

**ALEXIS C. GANDIONCO, PETITIONER, VS. THE HONORABLE
SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, THE
HONORABLE FISHERIES COMMISSIONER, EX-COMMISSIONER
ANDRES M. MANE AND SIXTO...**

G.R. No. L-44486. October 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This case was certified to Us by the then Court of Appeals, the question raised being the interpretation of Presidential Decree No. 6 and Letters of Instruction Nos. 14 and 14-A, with reference to facts which are not at all disputed.

Petitioner Alexis Gandionco sought reinstatement as Fishery Agent of the Philippine Fisheries Commission after he had been separated from the service for alleged incompetence. The petition was dismissed by the then Court of First Instance of Cebu in Civil Case No. R-13424 and, appealing, assigned as errors the following:

1. The Court a quo erred in holding that the dismissal of petitioner from the service was not without lawful basis despite abundant proof that the petitioner was not given due process or subjected to prior hearing or investigation.
2. The court a quo erred in holding that petitioner failed to substantiate his case despite overwhelming evidence adduced by petitioner in support of his petition.
3. The court a quo erred in holding that mandamus will not lie to control the executive acts requiring the exercise of judgment although it has been established that said judgment was exercised capriciously and arbitrarily in violation of the Constitution and the provision of Presidential Decree No. 6.

There is no dispute as to the facts which are stated in appellee's brief:

"Appellant was a former fishery agent of the Bureau of Fisheries, assigned to Region 6, Cebu City, having been appointed as such in February 1967 (Answer, p. 96, Record). On September 6, 1971, he took a vacation leave of fifteen (15) days, which expired on September 27, 1971 (Exhibit '3'). On September 27, 1971, he took a sick leave for thirty (30) days, which expired on November 5, 1971 (Ibid). On November 6, 1971, he consulted and was examined by Dr. Leon Horlanda, a general practitioner. He complained of insomnia, headaches, dizziness, lack of appetite and irritability (Exh. 'L'). On November 10, 1971, appellant again applied for a sick leave for twenty-nine (29) days effective on said date and expiring on December 21, 1971 (Exh. '1'). Said application for sick leave was accompanied by a medical certificate (Exh. '1-A') issued by Dr. L. Horlanda, certifying that appellant was advised to rest indefinitely beginning November 6, 1971. Upon the expiration of his leave on December 21, 1971, appellant applied for another sick leave for 366 days effective December 22, 1971 up to December 21, 1972 (Exh. '2'). His application for leave was also accompanied by another medical certificate of Dr. L. Horlanda dated December 21, 1971 likewise attesting to the fact that appellant was under treatment and observation for 'anxiety reaction', and was advised to rest indefinitely (Exh. '2-A').

"Sometime in June 1972, Dr. L. Horlanda certified that the appellant has fully recovered (Exh. 'L'). Despite his recovery from his alleged sickness however, petitioner did not report for work. Neither did he inform his office that he had fully recovered.

"On September 21, 1972, Martial Law was declared by virtue of Proclamation No. 1081. To effect the desired changes and reforms in the social, economic and political structure of the nation, Presidential Decree No. 1 was issued, 'reorganizing the Executive Branch of the National Government.' To complement and implement said decree, Presidential Decree No. 6 was issued 'amending certain rules on discipline of government officials and employees.' The latter decree was deemed essential for the effective implementation of the government's reorganization plan. It was imperative for the public service to be rid of undesirable officials and employees. Corollary to Presidential Decree No. 6, the President of the Philippines likewise issued Letters of Instruction Nos. 14 and 14-A to 'all Heads of Departments, other agencies and offices of the government.'

"Acting on the directive of the Secretary of Agriculture and Natural Resources dated November 2, 1972 (Annex '1', Answer, p. 59, Record) 'to effect the dismissal of officials and employees of your respective bureaus and offices included in the attached list', respondent Ex-Commissioner Andres M. Mane addressed a letter (Exh. 'A') to the appellant informing him that 'pursuant to the directive of the Secretary of Agriculture and Natural Resources, in the implementation of Presidential Decree No. 6 and/or Letters of Instruction Nos. 14 and 14-A of the President of the Philippines, you are hereby notified that effective upon receipt hereof but not beyond November 30, 1972, you are separated from the service for incompetence.' Appellant received said letter on November 28, 1972, and on the same date, he wrote back respondent Commissioner (Exh. 'B') asking for reconsideration of his separation (pp. 7 & 40, tsn., Dec. 6, 1973). Appellant did not protest, much less interpose an appeal to the Civil Service Commission (p. 54, tsn, Dec. 6, 1973). He, however, claims to have sent a letter dated January 5, 1973 (Exh. 'C' to the President of the Philippines but there is no showing that the President received said letter (pp. 8, 51-53, tsn., Dec. 6, 1973)." (pp. 45-47, Rollo)

The lower court's decision is that petitioner's dismissal from the service was lawful because it was done, pursuant to the directive of the Secretary of Agriculture and Natural Resources in the implementation of Presidential Decree No. 6 and Letters of Instruction Nos. 14 and 14-A; that the validity, legality and constitutionality of said decree and letters of instruction cannot be assailed because they had become part of the law of the land (Section 3, paragraph 2, Article 17 of the New Constitution).

The issue according to petitioner is "whether or not by summarily dismissing petitioner from the service, the respondents had acted in a manner consistent with and pursuant to the provision of Presidential Decree No. 6, in relation to the Constitution and other existing executive orders x x x; that petitioner's leave of absence was due to his sickness as certified to by his attending physician. Simply stated, petitioner's leave of absence, although exceeding one year, was authorized. Consequently, respondents should have notified petitioner of his obligation to terminate his leave of absence, which in the first place was sanctioned by them. Instead, petitioner was suddenly dismissed even before the expiration of his authorized indefinite leave of absence. This is arbitrary and despotic." (p. 9, Appellant's Brief).

Hence, the present action for the nullification of petitioner's separation order, dated November 20, 1972, and his reinstatement to his former position as fishery agent.

The act of respondent Secretary of Agriculture and Natural Resources in dismissing petitioner Gandionco from the service was in accordance with Presidential Decree No. 6 and Letters of Instruction Nos. 14 and 14-A, which were issued under Proclamation No. 1081. Section 1, Presidential Decree No. 6, specifically states the grounds for disciplinary action against government officers and employees, among others, to wit: neglect of duty and/or inefficiency and incompetence in the performance of official duties; and Sec. 2 thereof gives the department heads the authority to remove, separate, suspend or otherwise discipline officers and employees under their jurisdiction

except presidential appointees. Their decisions shall be final, except in case of removal, in which case the respondent may appeal the decision to the Civil Service Commission (Sec. 2, PD No. 6).

In the case at bar, petitioner did not appeal to the Civil Service Commission. As a consequence, nullification of the separation order and reinstatement would fail. Courts will not interfere where the party neglects or refuses to avail himself of the remedy extended by the executive department of the government.

Indeed, the repeated and continuous leaves of absence of petitioner from September 1971 to November 1972 made him notoriously undesirable. While his health did not allow him to work initially, his physician had certified that he had recovered and yet he refused to report for work without satisfactory reason. That was prejudicial to the office which could not engage another employee to perform his functions.

His physical absence created a situation where the position is in theory occupied and yet the occupant is nowhere to perform the functions of the office. "In fact, because of his repeated and continuous leaves, appellant did not have any efficiency rating for 1971 (Exh. '3')." (p. 12, Appellee's Brief)

What respondent Secretary did is sanctioned by Section 3 of Presidential Decree No. 6, which provides:

"SEC. 3. Summary proceedings. - No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

x x x x x x x x

"c. When the respondent is notoriously undesirable."

And, Letter of Instruction No. 14-A, issued on September 29, 1972, states:

"In order to facilitate the reorganization of the Government and to speed up the current intensified effort to weed out undesirable government officials and employees, you are hereby directed to require all officials and employees in your department, office or agency, who are facing administrative charges, or who are notoriously undesirable on the ground of dishonesty, incompetence or other kinds of misconduct defined in the Civil Service law or rules, or have been repeatedly charged, to tender their resignations within one week after the publication of this Order in your department, office or agency. (Italics supplied)

x x x x x x x x

"2. In the case of an officer or employee who is notoriously undesirable, or has been repeatedly charged administratively but has for any reason escaped disciplinary action, the head of department, office or agency shall take notice of such notoriety and, without the necessity of filing charges, shall summarily dismiss or otherwise terminate the services of the respondent official or employee."

PREMISES CONSIDERED, the Court DISMISSES the appeal and AFFIRMS the decision dated April 3, 1974 of the then Court of First Instance of Cebu City in Civil Case No. R-13424. Without costs.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee (Chairman), J., no part.

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