

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIA PAPAKYRIAKOU,

Applicant,

and

THE HEALTH SERVICES OF CYPRUS, THROUGH
THE MINISTRY OF HEALTH OF THE CYPRUS REPUBLIC,

Respondent.

GEORGHIA
PAPAKYRIAKOU
v.
THE HEALTH
SERVICES
OF CYPRUS,
THROUGH THE
MINISTRY OF
HEALTH OF
THE CYPRUS
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(Case No. 86/70).

Administrative acts or decisions—Which alone can be made the subject of a recourse under Article 146 of the Constitution—Paragraph 1 of Article 146—Acts within the domain of public law as distinct from acts within the domain of private law—The former alone are within the ambit of Article 146.1—See further immediately herebelow.

Employment for a long and indefinite period of time as a daily paid midwife, at the Nicosia General Hospital, a Government institution—Held to be an employment in the ordinary course of satisfying the needs of a public service and, therefore, comes within the domain of public law—Consequently the termination of such employment amounts to an “exercise of executive or administrative authority” in the sense of Article 146.1 of the Constitution—And the Court, therefore, has jurisdiction to entertain a recourse against said termination of employment—Reasoning of the decision in Paschalidou v. The Republic (1969) 3 C.L.R. 297, adopted.

Public Officers—As distinct from merely government employees—Such distinction does not necessarily mean that such employment or termination thereof is a matter of private law—See supra; see also infra under Government employees.

Recourse under Article 146 of the Constitution—Jurisdiction of the Supreme Court to entertain such recourse—Acts or decisions amounting to exercise of executive or administrative authority in the sense of Article 146.1—Acts or decisions within the domain of public law—Temporary employment, on daily wage basis as

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*midwife in the service of the Nicosia General Hospital—
Termination of such employment—Matters within the domain
of public law—See supra.*

*Jurisdiction of the Supreme Court on a recourse under Article 146
of the Constitution—See supra.*

*Government employees—Though not public officers within the
provisions of the Public Service Law (Law 33/67) or within the
definition in Article 122 of the Constitution—Still they may be
said, in certain cases, to be employees whose employment (as
well as the termination of such employment) is a matter within
the domain of public law—See further supra.*

This is a recourse under Article 146 of the Constitution against the termination of her employment as a daily paid midwife at the Nicosia General Hospital. Counsel for the Respondent raised the preliminary issue that this is a case within the domain of private law and that, therefore, this Court has no jurisdiction to entertain the recourse.

The salient facts are briefly as follows: The Applicant lady served from 1965 until the termination of her employment in 1970, as a midwife posted at the Nicosia General Hospital; though she was not holding a specific post of midwife, and was paid on a daily casual assistance basis, her duties were the same as those of any other midwife there.

Overruling the preliminary objection raised by counsel for the Respondent, the Court:—

Held, (1) (a). It may well be that the Applicant is not a person within the provisions of the Public Service Law, 1967 (Law 33/67) or within the definition of “public officer” in Article 122 of the Constitution. But then the result would be that the question of the termination of her employment would not be a matter for the Public Service Commission which has been set up under that Law 33/67 or for the Public Service Commission envisaged under Article 124 of the Constitution.

(b) Such a result, however, does not provide the answer to the issue of jurisdiction raised by counsel for the Respondent. This answer depends on whether the employment of the Applicant, was within the domain of public law; because in such a case then the termination of her employment would

still amount to the exercise of "executive or administrative authority" in the sense of Article 146.1 of the Constitution.

(2) The Applicant had been employed for a very long and indefinite period of time on a temporary basis, in the ordinary course of satisfying the needs of a public service, viz. the maternity service provided by the Nicosia General Hospital. The position is in law similar to the position of the Applicant lady in the case of *Paschalidou v. The Republic* (1969) 3 C.L.R. 297 where it has been held by the Supreme Court on appeal that the employment of a nursery school-teacher on contract, on a month to month basis, was within the realm of public law. On the other hand the decision of the Greek Council of State in case No. 528/1933 is distinguishable from the present one (see Kyriacopoulos on Greek Administrative Law, 4th ed. Vol. C, at p. 178).

(3) In the light of the foregoing, I hold that the employment of the Applicant was within the domain of public law and that, therefore, I have jurisdiction under Article 146.1 of the Constitution to decide on the validity of the termination of such employment.

Order accordingly.

Cases referred to:

Paschalidou v. The Republic (1969) 3 C.L.R. 297;

Decision of the Greek Council of State in case No. 528/1933.

Decision on Preliminary Issue.

Decision on a preliminary issue raised by the Respondent to the effect that the Court does not possess jurisdiction, under Article 146 of the Constitution, to entertain Applicant's recourse against the termination of her employment as a daily paid midwife at the Nicosia General Hospital.

E. Efstathiou, for the Applicant.

V. Aristodemou, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following decision* was delivered by:

* This recourse was subsequently withdrawn.

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TRIANTAFYLIDIS, J.: In this case counsel for the Respondent has raised the preliminary issue that this Court does not possess jurisdiction, under Article 146 of the Constitution, to entertain the recourse of the Applicant against the termination of her employment as a daily paid midwife at the Nicosia General Hospital.

Counsel for the Respondent has argued that the relationship between the Applicant and her employer, the Respondent, was such that it came *within the domain of private law, and not within that of public law*; and he has, also, submitted that neither the relevant provisions of the Public Service Law, 1967 (Law 33/67) nor the definition of “public officer” in Article 122 of the Constitution apply to the Applicant.

Assuming, without deciding to that effect, that the provisions of Law 33/67 and the said definition in Article 122 are not applicable in relation to the Applicant the result would be that the question of the termination of her employment would not be a matter for the Public Service Commission which has been set up under Law 33/67 or for the Public Service Commission envisaged under Article 124 of the Constitution.

Such a result, however, does not provide the answer to the issue of jurisdiction which was raised by counsel for the Respondent. This answer depends on whether the employment of the Applicant, in the light of the particular circumstances of such employment, was within the domain of public law; because in such a case then the termination of her employment would still amount to the exercise of “executive or administrative authority” in the sense of Article 146.1 of the Constitution.

The salient, in this respect, facts of this case are that the Applicant served, from 1965 until the termination of her employment in 1970, as a midwife posted at the Nicosia General Hospital; though she was not holding a specific post of midwife, and was paid on a daily casual assistance basis, her duties were the same as those of any other midwife there.

The proper approach to a situation of this nature has been laid down by this Court, on appeal, in *Paschalidou v. The Republic* (1969) 3 C.L.R. 297; It was held in that case that the employment of a nursery school teacher on contract, on a month to month basis, was within the realm of public law

because the appointment had been made "in the ordinary course of satisfying the needs of..... a public service". Likewise, the Applicant in the present case had been employed, for a very long and indefinite period of time, on a temporary basis, in the ordinary course of satisfying the needs of a public service, viz. the maternity service provided by the Nicosia General Hospital.

The decision of the Greek Council of State in case 528/1933, which is referred to in a passage—cited by counsel for the Respondent—of the treatise by Kyriacopoulos on Greek Administrative Law (4th ed., Vol. C, at p. 178) is, in my view, distinguishable both because of the different structure of the public service in Greece and on the basis of its particular circumstances (there a doctor had been employed, on contract, in a manner which was found by the Council of State not to be at all compatible with the creation of the status of a public functionary and it was held that his employment was of a private contractual nature).

In the light of the foregoing I hold that the employment of the Applicant was within the domain of public law and that, therefore, I have jurisdiction under Article 146.1 to decide on the validity of the termination of such employment which is in issue in these proceedings.

Order accordingly.

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