1973
June 9
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ELIAS CHRISTOFI
v.
REPUBLIC (MINISTER OF JUSTICE AND ANOTHER)

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELIAS CHRISTOFI,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF JUSTICE,
2. THE DIRECTOR OF THE DEPARTMENT OF PRISONS,

Respondents.

(Case No. 329/69).

Public Officers—Disciplinary proceedings—Conviction and punishment of dismissal—No opportunity given to officer, after conviction, to be heard in mitigation—Punishment vitiated.

Disciplinary proceedings—Disciplinary punishment—Vitiated through failure to give opportunity to applicant to be heard in mitigation after he was found guilty—See, also, under "Public Officers".

This recourse is directed against the decision of the respondents to terminate applicant's services as a Temporary Prison Warder.

Applicant was found guilty in disciplinary proceedings, before the Senior Superintendent of Prisons, of having behaved, while in the execution of his duty, "tyranically or improperly" towards a prisoner, contrary to regulation 11(1)(B)(a) of the Prisons (Prison Service) Regulations, and was dismissed.

At the hearing counsel for the applicant maintained that the disciplinary proceedings were irregular because (a) his client had not been given the chance of engaging an advocate to defend him and (b) the Superintendent acted in the dual capacity of judge and prosecutor.

The Court held that on the evidence before it was unable to find that the facts relied upon in support of either of those complaints have been established.

After the close of the case of the respondent, there being nothing before the Court to show that at the conclusion of the evidence in the disciplinary proceedings the applicant was asked if he wished to address the Superintendent in support of his defence, or that after he had been found guilty he was asked if there was anything he wished to say in mitigation the Court went on to hold an inquiry with a view to determining whether those questions or either of them had been put to the applicant; and as a result the Court was satisfied that the first question had been put but not the second.

Held, it is clear that the Superintendent's failure to ask the applicant, after finding him guilty, if he wished to address him in mitigation vitiated the punishment imposed on the applicant, and to that extent the application succeeds. (*Pantelidou* and *The Republic,* 4 R.S.C.C. 100, at p. 106 followed).

Sub judice decision annulled.

Cases referred to :

Pantelidou and *The Republic,* 4 R.S.C.C. 100 at p. 106.

Recourse.

Recourse against the decision of the respondents to terminate applicant's services as a temporary prison warder.

Chr. Hji Nicolaou, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :-

STAVRINIDES, J. : On January 8, 1969, the applicant was engaged as a Prison Warder on daily wages. On June 1 of the same year he became a Temporary Prison Warder employed on a monthly basis; and he continued in that employment until the following August 5, when the Senior Superintendent of Prisons (hereafter "the Superintendent"), having found him guilty in disciplinary proceedings of

having behaved, while in the execution of his duty, "tyrannically or improperly" towards a prisoner, contrary to reg. 11(1)(B)(a) of the Prisons (Prison Service) Regulations, dismissed him.

The applicant asks for a declaration

> "that the decision of the respondents for termination of the applicant's services as a Temporary Prison Warder on a monthly basis... is void and of no legal effect whatsoever";

and the application is stated to be based

> "on the following points of law:
>
> The decision in question was taken contrary to law, that is to say the basic principles of administrative law and due administration and/or was taken in excess and/or abuse of power within the meaning of art. 146 of the Constitution, in that, *inter alia*, the termination of the applicant's services was not justified and/or was the result of a misconception of fact."

The application goes on:

> "In conclusion the decision in question was the result of a wrong or defective exercise of the relevant discretionary powers vested in the Superintendent".

Evidence in the disciplinary proceedings was given by one G.I. Peristianis, the prisoner towards whom the applicant is alleged to have misbehaved; by another prisoner, named A. Charalambous; by Sgt. S. Constantinou; and lastly by the applicant himself.

The Superintendent kept a record of the disciplinary proceedings in English (*exhibit* 1). The case against the applicant is fully stated in Peristiani's evidence in chief, which, being brief, I may conveniently quote in full:

> "On arrival in prison on July 29, 1969, the accused received me in No. 3 block and started joking and teasing me by telling me that there was in prison somebody who was an archbishop but who has been shaved and asked me to talk to him. He

was laughing at me all the time. Another time he asked me to tell him about my advocates and when I told him that I engaged two but I have now to engage a third one (Mr. Triantafyllides) he said that my advocates 'tron ta rialia mou' and suggested to me to engage his own advocate, who was a 'paracraticos'. He mentioned the name of his advocate, but I cannot remember it now. He asked me to tell him how much I would pay my advocates, but I did not tell him. He did not tell me how much I would pay for his advocate.

The general behaviour to me of the accused was very tyrannical.

I complained about this to the British High Commission's representative who visited me on August 2, 1969, as well as to Senior Warder Savvas."

The applicant cross-examined the witness, but the latter's evidence in chief was not in any way shaken. The only other witness whose evidence referred to the incident related by Peristianis was Haralambous, whose evidence may be described as "neutral". Thus the only contradiction of Peristianis's evidence was to be found in the applicant's own evidence. Altogether it was perfectly open to the Superintendent to find as he did, and there can be no question of my annulling the finding of guilt for any of the reasons advanced in the application as being "points of law", or indeed for any other reason.

At the hearing before me counsel for the applicant maintained that the disciplinary proceedings were irregular because (a) his client had not been given the chance of engaging an advocate to defend him before the Superintendent and (b) the Superintendent acted in the dual capacity of judge and prosecutor. On the evidence before me I am unable to find that the facts relied upon in support of either of those complaints have been established. But after the close of the case of the respondent—there being nothing before me until then to show that at the conclusion of the evidence in the disciplinary proceedings the applicant was asked if he wished to address the Superintendent in support of his defence, or that after the applicant had been found guilty he was asked if there was anything he wished to say in mitigation—I went

on to hold an inquiry with a view to determining whether those questions, or either of them, had been put to the applicant; and as a result I am satisfied that the first question had been put to the applicant but not the second.

What is the effect of this finding? In *Pantelidou* and *Republic*, 4 R.S.C.C. 100, the former Supreme Constitutional Court said at p. 106 :

> "In the opinion of the court strict adherence to the principle (that before an officer is punished for a disciplinary offence he must be given the opportunity of being heard in mitigation) is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be, *prima facie*, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary..."

It is clear then that the Superintendent's failure to ask the applicant, after finding him guilty, if he wished to address him (the Superintendent) in mitigation vitiated the punishment imposed on the applicant, and to that extent the application succeeds. Of course the Superintendent may, if so minded, recall the applicant before him and, after giving him the opportunity of pleading in mitigation, deal with him as may be just in all the circumstances of the case, including the hardship suffered by him in the meantime.

Dismissal set aside; the respondent to pay the applicant £20 costs.

Sub judice decision annulled.
Order for costs as above.