

DOMINGO MALOGA, PETITIONER, VS. VICENTE G. GELLA, ET AL., RESPONDENTS.*G.R. No. L-20281. November 29, 1965*

Ponente: DIZON, J.

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Petition for certiorari filed by Domingo Maloga to set aside and annul the administrative complaint for grave misconduct in office filed against him by Vicente Gella, in the latter's capacity as Treasurer of the Philippines, and to enjoin Dalmacio C. Gener, as hearing officer, and Meliton Reyes, as prosecutor, from hearing the same.

In a letter dated February 16, 1962, respondent Gella required petitioner, National Cashier of the Bureau of Treasury, to explain within seventy-two (72) hours why he should not be charged administratively for violation of office regulations, neglect of duty and grave abuse of discretion. Not satisfied with Maloga's explanation, respondent Gella, in an unverified letter-complaint dated March 7, 1962, charged him with grave misconduct in office, requiring him at the same time to answer the same within seventy-two (72) hours and relieving him of his position as National Cashier of the Bureau of Treasury.

Answering said letter-complaint, petitioner alleged among other things, that the same is null and void for it was not sworn to by the complainant, as required by the following provisions of Section 32 of Republic Act No. 2260:

"* * * no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant, * * *."

Thereafter, respondent Gella, relying on the provisions of Paragraph 1 of Executive Order No. 370, series of 1941, exempting a department head from verifying his complaint against his subordinate, designated respondents Gener and Reyes, as hearing officer and prosecutor, respectively, to conduct an administrative investigation of the charges against petitioner. In view thereof, the latter filed the present petition.

The writ prayed for must be denied, firstly, because petitioner did not exhaust the administrative remedies available before instituting the present action; and secondly, because when the administrative charge against a government employee is proffered by the head or chief of the bureau or office concerned, the same need not be verified.

From the ruling of the respondent Treasurer of the Philippines, petitioner could have appealed to the corresponding department head before filing the present action for certiorari. This he failed to do.

On the other hand, pursuant to Executive Order No. 370, series of 1941, administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio*, in which case, whatever written charge is filed by him need not be sworn to, for the simple reason that said head or chief of the bureau or office is deemed to be acting in his official capacity and under his oath of office. It is only when the charge or complaint is filed by another person that the aforesaid executive order requires it to be under oath, for the obvious purpose of protecting government employees against malicious

complaints filed only for the purpose of harassing them; and even in such case, when the complaint is not or cannot be sworn to by the complainant, the head or chief of the bureau or office may, in his discretion, take action thereon if the public interest or the special circumstances of the case warrant. If this is so, it would be illogical to require the head or chief of the bureau or office to swear to the complaint when the same is filed by him. In this connection, We have held in *Pastoriza vs. Division Superintendent of Schools*, 106 Phil. 216, that the procedure under Executive Order No. 370 substantially conforms to the requirements of Section 32 of Republic Act No. 2260 to the effect that no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant. And in *Bautista vs. Negado*, 108 Phil. 283, We further held that "a complaint is not a pre-requisite to an administrative investigation". In the light of these rulings and the provisions of the executive order already referred to, it seems clear that the respondent Treasurer of the Philippines had authority to initiate the administrative proceedings against petitioner; that a formal complaint was not a pre-requisite for the validity thereof, and that, consequently, said respondent's letter of March 7, 1962 charging petitioner with grave misconduct in office did not have to be under oath.

Wherefore, the writ of certiorari prayed for is hereby denied. With costs.

Bengzon, C. J., Bautista Angelo, Concepción, Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ. concur.

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