

JONATHAN S. TACWIGAN, PETITIONER, VS. MARILYN B. PECUA, RESPONDENT.

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MACALINO, J:

This is a Petition for Review under Rule 43 of the Rules of Court which seeks to reverse and set aside Decision No. 130722[1] dated 10 July 2013 (“assailed Decision”) and Resolution No. 1400066[2] dated 14 January 2014 (“assailed Resolution”) of the Civil Service Commission in the case entitled “TACWIGAN, Jonathan S., Re: Conduct Prejudicial to the Best Interest of the Service.”

Factual and Procedural Antecedents of the Case[3]

It appears that Respondent Marilyn B. Pecua (“Respondent”) filed an Affidavit-Complaint[4] against Petitioner Jonathan S. Tacwigan (“Petitioner”), a Fire Officer of the Bureau of Fire Protection-Tabuk City Fire Station, Kalinga. In her Affidavit-Complaint, Respondent alleged, among others, that on 20 January 2010, herein Petitioner went to FM Kids General Merchandise to inspect the same for the purpose of issuance of a Fire Safety Inspection Certificate. Said establishment is owned by Respondent. After the said inspection, Petitioner told Respondent and her husband that there is a need for them to have a fire extinguisher. Petitioner offered his services to procure the required fire extinguisher. Accordingly, Respondent and her husband ordered from Petitioner two (2) fire extinguishers amounting to PhP2,500.00 each and gave the latter PhP3,000.00 as initial payment. The following day, the Fire Safety Inspection Certificate[5] of the said establishment was issued even without the fire extinguishers. On 24 January 2010, the balance was paid but Petitioner failed to deliver the two (2) fire extinguishers. Respondent thus reminded Petitioner to deliver the same to her as it was the start of Fire Prevention Month. As Petitioner ignored Respondent's demands, she was constrained to file an Affidavit-Complaint against the former.

Acting on Respondent's Affidavit-Complaint, the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) issued a Show Cause Order[6] dated 19 August 2010 directing Petitioner to submit his Comment. In compliance therewith, Petitioner filed his Comment[7] dated 22 September 2010 denying the allegations and praying that the Affidavit-Complaint be dismissed for lack of merit.

The CSC-CAR, after finding the existence of a prima facie case against herein Petitioner for Willful Failure to Pay Just Debts, Conduct Prejudicial to the Best Interest of the Service and Violation of Section 52, A(9), Rule IV of the Uniform Rules of the Administrative Cases in the Civil Service, formally charged him and was directed to file an Answer.[8] The CSC-CAR found the following in support of the Formal Charge:

- “1. That on January 20, 2010, Jonathan S. Tacwigan, the herein respondent, went to FM Kids General Merchandise, the establishment of complainant Marilyn B. Pecua, to inspect the said establishment for the purpose of the issuance of a Fire Safety Inspection Certificate;
2. That after the said inspection, respondent told the complainant and her husband that there is a need for them to have a fire extinguisher and he offered his services to procure the required fire extinguisher;
3. Accordingly, complainant and her husband ordered from the herein respondent, two (2) fire extinguishers,

each costing Two Thousand Five Hundred Pesos (P2,500.00), and the spouses gave the respondent Three Thousand Pesos (P3,000.00) as initial payment;

4. That on January 21, 2010, respondent went back and borrowed from the spouses (complainant and her husband) Ten Thousand Pesos (P10,000.00) which amount is to be used allegedly by his wife for eye check-up;

5. On the same day of January 21, 2010, the Fire Safety Inspection Certificate of the business establishment of complainant was issued even without the fire extinguishers;

6. That on February 24, 2010, the balance of Two Thousand Pesos (P2,000.00) for the fire extinguishers was paid, but to date, the two fire extinguishers were never delivered;

7. The respondent promised to pay the loaned amount of P10,000.00 in March 2010. However, said amount remained unpaid up to date;

8. Moreover, the respondent got from the FM Kids General Merchandise a domes (sic) tent worth Four Thousand Pesos (P4,000.00) which up to date remained unpaid;

9. That on May 24, 2010, two (2) demand letters were served to the respondent for the payment of the borrowed amount of Ten Thousand Pesos (P10,000.00), Four Thousand Pesos (P4,000.00) in payment of the domes (sic) tent and a demand for the delivery of the two (2) fire extinguishers or the reimbursement of the amount of Five Thousand Pesos (P5,000.00) which the complainant and her husband paid for the two fire extinguishers. However, despite said demands, herein respondent failed and refused to settle his obligations.”

In his Answer with Affirmative Defenses,[9] Petitioner denied that he offered to purchase the fire extinguishers but claimed that Respondent requested help to procure the same. He also denied that he received PhP3,000.00 from Respondent as alleged initial payment of the fire extinguishers as well as the remaining balance of PhP2,000.00. Petitioner further denied that he borrowed PhP10,000.00 from Respondent. He however admitted that he conducted an inspection of FM Kids General Merchandise to determine compliance with R.A. No. 9514[10] and its Implementing Rules and Regulations for the issuance of a Fire Safety Inspection Certificate. On 21 January 2010, the Fire Safety Inspection Certificate was issued to the said establishment. Petitioner also contended that Respondent violated the rule on non-forum shopping by stating in the Certification that she had not commenced a similar complaint when it truth she filed a criminal complaint for estafa against Petitioner and his wife before the Provincial Prosecution Office in Tabuk, Kalinga.

After investigation, the CSC-CAR issued Decision No. CAR-12-068 DC[11] dated 16 May 2012 finding Petitioner guilty of Conduct Prejudicial to the Best Interest of the Service and imposed upon him the penalty of suspension of nine (9) months without pay.

Petitioner moved for reconsideration[12] but the same was denied in Resolution No. 12-018 DC[13] dated July 18, 2012.

Aggrieved, Petitioner filed a Notice of Appeal and Memorandum of Appeal[14] dated 19 September 2012 before CSC.

On 10 July 2013, CSC issued the assailed Decision dismissing the said appeal, to wit:

“WHEREFORE, the appeal of Jonathan S. Tacwigan is hereby DISMISSED. Accordingly, the Decision dated May 16, 2012 of the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) finding him guilty of Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of nine (9) months suspension without pay is AFFIRMED.

On 14 January 2014, CSC rendered the assailed Resolution denying Petitioner's Motion for Reconsideration,[15] the fallo of which reads:

“WHEREFORE, the motion for reconsideration of Jonathan S. Tacwigan is hereby DENIED. Accordingly, Civil Service Commission (CSC) Decision No. 13-0722 dated July 10, 2013 finding him guilty of Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of nine (9) months suspension without pay, STANDS.[16]

Hence, Petitioner filed the instant Petition[17] on 26 February 2014.

On 21 May 2014, Respondent filed her Comment (to the Petition for Review).[18]

Thereafter, Petitioner filed his Memorandum[19] on 21 October 2014 while Respondent filed her Memorandum[20] on 17 November 2014.

In view of the submission of the parties' respective Memoranda, the instant case was deemed submitted for decision on 10 February 2015.[21]

The Issues

WHETHER OR NOT RESPONDENT VIOLATED THE RULE ON NON-FORUM SHOPPING WHEN SHE FILED AN ESTAFA CASE AND AT THE SAME TIME AN ADMINISTRATIVE COMPLAINT BASED ON THE SAME ACT OR OMISSION OF PETITIONER.

WHETHER OR NOT THE CSC DECISION AND RESOLUTION FINDING PETITIONER GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE WERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

This Court's Ruling

Petitioner asserts that Respondent violated the rule on non-forum shopping when she filed a criminal case for estafa and at the same time an administrative complaint against him based on the same act or omission.

Forum shopping consists of the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[22]

Nonetheless, the mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The test is whether the several actions filed involve the same transactions and the same essential facts and circumstances.[23] The actions must also raise identical causes of action, subject matter, and issues.[24] Elsewise stated, forum shopping exists where the elements of *litis pendentia* are present, or where a final judgment in one case will amount to *res judicata* in the other.[25]

Contrary to Petitioner's assertion, there is no forum shopping in the instant case. Jurisprudence is settled that causes of action are identical when there is an identity in the facts essential to the maintenance of the two actions, or where the same evidence will sustain both actions.[26] More significantly, there is identity of causes of action when the judgment sought will be inconsistent with the prior judgment.[27] Here, although the cases filed by Respondent arose from the same act or omission of Petitioner, they are, however, based on different causes of action. Further, a judgment in the estafa case will not amount to *res judicata* in the administrative case against Petitioner. It bears stressing that when the complaint for estafa was dismissed by the Provincial Prosecutor, the administrative complaint against Petitioner pending before the CSC-CAR was not dismissed precisely because the two cases were based on different causes of action.

Petitioner next contends that the finding of the CSC that Petitioner is guilty of conduct prejudicial to the best interest of the service is not supported by substantial evidence.

Administrative proceedings are governed by the "substantial evidence rule," meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the respondent has committed the acts stated in the complaint. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[28]

In the instant case, it was proven by substantial evidence that Petitioner committed an act prejudicial to the best interest of the service. It appears that Petitioner, a Fire Officer of the Bureau of Fire Protection-Tabuk City Fire Station, offered to procure the two (2) fire extinguishers in behalf of Respondent, the owner of FM Kids General Merchandise which was being inspected by him for the issuance of a Fire Safety Inspection Certificate. Being the person who conducted the inspection, it is highly unethical for Petitioner to offer to procure the fire extinguishers in behalf of the person who owns the establishment subject of his inspection. It also appears that despite receipt of the payment for the two (2) fire extinguishers, Petitioner failed to deliver the same to Respondent.[29]

As correctly observed by the CSC:

“Notably, Tacwigan did not deny that he agreed to help in procuring the fire extinguishers to FM Kids General Merchandise owned by the private complainant. In fact, he only rationalized that instead of him offering to purchase the fire extinguisher for the establishment, Pecua requested him to purchase the fire extinguishers. It is however immaterial whether Tacwigan volunteered to purchase or Pecua requested him to purchase the fire extinguishers, and/or whether he accepted the payment. It is sufficient that he gave a favor to a client of his office in the course of performing his official duties by allowing himself to procure the fire extinguishers for FM Kids General Merchandise which has a pending transaction with his office and being subject of inspection for the issuance of a Fire Inspection Safety Certificate. By accepting to help in the procurement of the fire extinguishers for FM Kids General Merchandise, he placed the said establishment at an advantage over the other establishments which are also subjects of inspection being undertaken by his office. His action is reprehensible and cannot be tolerated. He should be held liable for Conduct Prejudicial to the Best Interest of the Service by compromising the integrity of his office in the conduct of inspection for the issuance of Fire Inspection Safety Certificate.”

Under Section 46 (B)(8) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) conduct prejudicial to the best interest of the service is considered a grave offense and punishable by suspension ranging from six (6) months and one (1) day to one (1) year, for the first offense, and dismissal for the second offense. Section 49 thereof further provides that the medium of the penalty shall be imposed when no mitigating and aggravating circumstances are present. Thus, there being no mitigating and aggravating circumstances present, the penalty of suspension of nine (9) months without pay being the medium period, was correctly imposed by the CSC.

WHEREFORE, premises considered, the instant Petition is hereby DENIED. Accordingly, the Decision No. 130722 dated 10 July 2013 and Resolution No. 1400066 dated 14 January 2014 of the Civil Service Commission are AFFIRMED.

SO ORDERED.

Castillo, M., Chairperson and Galapate-Laguilles, Z. T., JJ., concur.

[1] Rollo, pp. 228-233.

[2] Id. at pp. 249-253.

[3] As culled from the records.

[4] Rollo, pp. 34-35.

[5] Id. at p. 37.

[6] Id at p. 42.

[7] Id. at pp. 43-48.

[8] Id. at pp. 51-52.

[9] [Id]. at pp. 53-58.

[10] Fire Code of the Philippines of 2008.

[11] Rollo, pp. 133-139.

[12] Id. at pp. 140-152.

[13] Id. at pp. 154-157.

[14] Id. at pp. 158-178.

[15] Id. at pp. 234-247.

[16] Id. at p. 253.

[17] Id. at pp. 6-32.

[18] Id. at pp. 268-295.

[19] Id. at pp. 327-352.

[20] Id. at pp. 353-380.

[21] Id. at p. 281.

[22] Lokin, Jr. v. COMELEC, G.R. Nos. 179431-32 & 180443, June 22, 2010.

[23] Lokin, Jr. v. COMELEC, supra citing Paredes, Jr. v. Sandiganbayan, Second Division, G.R. No. 108251, January 31, 1996, 252 SCRA 641.

[24] Lokin, Jr. v. COMELEC, supra note 22 citing International Container Terminal Services, Inc. v. Court of Appeals, G.R. No. 116910, October 18, 1995, 249 SCRA 389.

[25] Lokin, Jr. v. COMELEC, supra note 22 citing Buan v. Lopez, Jr., G.R. No. L-75349, October 13, 1986, 145 SCRA 34; see also Heirs of Sotto v. Palicte, G.R. No. 159691, February 17, 2014 and Sara Lee Philippines, Inc. v. Macatlang, G.R. No. 180147, June 4, 2014.

[26] PCGG v. Sandiganbayan, G.R. No. 124772, August 14, 2007 citing Escareal v. Philippine Airlines, Inc., G.R. No. 151922, April 7, 2007 citing Stilanopolus v. City of Legazpi, G.R. No. 113913, October 12, 1999.

[27] PCGG v. Sandiganbayan, supra citing Lanuza v. Court of Appeals, G.R. No. 131394, March 28, 2005 citing Cruz v. Court of Appeals, 388 Phil. 550, 556 (2000).

[28] Gupilan-Aguilar v. Office of the Ombudsman, G.R. No. 197307, February 26, 2014 citing Office of the Ombudsman v. Bernardo, G.R. No. 181598, March 6, 2013.

[29] Records reveal that during the 25 April 2011 hearing, Petitioner admitted that the signature appearing at the bottom of the demand letter was his. Petitioner further admitted that despite receipt of the same, he failed to deliver the fire extinguishers nor refunded the amount he already received (Decision dated 16 May 2012 of the CSC-CAR, Rollo, p. 137).

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