101 Phil. 490

[G.R. No. L-10759. May 20, 1957]

LEONARDO MONTES, PETITIONER AND APPELLANT, VS. THE CIVIL SERVICE BOARD OF APPEALS AND THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, RESPONDENTS AND APPELLEES.

LABRADOR, J.:

Petitioner-appellant was on and before January, 1953, a watchman of the Floating Equipment Section, Ports and Harbors Division, Bureau of Public Works. In Administrative Case No. E-8182 instituted against him for negligence in the performance of duty (Dredge No. 6 under him had sunk because of water in the bilge, which he did not pump out while under his care), the Commissioner of Civil Service exonerated him, on the basis of findings made by a committee. But the Civil Service Board of Appeals modified the decision, finding petitioner guilty of contributory negligence in not pumping the water from the bilge, and ordered that he be considered resigned effective his last day of duty with pay, without prejudice to reinstatement at the discretion of the appointing officer.

Petitioner filed an action in the Court of First Instance of Manila to review the decision, but the said court dis missed the action on a motion to dismiss, on the ground that petitioner had not exhausted all his administrative remedies before he instituted the action. The case Is now before us on appeal against the order of dismissal.

The law which was applied by the lower court is Section 2 of Commonwealth Act No. 598, which provides:

> "The Civil Service Board of Appeals shall have the power and authority to hear and decide all administrative cases brought before it on appeal, and its decisions in such cases shall be final, unless revised or modified by the President of the Philippines."

It is urged on the appeal that there is no duty imposed on a party against whom a

decision has been rendered by the Civil Service Board of Appeals to appeal to the President, and that the tendency of courts has been not to subject the decision of the President to judicial review. It is further argued that if decisions of the Auditor General may be appealed to the courts, those of the Civil Service Board of Appeals need not be acted upon by the President also, before recourse may be had to the courts. It is also argued that if a case is appealed to the President, his action should be final and not reviewable by the courts because such a course of action would be derogatory to the high office of the President.

The objection to a judicial review of a Presidential act arises from a failure to recognize the most important principle in our system of government, i.e., the separation of powers into three co-equal departments, the executive, the legislative and the judicial, each supreme within its own assigned powers and duties. When a presidential act is challenged before the courts of justice, it is not to be implied therefrom that the Executive is being made subject and subordinate to the courts. The legality of his acts are under judicial review, not because the Executive is inferior to the courts, but because the law is above the Chief Executive himself, and the courts seek only to interpret, apply or implement it (the law). A judicial review of the President's decision on a case of an employee decided by the Civil Service Board of Appeals should be viewed in this light and the bringing of the case to the courts should be governed by the same principles as govern the judicial review of all administrative acts of all administrative officers.

The doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, as in this case, relief must be sought by exhausting this remedy before the courts will act. (42 Am. Jur. 580-581.) The doctrine is a device based on considerations of comity and convenience. If a remedy is still available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to the courts. (*Ibid*.)

Section 2 of Commonwealth Act No. 598 above-quoted is a clear expression of the policy or principle of exhaustion of administrative remedies. If the President, under whom the Civil Service directly falls in our administrative system as head of the executive department, may be able to grant the remedy that petitioner pursues, reasons of comity and orderly procedure demand that resort be made to him before recourse can be had to the courts. We have applied this same rule in De la Paz *vs.* Alcaraz, et al., 99 Phil., 130, 52 Off. Gaz.,

3037, Miguel, et al. *vs*. Reyes, et al., 93 Phil., 542, and especially in Ang Tuan Kai & Co. *vs*. The Import Control Commission, 91 Phil., 143, and we are loathe to deviate from the rule we have consistently followed, especially in view of the express provision of the law (section 2, Commonwealth Act No. 598).

The judgment appealed from is affirmed, with costs against appellant.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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