

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
COURT OF INDUSTRIAL RELATIONS AND PEDRO OLASE,
RESPONDENTS. PEDRO OLASE, PETITIONER, VS. GSIS AND THE
COURT OF INDUSTRIAL RE...**

G.R. No. L-17186 and L-17363. October 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

The above-entitled cases are the separate appeals of the Government Service Insurance System (hereinafter called the GSIS) and Pedro Olase, respectively, from a decision of the Court of Industrial Relations in its Case No. 896-V (2), the dispositive part of which is as follows:

IN VIEW OF ALL THE FOREGOING, this Court finds no substantial evidence to support respondent's accusation that Olase committed the swindle and that the investigation and administrative proceedings conducted by respondent's officials fall short of the due process as provided for under Executive Order No. 370. The Court, therefore, orders the respondent Government Service Insurance System, its general manager and agents, jointly and severally to reinstate Pedro Olase to his former position. With respect to the petitioner-movant's claim for back wages, it is believed that the same cannot be granted in view of the fact that the dismissal was not motivated by malice but done in good faith. Although there might have been a bad judgment on the part of respondent in dismissing petitioner-movant, yet this judgment was based on its honest belief that petitioner-movant committed the act. The court also orders respondent, its general manager and agents, to post a copy of this order in two conspicuous places in the premises of respondent within a period of thirty (30) days and thereafter shall inform this Court from time to time compliance with the same."

Said Court of Industrial Relations Case No. 896-V (2), originated as follows: On June 17, 1953, the GSIS Employees Association declared a strike for failure of the GSIS to grant its demands. Nos. 2. (adoption of a scale of salaries with a minimum monthly of P200, to take effect on July 1, 1953); 3. (continuance of family allowance and the lifting; of suspension of its benefits to wives, as a consequence of marriage, and to children born on or after July 1, 1952); 4. (free hospitalization and medicine in case of sickness of the employee or the immediate members of his family); 5. (50 per cent of salary payable during hospitalization after the vacation and sick leave have expired) ; 7. (temporary emergency employees be made permanent by providing them allocations in the annual budget beginning July 1, 1953); 8. (creation of position of General Manager at a salary of P19,200 per annum); 9. (fixing of salary of a General Actuarial at P15,000); etc.

Upon failure of the System to grant the demands, a general strike took place, and the case was certified to the Court of Industrial Relations. The above facts are taken from our G.R. No. L-7175, entitled "Government Service Insurance System vs. Modesto Castillo, etc.," (98 Phil., 876; 52 Off. Gaz., [9] 4269) in which we denied a petition of the GSIS to prohibit respondent Judge Castillo from hearing CIR Case No. 896-V.

On June 11, 1957, the GSIS Employees Association filed a petition, to which they gave the name of "incidental motion", in Court of Industrial Relations Case No. 896-V, on behalf of its member Pedro Olase, alleging that said

employee was forced to resign from the GSIS and praying for his immediate reinstatement with pay from June, 1, 1957, when he was ordered to desist from occupying his position. The GSIS questioned the jurisdiction of the Court of Industrial Relations to review the dismissal as an incident of the original Case No. 896—V, contending that the case of the dismissal of Olase is not an incident and can not be an incident of the pending action in the Court of Industrial Relations.

In reply to the above contention, it was claimed on behalf of Pedro Olase that there was an order in said Case No. 896-V prohibiting dismissal of employees during the pendency of the action. The GSIS argued, in reply, that the dismissal or separation of Olase could not be an incident of the pending action between the parties. After overruling the motion to dismiss filed by the GSIS, the court below issued the order already quoted above.

We find merit in the contention of the GSIS that the dismissal of Olase did not arise out of any of the demands made in the strike. The order of the Court of Industrial Relations not to dismiss any employee during the pendency of the case then under consideration must necessarily refer to dismissals occasioned, directly or indirectly, by the demands under consideration in the case. The malfeasance of which Olase was charged has absolutely no connection with the demands of the GSIS Employees Association, hence the GSIS was not prohibited from dismissing Olase, for the said malfeasance, which has no relation to any of the demands then pending consideration before the Court.

Even, though, however, Olase could not file his petition for reinstatement as an incidental motion in the pending case, his petition for reinstatement is still cognizable by the Court of Industrial Relations as he is seeking reinstatement. *Prisco vs. CIR* (108 Phil., 134). The appeal of the GSIS is, therefore without merit.

With respect to the dismissal of Pedro Olase, the Court of Industrial Relations found the following:

"1. That there was no strong and substantial evidence that Olase participated and perpetrated the alleged fraud against Julian Caguite. The supposed swindle took place in 1953."

* * * * *

"7. That the evidence further shows that all the investigations conducted by respondent, through its investigating officers, were all taken ex-parte, without due notice to Pedro Olase to appear and the testimonies taken therein were taken in Olase's absence.

"From the beginning, Olase had requested respondent to give him the opportunity to confront, his accusers but these requests remained unheeded. Even the recommendation of Ybardolaza, the only investigator who was able to take the separate individual testimonies of Olase and Caguite doubted the guilt of Olase, so that he had to recommend that a confrontation be made, but this was not followed. Another striking factor was that the report of Ybardolaza was prepared only after the retraction and subsequent reiteration of the charge by Caguite. This, in effect, created doubt as to the guilt of Olase in the very mind of one assigned to investigate the case. The Board of Trustees of respondent System likewise had its doubts when it passed a resolution requesting the General Manager to allow the Special Board of Inquiry to conduct a reinvestigation to allow Olase to be heard but this was never acted upon."

"9. Respondent in finding Olase guilty of the charge premised in the repeated allegations of Julian Caguite did not constitute substantial compliance of due process, since such allegations were taken ex-parte and uncorroborated on any single material point and, therefore, doubtful, self-serving and improbable." (Nos. 1, 7 and 9, pp. 20, 24 and 26, Annex "5".)

Olase appeals from the denial to him of back wages, disputing the finding of the respondent court that the dismissal was made in good faith. During the first stage of the administrative proceedings, Olase was given opportunity to answer, but the investigation that was conducted after the retraction of the offended party, one by

the surname of Caguite, appears to have been made in the absence of Olase. The members of the Board proceeded to Tayabas to investigate Caguite, who had made a retraction, and it was then that Caguite explained that he was paid P300 in order to make the retraction.

Olase accused the GSIS of acting in bad faith. The court below held that the suspension by the GSIS was made in good faith. We find this conclusion to be correct. As a matter of fact, the proceedings were only defective in one respect, that is, the fact that Olase was not present at the time the Board of Inquiry of the GSIS examined Caguite with respect to latter's retraction, at which time Caguite reiterated that he made the retraction upon payment to him of P300.00. At this questioning of Caguite, Olase was not present, and neither does it appear that he was given the opportunity to disprove the explanation given by Caguite of his retraction.

We find that the denial of back wages is due to a conviction arrived at by the investigator, after a full consideration of all the facts disclosed at the investigation, that Olase was in part responsible for a customer being mulcted of a big portion of the value of his check. Only a technicality, i.e., lack of opportunity on the part of Olase to refute the charge that Caguite made the retraction because he was paid P300, was the ground why the respondent court ordered reinstatement, this without back wages. On our part, we find that the order denying back wages does not constitute abuse of discretion on the part of the respondent court.

Wherefore, in G. R. No. L-17186 the petition of the GSIS is dismissed and the order appealed from is affirmed, and in G. R. No. L-17363 the petition is also dismissed and the order appealed from also affirmed. Without costs.

Bengzon, C. J, Padilla, Bautista Angelo, Concepcion, Reyes, J, B. L., Paredes, Dizon, and De Leon, JJ., concur.

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