

EDGAR A. CATARONGAN, PETITIONER, VS. CIVIL SERVICE COMMISSION AND RAMONA ALEGRO GELI, RESPONDENTS.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is a petition for review under Rule 43, 1997 Rules of Civil Procedure, as amended, assailing the Decision dated October 29, 2013,[1] numbered as 131061, of public respondent Civil Service Commission (CSC) which reversed the Resolution dated June 11, 2013[2] of the CSC Regional Office (CSCRO) No. VIII and held that the reassignment of private respondent to LTO Catbalogan District Office was not valid, and (ii) Resolution dated February 25, 2014,[3] numbered as 1400330, of public respondent CSC which denied petitioner's motion for reconsideration of the Decision dated October 29, 2013.

THE ANTECEDENTS

Private respondent Ramona Alegro Geli started working as janitress at the Land Transportation Office (LTO) in 1979. She rose from the ranks and became Transportation Regulation Officer II of LTO, Calbayog District Office, Calbayog City.[4] On December 3, 2010, private respondent was designated as Officer-in-Charge (OIC) of "Calbayog District Office, LTO Region 8, Tacloban City," per Office Order No. VPT-2010-245 issued by LTO Assistant Secretary Virginia P. Torres.[5]

On October 18, 2012, petitioner Edgar A. Catarongan was designated as OIC-Regional Director of LTO Regional Office No. VIII, per Memorandum issued by Department of Transportation and Communication (DOTC) Secretary Joseph Emilio A. Abaya.[6]

On January 9, 2013, Undersecretary Eduardo S.L. Oban, Jr. designated Paz B. Tarrayo, Cashier II, as OIC of LTO Calbayog District Office, per Special Order No. 2013-15.[7] On January 10, 2013, petitioner relieved private respondent as OIC of LTO Calbayog District Office and designated her as Assistant Chief, LTO Catbalogan District Office, Catbalogan, Samar, effective January 11, 2013.[8]

In a letter dated January 16, 2013,[9] private respondent requested that her transfer to LTO Catbalogan District Office be reconsidered as the same was allegedly (i) covered by the ban on transfer of Civil Service employees within the election period; (ii) effected without private respondent's consent; (iii) not supported with a valid and sufficient cause; and, (iv) whimsical, arbitrary and laced with traces of ill-motive, grudge and personal rancor against private respondent. Petitioner denied private respondent's request for reconsideration, per Memorandum dated January 29, 2013.[10]

Thus, private respondent filed with the CSCRO No. VIII an "Appeal -Cum- Appeal Memorandum"[11] alleging, among others, that (i) private respondent's relief as OIC and removal from LTO Calbayog District Office was done with grave abuse of discretion and founded on petitioner's personal hostility towards her; (ii) private respondent's transfer to LTO Catbalogan District Office was contrary to the ban on transfer of Civil Service employees during the election period and constituted a constructive dismissal because the position of "Assistant Chief" did not exist in the organizational flowchart of any LTO District Office in Region VIII; and, (iii) private

respondent's reassignment would cause her great financial dislocation and health breakdown as Catbalogan was very far from Calbayog.

In his comment,[12] petitioner maintained that (i) the designation of private respondent as OIC of LTO Calbayog District Office merely ended or expired by operation of law due to the designation of another employee as OIC thereat, and (ii) the reassignment order was valid because the same was issued in compliance with DOTC Special Order No. 2013-15 dated January 9, 2013.

In a Resolution dated June 11, 2013,[13] the CSCRO No. VIII dismissed private respondent's appeal and held that her reassignment was valid. Thus:

"WHEREFORE, the instant appeal of Ramona A. Geli is hereby dismissed for lack of merit. Accordingly, the order of reassignment through Office Order No. EAC-2013-003 dated 10 January 2013 of Director Edgar A. Catarongan STANDS.

Government Center, Palo, Leyte."

Private respondent filed an "Appeal -Cum- Appeal Memorandum" before public respondent CSC which rendered a Decision dated October 29, 2013[14] reversing the Resolution dated June 11, 2013 of the CSCRO No. VIII. Thus:

"WHEREFORE, the appeal (treated as petition for review) of Ramona A. Geli, Transportation Regulation Officer II, Land Transportation Office (LTO), Calbayog District Office, Calbayog City, is hereby GRANTED. Accordingly, the Resolution No. 13-00234 dated June 11, 2013 of the Civil Service Commission Regional Office (CSCRO) No. VIII, Palo, Leyte, is REVERSED AND SET ASIDE. The Commission finds Office Order No. EAC-2013-003 dated January 10, 2013 of Edgar A. Catarongan, Regional Director, LTO – Regional Office No. VIII, Tacloban City, reassigning Geli to the LTO Catbalogan District Office, Catbalogan, Samar as Assistant Chief, NOT IN ORDER. Geli shall be reverted to her original position as Transportation Regulation Officer II at the LTO, Calbayog District Office, Calbayog City.

The CSCFO – Catbalogan, Samar is directed to monitor the implementation of this Decision and to submit a report of compliance to the Commission within five (5) days from receipt hereof.

Quezon City."

Petitioner filed a motion for reconsideration, but the same was denied by public respondent CSC in a Resolution dated February 25, 2014.[15]

Thereupon, petitioner filed the present petition for review which is premised on the following arguments:

"Respondent Geli was merely designated as OIC of LTO Calbayog District Office. Her designation ended and/or expired by operation of law."[16]

"Respondent GELI's reassignment to LTO Catbalogan District Office is not tantamount to a constructive dismissal. The reassignment was made in the exigency of the service."[17]

"Petitioner CATARONGAN was denied due process of law."[18]

"The appointment of respondent GELI is station specific but her reassignment is not bound by the one (1) year limitation as it was not done outside her geographical location."[19]

THE ISSUE

Whether public respondent CSC erred in reversing the Resolution dated June 11, 2013 of the CSCRO No. VIII and in holding that private respondent's reassignment to LTO Catbalogan District Office as Assistant Chief was invalid.

THE COURT'S RULING

The CSCRO No. VIII held in its Resolution dated June 11, 2013[20] that private respondent's reassignment to LTO Catbalogan District Office and designation as Assistant Chief are management prerogatives which must not be disturbed, in the absence of violation of the rules or grave abuse of discretion. The CSCRO No. VIII found that private respondent failed to prove her allegations of harassment and grave abuse of discretion on the part of petitioner.

On appeal, public respondent CSC reversed the finding of the CSCRO No. VIII and held that private respondent's reassignment amounted to constructive dismissal as the same was outside her geographical location and would cause her financial distress and inconvenience. Thus:

"As borne by the records, appellant was issued an appointment as Transportation Regulation Officer II (SG-15) under a permanent status at the LTO Calbayog District Office, Calbayog City, Region VIII. Said appointment of appellant is considered station-specific since it was specifically indicated on the face of her appointment paper that her office or station shall be at the LTO Calbayog District Office, Calbayog City. An appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the letter of appointment (Form No. 33). From the foregoing, it can be clearly seen that appellant's reassignment to LTO Catbalogan District Office, Catbalogan, Samar is outside her geographical location and would cause her financial dislocation considering the travel and other expenses she will have to incur as a result of such reassignment. Appellant's reassignment will also create inconvenience her (sic) inasmuch as she is already fifty-six (56) years old and is suffering from hyper reactive airway disease and gastroesophageal reflux disease, as evidenced by the medical certificate she submitted.

Further, a perusal of the Office Order No. EAC-2013-003 dated January 10, 2013 of LTO Regional Director Catarongan shows that while it stated that the reassignment of appellant is being done in the 'best interest of the service', it did not, however, specify the definite duties and responsibilities of appellant as Assistant Chief of LTO Catbalogan District Office. It is also noted that the said Office Order has not provided any duration on the reassignment of appellant. Such is necessary in view of the nature of appellant's appointment which, as discussed earlier, is considered station-specific and thus, her reassignment shall be allowed only for a maximum period of one (1) year. x x x"[21]

Petitioner faults public respondent CSC in so ruling. Allegedly, private respondent's reassignment did not amount to constructive dismissal because (i) private respondent was reassigned to an existing office; (ii) she was directed to report to petitioner for further instructions regarding her assignment; (iii) the financial difficulty alleged by private respondent was not tantamount to financial dislocation because Calbayog and Catbalogan are located within the same province and can be traversed in a short distance; (iv) the reassignment must be presumed to be valid and regular as it was not whimsically and arbitrarily done;[22] and, (v) petitioner was denied due process of law because he was not allowed to file comment on private respondent's "Appeal -Cum- Appeal Memorandum." Petitioner further posits that private respondent's "reassignment is not bound by the one (1) year limitation as it was not done outside her geographical location." [23]

The petition is devoid of merit.

Hornbook is the doctrine that one who alleges a fact has the burden of proving it and in administrative cases, the quantum of proof required is substantial evidence.[24] Substantial evidence is defined as such amount of relevant

evidence which a reasonable mind might accept as adequate to justify a conclusion.[25] Petitioner failed to discharge this burden.

A reassignment is a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment.[26] In *Cristina Jenny Cariño vs. Executive Director David Daoas*,[27] the Supreme Court held that officers appointed to a specific station could not be reassigned to another station without their consent. Said the Supreme Court:

"As correctly stated by the Court of Appeals, the validity of the reassignment of petitioner was already settled by the pronouncement of the Civil Service Commission that such reassignment was not valid and that she could not be transferred to another region without her consent. It is true that the transfer or detail of a public officer or employee is a prerogative of the appointing authority and that it can be done as the exigencies of the public service may require. As such, this Court in a number of cases allowed the reassignment of personnel but in such instances, they were not appointed to a specific station or particular unit or agency. The rule proscribes transfers without consent of officers appointed — not merely assigned — to a particular station, such as in the case of herein petitioner who was appointed as Accountant III in Region I. Hence, she could not be reassigned to another station or region without her consent. Otherwise, the unconsented transfer would amount to a removal."

It is undisputed that private respondent's appointment as Transportation Regulation Officer II is station-specific, as her place of assignment, LTO Calbayog District Office, was specified in the letter of appointment issued by Assistant Secretary Virginia P. Torres.[28] Thus, private respondent's consent to her reassignment was required. However, private respondent did not consent to the reassignment. Thus, private respondent's reassignment was tainted with arbitrariness.

Furthermore, petitioner failed to specify the duration of private respondent's reassignment, which should only be for one (1) year for station-specific appointments, pursuant to Section 6 (3) of CSC Memorandum Circular No. 02, series of 2005 which provides:

"Sec. 6.

xxx xxx xxx

Reassignment shall be governed by the following rules:

xxx xxx xxx

3. Reassignment of employees with station-specific place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year. An appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the appointment paper. Station-specific appointment does not refer to a specified plantilla item number since it is used for purposes of identifying the particular position to be filled or occupied by the employee.

It is also noteworthy that a reassignment that is indefinite and results in a reduction in rank, status and salary, is, in effect, a constructive removal from the service.[29] Under CSC Memorandum Circular No. 02, series of 2005, dated January 4, 2005, reassignment amounts to constructive dismissal in the following cases:

"7. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal. Constructive dismissal exists when an official or employee quits his or her work because of the agency head's unreasonable, humiliating, or demeaning actuations, which render continued work impossible because of geographic location, financial dislocation and performance of other duties and responsibilities inconsistent with those attached to the position. Hence, the employee is deemed illegally dismissed. This may occur although there is no diminution or reduction in rank, status or salary of the

employee.

Reassignment that constitutes constructive dismissal may be any of the following:

a)

Reassignment of an employee to perform duties and responsibilities inconsistent with the duties and responsibilities of his/her position such as from a position of dignity to a more servile or menial job;

b)

Reassignment to an office not in the existing organizational structure;

c)

Reassignment to an existing office but the employee is not given any definite duties and responsibilities;

d)

Reassignment that will cause significant financial dislocation or will cause difficulty or hardship on the part of the employee because of geographical location; and

e)

Reassignment that is done indiscriminately or whimsically, because the law is not intended as a convenient shield for the appointing/disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest."

Private respondent presented substantial evidence to prove her claim that her reassignment to LTO Catbalogan District Office constituted constructive dismissal. Records bear that Calbayog and Catbalogan, although both located in the province of Samar, have a distance of approximately 70 kilometers from each other. Thus, private respondent would have to travel a considerable distance to get to work each day, and would have to pay additional transportation fees.[30] Private respondent, who was 56 years old, also presented a medical certificate[31] showing that she was suffering from "Hyper Reactive Airway Disease," among others, and the daily commute to and from work would also take a toll on her health.

Petitioner's claim that he was denied due process because he was not allowed to file comment on private respondent's "Appeal -Cum- Appeal Memorandum,"[32] is misplaced. It is basic that when the case before the CSC is non-disciplinary in nature, an opportunity to be heard is not mandatory as the CSC, in approving or

disapproving an appointment, "only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses the minimum qualifications and none of the disqualifications." [33]

At any rate, it bears stressing that the essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or opportunity to seek a reconsideration of the action or ruling complained of. [34] Records show that petitioner was able to file a motion for reconsideration [35] of the CSC Decision dated October 29, 2013 finding private respondent's reassignment not in order. Said motion for reconsideration was denied by public respondent CSC in a Resolution dated February 25, 2014. Albeit denied, petitioner was clearly afforded due process of law when he was able to file said motion for reconsideration.

Verily, regularity in the performance of official duties is presumed and in the absence of competent evidence to rebut this presumption, the Court is duty bound to uphold this presumption. [36] Then again, it is settled that findings of fact of an administrative agency must be respected, so long as such findings of fact are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. [37]

WHEREFORE, the petition is dismissed for lack of merit and the assailed Decision dated October 29, 2013 and Resolution dated February 25, 2014 of public respondent Civil Service Commission are affirmed.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] pp. 29-36, Rollo

[2] pp. 156-179, Ibid.

[3] pp. 38-41, Ibid.

[4] p. 29, Ibid.

[5] p. 61, Ibid.

[6] pp. 54-56, Ibid.

[7] pp. 218-219, Ibid.

[8] p. 62, Ibid.

[9] pp. 63-67, Ibid.

[10] p. 152, Ibid.

[11] pp. 86-121, Ibid.

[12] pp. 122-130, Ibid.

[13] pp. 156-179, Ibid.

[14] pp. 29-36, Ibid.

[15] pp. 38-41, Ibid.

[16] p. 13, Ibid.

[17] p. 16, Ibid.

- [18] p. 20, Ibid.
- [19] p. 20, Ibid.
- [20] pp. 156-179, Rollo
- [21] p. 34, Ibid.
- [22] pp. 18-19, Ibid.
- [23] p. 20, Ibid.
- [24] Engr. Ernesto T. Matugas vs. COMELEC, 420 SCRA 365, January 20, 2004
- [25] Travelaire & Tours Corp. vs. NLRC, 294 SCRA 505, August 20, 1998
- [26] Rudigario C. Gatmaitan vs. Dr. Ricardo B. Gonzales, et al., 492 SCRA 591, June 26, 2006
- [27] 380 SCRA 355, April 9, 2002
- [28] p. 79, Rollo
- [29] Eduardo V. Bertain vs. Court of Appeals, et al., 209 SCRA 644, June 9, 1992
- [30] p. 289, Rollo
- [31] p. 278, Ibid.
- [32] p. 20, Ibid.
- [33] Rogelio R. Debulgado, et al. vs. Civil Service Commission, 237 SCRA 184, September 26, 1994
- [34] Municipality of Butig, Lanao Del Sur vs. Court of Appeals, et al., 477 SCRA 115, December 9, 2005
- [35] pp. 42-53, Rollo
- [36] JG Summit Holdings, Inc. vs. Court of Appeals, et al., 412 SCRA 10, September 24, 2003
- [37] Ruble Rubenecia vs. Civil Service Commission, 244 SCRA 640, May 31, 1995

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