1986 February 12

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PAPAIOANNIS ZAVROS,

Applicant,

v.

1. THE DISTRICT OFFICER OF PAPHOS AS CHAIRMAN OF THE IMPROVEMENT BOARD OF KOUKLIA,

2. THE IMPROVEMENT BOARD OF KOUKLIA,

Respondents.

(Case No. 15/85).

Administrative act—Termination of employee's service by a Public Authority—If the employee was regularly employed by such authority the termination of his services is within the domain of Public Law.

Improvement Boards—Bodies exercising administrative functions.

Jurisdiction—Constitution, Article 146—The jurisdiction of this Court under Article 146 over cases falling within its ambit is exclusive and it cannot be ousted by the fact that another action is pending before another Court.

Natural Justice—Right to be heard—In disciplinary proceedings strict compliance with the rule is required—Although in this case no such proceedings were taken, applicant's dismissal from service with the respondent was in the form of a disciplinary sanction—Said rule ought to have been adhered to.

The applicant was appointed as an Inspector of the Improvement Board of Kouklia (I.B.K.) on the 23.11.65 on a month to month basis. In December 1977 the applicant was consecrated as a priest.

On 22.11.84 the respondents decided to dismiss the applicant on account of accusations concerning his behaviour towards a female inhabitant of the village. By letter dated 24.11.84 the applicant was informed that the respondents, after having taken into consideration the seriousness of the accusations in combination with the decision of the Bishop of Paphos to suspend him for three months and the feeling of hostility in the village against him, which made it impossible for him to be accepted in the village as Inspector any longer, decided to terminate his services as from 24.11.84.

As a result the applicant filed the present recourse. Counsel for the respondents raised the following objection, namely that the recourse cannot be entertained as an action by the applicant concerning his dismissal is pending before the Industrial Disputes Tribunal and that the sub judice act is not an administrative act.

Held, annulling the sub judice decision (1) The respondents are a body exercising administrative functions. The termination of services by a public authority of an employee regularly employed whether established or unestablished or employed on contract is a matter of public law. As the applicant was regularly employed by the respondents his dismissal is a decision within the domain of public law and thus amenable to a recourse under Article 146 of the Constitution.

(2) This Court has exclusive jurisdiction over cases falling within the ambit of Article 146. Its jurisdiction cannot be ousted or limited in any way by the fact that another action is pending before another Court.

(3) The applicant was dismissed without being afforded the opportunity to be heard. The right to be heard is one of the fundamental rules of Natural Justice. Strict adherence to the rule is required in the case of disciplinary proceedings. Although no such proceedings were taken in this case, the applicant's dismissal was in the form of a disciplinary sanction and, therefore, adherence to the rule was required.

Sub judice decision annulled.
£60.- costs in favour of applicant.

Cases referred to:

Loizou v. *C.I.T.A.*, 4 R.S.C.C. 48;

Pantelidou v. *The Republic* 4 R.S.C.C. 100;

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

PapaKyriacou v. *The Health Services of Cyprus* (1970) 3 C.L.R. 351;

Androkli v. *The Republic* (1985) 3 C.L.R. 11;

Kyriakides v. *The Republic*, 1 R.S.C.C. 66;

Ramadan v. *The Electricity Authority of Cyprus*, 1 R.S.C.C. 46;

Solomou v. *The Republic*, 1 R.S.C.C. 96;

Orphanou v. *The Republic* (1985) 3 C.L.R. 1022;

Loizou v. *The Republic* (1984) 3 C.L.R. 278;

Kazamias v. *The Republic* (1982) 3 C.L.R. 239;

Adamides v. *The Republic* (1982) 3 C.L.R. 343.

Recourse.

Recourse against the decision of the respondents whereby applicant's services as Inspector of the Improvement Board of Kouklia were terminated.

G. Triantafyllides, for the applicant.

K. Chrysostomides, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant prays by this recourse, for a declaration that the decision of the respondents dated the 22nd November, 1984, by which his services as Inspector of the Improvement Board of Kouklia were terminated as from 24.11.1984 be declared null and void and of no legal effect whatsoever.

The applicant was appointed as an Inspector of the Improvement Board of Kouklia (I.B.K.) on the 23rd Novem-

ber. 1965, on a month to month basis in order to exercise amongst others the duties of accountant and secretary of the Board. As from December, 1977, the applicant was also consecrated as a priest of the village, with the consent of the respondents.

The I.B.K. at its meeting of 22.11.1984 decided to dismiss the applicant as from 24.11.1984 on account of certain accusations made against him concerning his behaviour towards a female inhabitant of the village (blue 163 in exhibit 1). This decision was communicated to the applicant by letter of the District Officer dated the 24th November, 1984, (blue 164 in the file produced as exhibit 1) which reads as follows:

"I wish to inform you that the Improvement Board of Kouklia at a special meeting which was held on 22.11.84 in my office considered the matter which was created on account of the accusation which you are facing that you have behaved improperly towards a female inhabitant of your village and after having taken into consideration the seriousness of the accusation you are facing in combination with the decision of Bishop of Paphos to suspend you for three months and the feeling of hostility prevailing in the village against you which makes it impossible for you to be accepted in the community as an Inspector any longer, decided to terminate your services as from today 24.11.1984. The Board in compliance with a relevant condition of your appointment will pay to you a month's salary in liew of notice and will also pay the equivalent of any leave to which you may be entitled.

As a result of the above decision of the Board you are invited to attend today at the office of the Assistant District Inspector for audit purposes and to surrender any amount of money or other property of the Board which you have in your possession."

The applicant filed the present recourse challenging the above decision of the respondents.

Counsel for the respondents raised by his opposition the

preliminary points that (a) the recourse cannot be entertained in view of the fact that an action by the applicant is pending before the Industrial Disputes Tribunal and (b) the sub judice decision is not an administrative act and is not, therefore, amenable to a recourse.

Counsel for the respondents maintained on the preliminary objections, that the applicant, by his act to file an application for damages before the Industrial Disputes Tribunal, impliedly accepted the act of dismissal and further, he cannot have a dual action in another Court.

Counsel for applicant argued that the applicant had a right and ought to institute both actions because if he did not do so, and it was found by the Industrial Disputes Tribunal that the matter was one of public law, the time limit of 75 days for filing a recourse would have elapsed by then and the applicant would have had no remedy. Counsel also submitted that the action before the Industrial Disputes Tribunal will only proceed if this Court finds that it has no jurisdiction to entertain the case.

With regard to the second preliminary point counsel for applicant argued that the respondents are an organ of local administration carrying out functions in the field of public law and its decisions are, therefore, amenable to review by this Court.

Although I should have treated the second point as abandoned by counsel for the respondents, since he advanced no argument in reply to the arguments of counsel for applicant, I decided to deal with it briefly.

There is no doubt that the respondent is a body exercising administrative functions. What remains to be seen is whether the sub judice decision was taken in the course of the exercise of such functions.

It has been repeatedly held by this Court that the termination of services by a public authority of an employee regularly employed whether established or unestablished or employed on contract is a matter of public law. *Loizou* v. *C.I.T.A.*, 4 R.S.C.C. 48 (a case of a regularly employed workman); *Pantelidou* v. *The Republic*, 4 R.S.C.C. 100

(a case of an unestablished officer employed on a month to month basis); *Paschalidou* v. *The Republic* (1969) 3 C.L.R. 297 (a case of contractual appointment of a nursery school-teacher): *Papakyriacou* v. *The Health Services of Cyprus* (1970) 3 C.L.R. 351 (a case of a midwife appointed on daily basis)).

The Full Bench of this Court in the case of *Androkli* v. *The Republic* (1985) 3 C.L.R. 11, found that the dismissal of a regularly employed waterguard of the Government Water Works of Polemidhia-Yermassoyia was a decision falling within the domain of public law.

On the basis of the above I find that the dismissal of the applicant, who was regularly employed by a public organ, in the exercise of its administrative function is a decision falling within the domain of public law and thus amenable to a recourse.

Having decided that the sub judice decision is one that can be entertained under Article 146 of the Constitution, I will come next to consider the other preliminary point, that is whether this recourse can proceed in view of the fact that an action for damages for wrongful dismissal has already been filed by the applicant in the Industrial Disputes Tribunal.

I wish to stress right from the beginning that this Court has exclusive jurisdiction over cases falling within the ambit of Article 146 and its jurisdiction cannot be ousted or limited in any way by the mere fact that another action is pending before another Court. The judgments of this Court are declaratory of the rights of a party who if successful may pursue any remedy for damages under paragraph 6 of Article 146, before any other Court.

In *Kyriakides* v. *The Republic*, 1 R.S.C.C. 66 the Supreme Constitutional Court, following the dicta in *Ramadan* v. *The Electricity Authority of Cyprus*, 1 R.S.C.C. 46 held the following at pp. 74-75:

> "Therefore, in the opinion of this Court, in respect of all wrongful acts or omissions referred to in Article

172 and which acts or omissions come within the scope of Article 146 an action for damages lies in a civil Court only under paragraph 6 of such Article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and in such cases an action does not lie direct in a civil Court by virtue of the provisions of Article 172.

Objection (c): In its Judgment in Application 1/61 this Court has defined the limits between its administrative jurisdiction created by paragraph 1 of Article 146 and the jurisdiction of the High Court and inferior courts. In accordance with that judgment, in case of doubt on account of apparent or alleged conflict of jurisdictions, the decisive test is to look first at Article 146 in order to determine whether the particular matter is within the exclusive jurisdiction of this Court under such Article."

The above decision was also followed in the case of *Solomou* v. *The Republic*, 1 R.S.C.C. 96 in which a submission made on behalf of the applicant that a parallel legal remedy existed under Article 172 of the Constitution and, therefore, no recourse could be made under paragraph 1 of Article 146, was rejected by the Court.

This preliminary objection therefore fails as well.

Turning now to the merits of the case, it is clear from the material before me, including the contents of the file (exhibit 1) that the applicant was dismissed without being afforded the opportunity to be heard.

The right to be heard is one of the fundamental rules of natural justice and its violation leads to the annulment of the administrative decision concerned. (See for example the cases of *Orphanou* v. *The Republic* (1985) 3 C.L.R. 1022; *Loizou* v. *The Republic* (1984) 3 C.L.R. 278; *Kazamias* v. *The Republic* (1982) 3 C.L.R. 239 and *Adamides* v. *The Republic* (1982) 3 C.L.R. 343).

Strict adherence to the above rule is required in the case of disciplinary proceedings. Although the applicant was

not subjected to any disciplinary proceedings, his dismissal was in the form of a disciplinary sanction without affording him the opportunity of being heard. I will, therefore, annul the sub judice decision on this point.

In the result this recourse succeeds and the sub judice decision is hereby annuled with £60.- costs in favour of applicant.

Sub judice decision annulled.
Respondents to pay £60.- costs.