

NELSON D. LAVIÑA, PETITIONER, VS. DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENT.

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Ambassador Nelson D. Laviña appeals the Order issued on July 29, 2002 by the Office of the President(OP) in OP Case No. 01-J-123 (Administrative Case No. 003-97), which affirmed Administrative Order No.136 dated September 4, 2000 of then Executive Secretary Ronaldo Zamora finding him liable for simple misconduct and imposing the penalty of suspension without pay for 1 month and 1 day, thereby sustaining the recommendation of the Department of Foreign Affairs (DFA) Board of Foreign Service Administration(BFSA) under Memorandum dated May 22, 2000.

In his petition for review, he prays for the following reliefs:

WHEREFORE, Petitioner respectfully prays that this Honorable Court of Appeals order:

- That the Formal Charge against Petitioner Ambassador Nelson D. Laviña on the remaining Charge No. 1 on alleged deductions be DISMISSED; that the decision of the DFA dated 22 May 2000 in Administrative Case No. 003-97, sustained by Administrative Order No. 136 of 04 September 2000, and affirmed by OP Order dated 29 July 2002 (O.P. Case No. 01-J-123) be reversed;
- That Petitioner be restored to his former position before his recall as Ambassador Extraordinary and Plenipotentiary (AEP) to the Republic of Kenya; however, since this is no longer feasible or advisable, he be assigned to another post, (as political ambassador, as he is now retired) taking into account his status as a senior ambassador of the service;
- Petitioner be awarded all remunerations, salaries and allowances that should have accrued to him abroad during the period of his illegal recall from August 1997 up to November 2000 which was the date of his regular recall to Home Office after termination of his official tour of duty, minus whatever amount he had received in Manila during that period of illegal recall;
- That as part of other reasonable reliefs within the premises, Ms. Virginia Vicente and Ms. Helen Tadifa, Administrative Officer and Finance Officer, respectively, at the Philippine Embassy in Nairobi at the time of their recall, should be reassigned to other posts abroad; however, since Ms. Tadifa has abandoned the service, she may be considered resigned therefrom.[1]

The relevant antecedent facts follow.

On January 14, 1997, DFA, through BFSA, requested then President Fidel V. Ramos for authority to investigate the petitioner, then the Ambassador Extraordinary and Plenipotentiary to Kenya, upon the charge made by 3 Kenyan staff members that he had appropriated parts of the salaries for his personal use.[2] Specifically, the complaint stemmed from the encashment of 2 checks in the names of Peter Musoneye and Juma Kalama, local hires at the ambassadorial residence, the proceeds being misappropriated by the petitioner to his own personal use.

On January 20, 1997, the DFA Secretary was authorized by the Office of the President to investigate the allegations of misconduct committed by the petitioner.

Thus, BFSA constituted a Fact-Finding Team composed of Undersecretary Rosario G. Manalo, Office for Legal Affairs (OLA), Assistant Secretary Franklin M. Ebdalin and Ma. Theresa B. Dizon, FSO IV, to conduct the investigation in Nairobi, Kenya from April 20 to April 30, 1997 pursuant to the authority granted by the Office of the President.[3]

In a Memorandum dated June 24, 1997, the DFA Secretary transmitted to the Office of the President the findings of the Fact-Finding Team, wherein the Team recommended, with the concurrence of the DFA Secretary, that the petitioner be administratively charged with conduct unbecoming of an Ambassador, as follows:[4]

- Illegally deducting a portion from the salaries of three Kenyan local hires of the Philippine Embassy, Nairobi, and using the deducted amount for his personal use;
- For purchasing and keeping in his possession raw elephant tusks which is prohibited under Kenyan law;
- For allowing the involvement of members of the Filipino community in the internal concerns of the Embassy;
- For endorsing to an International Organization communications signed by an Embassy staff member containing defamatory statements against some members of the Filipino community as well as transmitting to that organization internal communications of the Department of Foreign Affairs;
- For attesting to affidavits of Ms. Helen Tadifa, Finance Officer, containing defamatory statements against members of the Filipino community;
- For improperly undertaking representational activities such as non-holding of an Embassy Celebration of the Philippines National Day for members of the Diplomatic Corps in 1996 despite the release of US \$1,000 for this purpose, and instead allowing the said fund to be used as reimbursement for silverware dishes purchased by his spouse, Mrs. Estelita Laviña;
- For compromising the security of the Embassy premises and communications by allowing the access of non-Embassy personnel to secured areas of the Embassy as well as to internal communications;
- For charging to the Embassy funds expenses for personal telephone calls and fax communications, reasoning that his position as Ambassador entitles him to such a privilege; and
- For mismanagement of the Embassy's operation particularly in fiscal-related matters.[5]

On July 17, 1997, pursuant to Board Resolution No. 97-21, BFSA created a Special Investigation Committee (SIC) to hear the charges against the petitioner. The SIC was constituted by former DFA Undersecretary Leonides T. Caday as Chairman and by Assistant Secretaries Jose Fernandez, Victor Garcia III, Marcellana Desales and Luz Palacios as members. The hearings commenced on October 10, 1997 with the petitioner opting for a formal hearing on his case. The petitioner submitted his formal memorandum after the hearing.

On April 15, 1999, BFSA issued Resolution No. 99-07 affirming the following SIC findings and recommendations against the petitioner, to wit:[6]

- a) that the Board endorse the Special Investigating Committee's findings and recommendations on the suspension of Amb. Lavina for six (6) months without pay and in view of Amb. Laviña's forty years of service to the Department, to recommend the acceptance of his offer to retire under R.A. 660 upon the service of said penalty.

b) that the four (4) months suspension without pay of Mr. Nestor Padalhin be increased to six (6) months despite his proffered apologies; and

c) that there should be a strong reprimand to Mr. Nestor Padalhin not to trifle with sovereign prerogatives in connection with his unilateral waiver of the Embassy's diplomatic immunity.

On June 11, 1999, the petitioner submitted to BFSA his omnibus petition for review and to admit newly discovered evidence. A hearing was held on September 3, 1999 wherein the petitioner extensively participated.

On November 8, 1999, BFSA modified its Resolution No. 99-07 by recommending to the Office of the President the imposition on the petitioner of suspension without pay for 1 month and 1 day, after taking into consideration the petitioner's 40 years of service with DFA and very satisfactory performance.[7]

The DFA Secretary transmitted a Memorandum dated May 22, 2000 to the Office of the President recommending that the petitioner be charged administratively on the basis of the modified finding of BFSA that he had committed 1 count of misconduct for the offense of deducting from and/or appropriating for his own personal use the salaries and compensation of 4 Kenyan hires of the Philippine Embassy.[8]

On September 4, 2000, the Office of the President, through then Executive Secretary Ronaldo B. Zamora, issued Administrative Order No. 136, the dispositive portion of which reads:

In view of the foregoing, this Office, after a careful study of the case concurs with the recommendation of the DFA Secretary and hereby orders that Ambassador Nelson D. Laviña, Chief of Mission I, be meted the penalty of one (1) month and one day suspension without pay, and that Consul General Nestor N. Padalhin, Chief of Mission II be meted the penalty of suspension of three (3) months without pay, with severe reprimand.[9]

On October 18, 2000, the petitioner filed with the Office of the President a motion for reconsideration, pertinently stating:

28. Respondent proved decisively in his Omnibus Petition that Charge No. 1 lacks merits. The Complainant or Prosecution failed to prove the case even under "substantive evidence" rule in administrative proceedings. Hence, the constitutional presumption of innocence of respondent remains. The DFA (SIC/BFSA) deliberately disregarded the facts and the evidence submitted by Respondent, all on record and the law sustaining those facts, the DFA committed grave abuse of discretion or judgment amounting to lack of jurisdiction. The case against Respondent should have been DISMISSED.

On July 29, 2002, however, the Office of the President, through Deputy Executive Secretary Arthur P. Autea, issued an Order denying the motion for reconsideration, decreeing thus:

WHEREFORE, the instant motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[10]

Hence, this appeal by petition for review, wherein the petitioner submits the following issues:

- a) Whether or not there was grave abuse of discretion amounting to lack of jurisdiction on the part of the SIC/BFSA;
- b) Whether the recall of Ambassador Laviña in August 1997 was illegal;
- c) Whether or not the proceedings before the BFSA were void ab initio for lack of jurisdiction.[11]

The petition for review is denied due course.

The appeal is moot and academic, rendered so by the intervening mandatory retirement of the petitioner from the service on March 15, 2002, upon his reaching 65 years of age.[12] The records show that the Office of the President, through then Deputy Executive Secretary Autea, issued the Order denying the petitioner's motion for reconsideration on July 29, 2002, after the petitioner's mandatory retirement. Consequently, the supervening retirement rendered this recourse moot and academic.

Moot and academic cases cease to present any justiciable controversies by virtue of supervening events.[13] The courts of law will not determine moot questions,[14] considering that it is unnecessary for the courts to indulge in academic declarations.[15] Neither shall courts of law express their opinions in which no practical reliefs can be attained,[16] but they should rather decline assumption of jurisdiction over moot cases.[17]

Nonetheless, we agree with the respondent's insistence that the petition is unfounded.

Our review of the submissions herein has convincingly shown that the findings of the Fact-Finding Team headed by Undersecretary Manalo were based on substantial evidence, the standard applicable to administrative or quasi-judicial bodies. Properly defined, substantial evidence is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [18]

That the administrative liability of the petitioner has been firmly established is borne out by the records. In particular, the BFSA Memorandum dated May 22, 2000 categorically disclosed the relevant evidentiary bases for holding him to have unlawfully withheld the salaries of his Kenyan helpers, as follows:

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The SIC took into account the complainant DFA's presentation of two (2) checks made out in the names of Peter Musonye and Juma Kalama, two of the local hires, which found their way into the bank account of Mrs. Laviña. Furthermore, the SIC considered the other evidence which supports the charge of illegal deductions against respondent, namely, the written interrogatories and cross-interrogatories of three (3) of the Kenyan local hires, Juma Kalama, Peter Musonye, and Duncan Chege which clarified how the deductions were effected from their respective salaries. The SIC likewise took into account the affidavits and more importantly, the testimonies before it of Ms. Edna Palao and Ms. Zenaida Cabando who both testified that orders of Amb. and Mrs. Laviña in executing affidavits in the Laviñas' favor and in the case of Palao, to effect the illegal deductions. The SIC, as the duly-designated hearing body for the case, had the opportunity to listen, to observe and to subject to probing questions first-hand witnesses Palao and Cabando. [SIC Report at 7] [19] xxx

The petitioner has not given us any good reason to reverse or modify the factual findings made against him. Thus, we sustain such adverse findings. We reiterate that the factual findings made by an administrative agency, if supported by substantial evidence, are entitled to great respect and even finality, unless the aggrieved party, in order to compel a contrary conclusion, is able to show that the agency has arbitrarily disregarded or misapprehended the facts and circumstances.[20]

WHEREFORE, OP Administrative Order No. 136 dated September 4, 2000 and the Order issued on July 29, 2002 in OP Case No. 01-J-123 (Administrative Case No. 003-97) are AFFIRMED.

SO ORDERED.

Villarama, Jr., (Chairman) and Librea-Leagogo, JJ., concur.

[1] Rollo, p. 55.

[2] Annex C, Petition.

- [3] Administrative Order No. 136, Annex B, Petition.
- [4] Annex B, Petition.
- [5] Annex B, Petition; at rollo, pp. 71-72.
- [6] Annex C, Petition; rollo, p. 73.
- [7] Annex C, Petition; rollo, p. 82.
- [8] Annex C, Petition; rollo, p. 82.
- [9] Annex B, Petition; rollo, p. 67.
- [10] Annex A, Petition; rollo, pp. 60-61.
- [11] Rollo, p. 19.
- [12] Petition, p. 2; at rollo, p. 3.
- [13] Province of Batangas v. Romulo, 429 SCRA 736 (May 27, 2004).
- [14] Cole v. CA, 348 SCRA 692 (2000).
- [15] Pepsi-Cola Bottling Company v. Secretary of Labor, 312 SCRA 104 (1999).
- [16] Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr., G. R. No. 132796, March 10, 2004; 425 SCRA 129; Vda. de Dabao v. Court of Appeals, G. R. No. 116526, March 23, 2004, 426 SCRA 91; Philippine Airlines v. Pascua, G. R. No. 143258, August 15, 2003; 409 SCRA 195; Paloma v. Court of Appeals, G. R. No. 145431, November 11, 2003; 415 SCRA 590; City Sheriff v. Fortunado, 288 SCRA 190 (1998).
- [17] Gancho-on v. Secretary of Labor, 271 SCRA 204 (1997).
- [18] Sec. 5, Rule 133, Rules of Court.
- [19] Annex C, Petition; at rollo, p. 76.
- [20] Castillo v. NLRC, 308 SCRA 326 (1999).

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