—Applicant "not regularly employed" in the sense of Article 122 of the Constitution—Termination of Applicant's services though not coming within Articles 122 and 125, still a matter of public law—Discretion for dismissal of Applicant properly exercised.*

*Public Service—Casual employees—Status of—Casual employees as a rule are not considered as public officers as they are not employed as holders of particular public offices but are employed to meet occasional exigencies.*

*Public Service Commission —Competence of under Article 125 of the Constitution—Competence relates to "public officers" as defined in Article 122.*

By this recourse, Applicant seeks the annulment of the act or decision of her dismissal as an employee of the Department of Statistics and Research in the Ministry of Finance.

Such dismissal took place through Applicant being informed orally on the 3rd of April, 1963, that her services would be terminated as from the 11th April, 1963. She was also granted earned leave until the 29th April, 1963.

Applicant, together with other female employees, were employed by Government on a casual basis for work in the Census Section.

In December, 1962, Applicant, at her own request, was transferred from the Census Section to the Statistics Ma-

chines Section, exchanging places with another casual female employee who was moved to Applicant's place in the Census Section.

In April, 1963, the work in the Census Section came to an end and practically all its staff was dismissed, including even monthly employees, and Applicant, though posted in the Statistics Machines Section, was dismissed in April, 1963, when she became redundant in relation to her own employing Section, the Census Section.

Hence the present recourse.

Two questions arise for determination in this Case:

(1) Have Applicant's services been terminated by the appropriate organ?

(2) Have they been terminated in a proper exercise of the relevant discretionary power?

*Held, I. On whether Applicant's services have been terminated by the appropriate organ:*

*(a)* The Applicant's services were terminated by her Department, by which she was first employed, and not by the Public Service Commission, which had nothing to do at any time with Applicant's employment.

*(b)* Applicant was not a person the termination of whose services came under the competence of the Public Service Commission under Article 125, and, therefore, her services were properly terminated by her own Department, as far as competence to do so is concerned.

*II. On whether the employment of Applicant was terminated in the proper exercise of the relevant discretionary power.*

*(a)* The burden of establishing abuse of powers or excess of powers lies always on an Applicant. Applicant has failed to discharge such burden. For this reason only her recourse should be dismissed on this point.

*Koukoullis and The Republic* 3 R.S.C.C. p. 134 followed.

*(b)* The Respondent in this Case has established that

there has been no abuse or excess of powers involved in the manner in which Applicant's services were terminated.

*(c)* There is no substance in the allegation that Applicant was dismissed through an improper exercise of the relevant discretionary power.

*III. As regards costs:*

*(a)* No order of costs should be made against Applicant and there will be an order of costs in her favour for all the out of pocket expenses she has incurred in this Case.

*Application dismissed.*

Cases referred to:

*Loizou and CYTA* (4 R.S.C.C. p. 48 at p. 51);

*Koukoullis and The Republic* (3 R.S.C.C. p.134 at p. 136).

**Recourse.**

Recourse against the decision and/or act of the Respondent to dismiss Applicant from her employment in the Department of Statistics and Research with effect from 11th April, 1963.

*Applicant* in person.

*L. Loucaides, Counsel of the Republic*, for the respondent.

*Cur. adv. vult.*

The facts of the case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant seeks the annulment of the act or decision of her dismissal as an employee of the Department of Statistics and Research in the Ministry of Finance.

Such dismissal took place through Applicant being informed orally on the 3rd of April, 1963, that her services would be terminated as from the 11th April, 1963. She was also granted earned leave until the 29th April, 1963.

The salient facts, as they are to be found on the basis of evidence adduced, and accepted by me, are as follows: -

When a Census was carried out in Cyprus in 1960 it became necessary to employ additional staff for the purposes of the Census Section which was created in the Statistics Department. The existence of such Section was temporary because of the very nature of the work to which it related. A glaring manifestation of how temporary it was is the fact that the necessary machines to be used in that Section were not purchased by Government, but were only hired for the duration for which they were going to be needed.

Applicant, together with other female employees, were employed by Government on a casual basis for work in the Census Section.

Applicant must have known from the outset that her employment was not going to be of a permanent nature or of indefinite duration. Apart from having been told so, she must have herself appreciated how very casual her employment was when in June, 1962, she and other female employees of the Census Section had their services terminated because there was a shortage of the cards on which they were working and they were re-engaged a few weeks later when such cards were available.

It is to be noted that at that time Applicant had already become, as from the end of 1961, a "regular" weekly-paid employee. This, however, did not prevent her from being dismissed and re-employed, as above, according to whether or not there was work to be done. Though "regular" in the sense that she had completed six months' satisfactory service and was to enjoy certain privileges, Applicant continued to be in substance a casually employed person.

In December, 1962, Applicant, at her own request, was transferred from the Census Section to the Statistics Machines Section, exchanging places with another female employee, a Miss Constantinidou, who was moved to Applicant's place in the Census Section. The Statistics Machines Section is a permanent Section of the Statistics Department. Unfortunately for Applicant she was not transferred to this Section as a person who, being on casual employment, was being given thereby a more permanent status by becoming a regular employee of a permanent Section, but she was posted in such Section as being still a casual employee of the Census Section; this is also amply shown to be so by the fact that she continued to be paid out of the appropriation of the Census

Section. The other employee, Miss Constantinidou, who was moved from the Statistics Machines Section to the Census Section, in exchange for Applicant, was also a casual employee, on a daily-wage basis. It was in other words an exchange of casual labour between the Census Section and the Statistics Machines Section, without any change of status of the employees concerned.

In April, 1963, the work in the Census Section came to an end and practically all its staff was dismissed, including even monthly employees. There were only retained, for the winding up of the work of the Census Section, only two employees, who both had been employed before Applicant had first been employed. Subsequently one of the said two employees was dismissed also and the other, who was the Supervisor of the Census Section, was posted elsewhere in the Statistics Department. Together with the termination of the services of the employees of the Census Section, as above, Applicant's services were also terminated, though she was still posted at the time in the Statistics Machines Section.

The services of the aforesaid Miss Constantinidou had already been terminated earlier, in February, 1963, because she had become redundant in her capacity as an employee of the Statistics Machines Section, in which capacity she was still being paid, even though she was working in the Census Section. Had Applicant changed posts with Miss Constantinidou for all intents and purposes in December, 1962, when they were exchanged between Sections, Applicant herself would have been dismissed in February as redundant from the Statistics Machines Section, and not Miss Constantinidou, who would have been retained until April, 1963, when the Census Section ceased to need all its staff except two. But as Miss Constantinidou was all along considered to be a casual employee of the Statistics Machines Section, though posted in the Census Section, she was dismissed in February, 1963, when she became redundant in relation to her own employing Section, the Statistics Machines Section, and Applicant, though posted in the Statistics Machines Section, was dismissed in April, 1963, when she became redundant in relation to her own employing Section, the Census Section.

I have no doubt, in all the circumstances, that Applicant never became an employee of the Statistics Machines Section, as such, but she remained all along an employee of the Census

Section, posted in the Statistics Machines Section.

Two questions arise for determination in this Case:

Have Applicant's services been terminated by the appropriate organ?

Have they been terminated in a proper exercise of the relevant discretionary power?

The Applicant's services were terminated by her Department, by which she was first employed, and not by the Public Service Commission, which had nothing to do at any time with Applicant's employment.

Nevertheless I have examined whether it could be held at all that Applicant at the time of her dismissal had acquired such a status as to be a person whose services could only be terminated by the Public Service Commission.

The Commission's relevant competence under Article 125 relates to "public officers" only, as this term is defined in Article 122. According to the latter provision "public officer" means the holder, whether substantive or temporary or acting, of a public office. "Public office" means an office in the public service. "Public service" means any service under the Republic, other than in certain capacities, with which we need not be concerned here, and includes service by workmen "regularly employed in connexion with permanent works".

So, in order that a person may be deemed to be a public officer, within the ambit of Articles 122 and 125, he must be the holder of a public office in the public service.

Can a casual employee ever qualify to be considered as a public officer in the above terms? It is, of course, always a question to be answered in the light of the particular circumstances in which it may arise, but more often than not casual employees would not so qualify, as they are not, as a rule, employed as holders, in any capacity, of particular public offices, but are employed to meet occasional exigencies.

In the present Case, I have reached the conclusion that Applicant was never employed as a public officer, in the sense of Articles 122 and 125, because she was never employed as a holder of a particular public office, in any capacity. From the Budgets of 1961, 1962 and 1963 it appears that the

employees of the Census Section were employed under special temporary appropriations without any public offices having been previously established or provided for, as such, in the Budget (see Law 9/61 Head A36 at p 132; Law 1/62 Head A44 at p 118; and Law 1/63 Head A46 at p 122, where the particular appropriation was made only for a limited period up to six months).

Even if Applicant were to be deemed to have been employed on the same basis as Government workmen then again she could not be brought within the definition of "public service" of Article 122, (even if other factors were to be sufficient for the purpose), because she was not employed "in connection with permanent works", in view of the fact that the Census Section was not a permanent Section but definitely a temporary one

Moreover, was even Applicant "regularly employed" in the sense of the part of the definition of "public service", in Article 122, concerning workmen? In a case on this point, *Loizou and CYTA* (4 R S C C p. 48) it was stated in the judgment (at p 51)

"The Court is of the opinion that the issue whether a particular workman is regularly employed, as above, is an issue of fact to be determined in each case on the basis of all relevant circumstances 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"

In the light of all pertinent factors I am of the opinion that Applicant in this Case, though she was classified as "regular" for technical purposes relating to the terms to be enjoyed by her, was not "regularly employed", in the sense of Article 122, because neither the security of her tenure, nor the view taken of her status by the employing authority, nor the nature of her duties justify such a finding, the notion of "regularly employed" presupposes a more or less indefinite duration and is incompatible with definite temporariness, as was the case with the Census Section

Having come to the conclusion that Applicant was employed as a casual employee, without being the holder of a public office in the public service, and that even if she were

to be found to have been employed on the same basis as workmen are employed, that she was not regularly employed in connexion with permanent works, I must hold that she was not a person the termination of whose services came under the competence of the Public Service Commission under Article 125, and, therefore, her services were properly terminated by her own Department, as far as competence to do so is concerned.

In the aforesaid Case of *Loizou and CYTA* the view was taken that if a person is not in the "public service" in the sense of Article 122 then his employment is a matter of private and not of public law and, therefore, a recourse under Article 146 does not lie in respect thereto (4 R.S.C.C. p. 52).

I am of the opinion that this view was taken in the special circumstances of that case because there the question was decided by reference to a servant of an independent undertaking, such as CYTA, who was found not to come within the ambit of "public service" as above. It was, thus, quite properly held there that his employment by such undertaking was a matter of private law.

The present Case is, however, different; here we are concerned with a person employed directly by Government and her employment, even though not coming within the ambit of Articles 122 and 125, remains still a matter of public law, in as far, inter alia, as its termination, as made in this Case, is concerned.

I have, therefore, to examine whether the employment of Applicant was terminated in the proper exercise of the relevant discretionary power.

The burden of establishing abuse of powers or excess of powers lies always on an Applicant (see *Koukoullis and the Republic* 3 R.S.C.C. p. 134 at p. 136); I am of the opinion that in all the circumstances of this Case Applicant has failed to discharge such burden. For this reason only her recourse should be dismissed on this point.

But Counsel for Respondent acting very fairly and in an effort to leave no doubt in the mind of the Court about the propriety of the action taken, has placed all available material before the Court in order to disprove even the unsubstantiated suggestion that there has been excess or abuse of powers. He has conducted the Case as if the relative burden was on

Respondent, and I must say that he did so quite properly, especially as Applicant for part of these proceedings has chosen not to be represented by counsel.

I am satisfied that the Respondent in this Case has established that there has been no abuse or excess of powers involved in the manner in which Applicant's services were terminated.

Furthermore Respondent has established that Applicant has not been the victim of any discrimination or unfair treatment.

In this respect the main allegation of Applicant has been that contrary to Regulation 11(6)(ii) of the Regulations applying to Wages and Conditions of Service of Government Workmen (*exhibit* 3), contrary to the principles of proper administration as well as contrary to Articles 6 and 28 of the Constitution, she has been dismissed from service whereas other employees who were engaged for the first time after she had been given employment were retained; she has alleged that the principle that in case of redundancy the last to be employed should be the first to be dismissed was not applied.

I am of the opinion, in the light of all evidence adduced, that neither the aforesaid regulation—which in my opinion is, strictly speaking, not applicable, because it applies only to cases of temporary dismissal—nor the principles of proper administration nor Articles 6 or 28 have been contravened. There is no doubt that the principle of "last in, first out" is one of a number of material considerations to be borne in mind when dismissing employees for redundancy and it may be relevant to the question of the proper exercise of the discretionary power involved. In this Case there has, indeed, been compliance with such principle; it is clear that together with Applicant all the other staff of the Census Section were dismissed too, except two female employees who had definitely longer service than Applicant. Even assuming for a moment, though I did not find it to be so, that Applicant could be regarded as a casual employee of the Statistics Machines Section, having ceased to be employee of the Census Section when she was posted to such Section, it is clear from the evidence adduced before me, and particularly that of Mr. Nicos Panayiotou, that when Applicant's services were terminated there remained in the Statistics Machines Section only monthly-paid employees i.e. employees enjoying

much greater security of tenure than Applicant, with the exception of three casual employees who were all first employed in such Section before Applicant was moved to such Section.

In the circumstances I find that there is no substance in the allegation that Applicant was dismissed through an improper exercise of the relevant discretionary power.

Her recourse, therefore, fails on all points and has to be dismissed.

I would like, however, to take this opportunity of drawing attention to the plight of Applicant. It is really tragic that in our modern times, when the aim of every organised society functioning under the rule of law is to ensure, as far as possible, the enjoyment of the right of work to all its citizens, a person like Applicant should find herself in the position of pursuing this recourse, not really because she has been deprived of certain employment which in her opinion is more profitable than other employment which she can find, but because she has been deprived of the only employment she could find and she cannot find other suitable employment, though she wants and has to work; and the matter is made even more poignant when one takes into account the fact that Applicant, as shown by the evidence adduced, is a person whose health has been impaired through detention without trial during the recent Liberation Struggle in Cyprus. That a person in the position of Applicant should be forced to come to Court in an effort to secure the opportunity to work is a situation, which though not the result of any improper act of administration, certainly does not reflect credit on anyone concerned or society as a whole. I do trust, and expect, that when the appropriate authorities come to know of the position of Applicant, they will do their utmost to see that she gets suitable work the soonest possible.

In line with the above remarks I have decided that, though Applicant has been unsuccessful in her recourse, no order of costs should be made against her and also, in order to alleviate to a certain extent her difficulties, there will be an order of costs in her favour for all the out of pocket expenses she has incurred in this Case, in trying to vindicate what she must have thought to be an unjustifiable denial of her right to work.

*Application dismissed. Order as to costs as aforesaid.*