

FELICISIMO P. MALINAO, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION AND ATTY. PAQUITO M. NACINO, IN HIS CAPACITY AS REGIONAL DIRECTOR OF THE COMMISSION OF HUMAN RIGHTS, REGION ...

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is a Petition for Review[1] filed by Felicisimo Malinao , Jr. under Rule 43 of the 1997 Rules of Court assailing the Decision and Resolution[2] of the Civil Service Commission dated May 3, 2011 and October 17, 2011, respectively.

Briefly, the facts as found in the records are as follows:

On June 25, 1997, respondent Atty. Paquito M. Nacino (Atty. Nacino), Regional Director of Commission on Human Rights (CHR) Regional Office No. VIII, filed a complaint against Felicisimo Malinao, Jr. (petitioner) with the Civil Service Commission (CSC) Central Office for Gross Insubordination, Conduct Prejudicial to the Best Interest of the Service, Grave Misconduct, being Notoriously Undesirable , Gross Neglect of Duty, Refusal to Perform Official Function and Violation of R.A. 6731. A similar complaint was also filed with the CSC Regional Office No. VIII (Regional Office). Both complaints were later consolidated and referred to the Regional Office for investigation and appropriate action.

On December 15, 1998, the Regional Office dismissed the complaint to which a motion for reconsideration was thereto filed by Atty. Nacino. The said motion was denied by the Regional Office by Order dated April 4, 2000. On April 26, 2000, Atty. Nacino appealed the dismissal of the complaint to the CSC Central Office and on March 13, 2001, it rendered Resolution No. 01-0583 dismissing the said appeal.

On October 16, 2000, the CSC promulgated Resolution No. 02-1358 granting the petition for review filed by Atty. Nacino and in effect reversed the Orders dated December 15, 1998 and April 4, 2000 of the Regional Office which dismissed the complaint and denying Atty. Nacino's motion for reconsideration. The resolution also gave petitioner five (5) days to submit his Answer under Oath to the Regional Office. Thereafter, the pre-hearing of the case was set on November 21, 2003.

On November 23, 2004, a Manifestation with Motion to Suspend Proceedings was filed by petitioner in light of CHR Resolution No. 1203-97 which provides that all complaints filed against CHR officials and employees for administrative discipline shall be filed directly with the CHR. On August 10, 2005, Atty. Rodolfo B. Encajonado, CESO IV from the Regional Office issued Order No. 05007 denying the Manifestation with Motion filed by petitioner on the ground among others, that the CHR resolution being invoked by the latter was issued after the CSC already acquired jurisdiction over the case.

After a series of hearings, a Decision was issued on February 8, 2010 by the Regional Office finding petitioner guilty of Gross Insubordination and imposing the penalty of dismissal from the service with all its accessory

penalties. A Motion for Reconsideration was filed by petitioner but it was denied in the Order dated May 31, 2010.[3]

On appeal to the CSC Central Office, petitioner insistently argued that jurisdiction over the administrative case filed against him was exclusively lodged with the CHR pursuant to CHR Resolution No. A2003-097[4]. On May 3, 2011 a Decision[5] was issued by the CSC Central Office dismissing his appeal and sustained the verdict of the Regional Office. However, the imposed penalty of dismissal from the service was modified to mere suspension. Likewise, his Motion for Reconsideration[6] was denied by Resolution[7] dated October 17, 2011. The fallo of the decision reads:

"WHEREFORE, premises considered, the appeal of Felicisimo P. Malinao, Jr. is hereby DISMISSED. Accordingly, the February 8, 2010 Decision issued by Civil Service Commission Regional Office No. VIII finding respondent-appellant guilty of Gross Insubordination is AFFIRMED. However, the penalty imposed by CSCRO No. VIII is modified to nine (9) months suspension pursuant to Section 52, Subsection A (19) of the Uniform Rules on Administrative Cases in the Civil Service."

Unflinching, petitioner filed this petition for review.

Petitioner argued in the main that under Section 12, par. 11 of Title 1 (A), Book V of the Administrative Code of 1987, the CSC can motu proprio institute an administrative disciplinary case against any government official or employee. However, where the administrative case is between an officer and an employee of the CHR, and the complained acts do not erode the integrity of the civil service system, the administrative disciplinary jurisdiction remains within the CHR, as head of the agency having jurisdiction over the parties under Section 47, par. 1, Title 1 (A), Book V of the Administrative Code of 1987. He likewise maintained that Sec. 3 of E.O. 163 is a statutory grant of exclusive administrative jurisdiction of CHR to its employees.

For respondent Atty. Nacino, he claims that there exists no law which vests upon the CHR jurisdiction in administrative cases; and that jurisdiction of secretaries and heads of agencies and instrumentalities over disciplinary actions against officers and employees under the CHR jurisdiction is not exclusive but is concurrent with the CSC.

For its part, the CSC, speaking through the Office of the Solicitor General, said that the complaint against the petitioner was properly filed with the CSC; and that CHR Resolution No. A2003-097 dated September 16, 2003 cannot apply to the petitioner as the CSC had already acquired jurisdiction over the case when said resolution was issued.[8]

The sole issue boils down to the basic question of whether or not the CSC has original jurisdiction over the administrative complaint filed before it by CHR against petitioner in light of CHR Resolution No. 1203-97.

The issue is not novel.

The rule is well-settled that where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is not affected by the new legislation placing jurisdiction over such proceedings in another tribunal. Jurisdiction continues until the court has done all that it can do to exercise that jurisdiction unless the law provides otherwise.[9] Jurisdiction, once it attaches, continues until the case is concluded[10]. In this case, it is very clear that the complaint against petitioner was filed with the CSC as early as June 25, 1997 which is six (6) years before the issuance of CHR Resolution No. A2003-097. After assuming jurisdiction over said case, trial on the merits ensued both at the level of the Regional Office and at the Commission itself, after which a decision was rendered by CSC. CHR Resolution No. A2003-097 did not have and could not have any effect of ousting the CSC of its jurisdiction over the case filed years ahead of its issuance.

The jurisdiction of the CSC to hear and decide the case against petitioner is well enshrined in the Constitution specifically Article IX-B thereof under which it was provided that CSC is the body charged with the establishment and administration of a career civil service which embraces all branches and agencies of the government, to wit:

Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

x x x x

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

Corollary thereto, Executive Order (E.O.) No. 292 (the Administrative Code of 1987) provides:

Chapter 3, Title I(A), Book V:

Section 12. Powers and Functions. - The Commission shall have the following powers and functions: x x x

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x

Furthermore, Section 4 of CSC Memorandum Circular No. 19-99, states that:

Section 4. Jurisdiction of the Civil Service Commission. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

Pursuant to the foregoing provisions, the CSC, as the central personnel agency of the government, has jurisdiction over disputes involving the removal, separation and suspension of all employees of government branches, subdivisions, instrumentalities and agencies, including government-owned or controlled corporations with original charters. Simply put, it is the sole arbiter of controversies relating to the civil service, including employees of the CHR.

CHR Resolution No. A 2003-097 is not applicable here as said resolution was promulgated only on September 16, 2003. To repeat, the case against petitioner was filed in 1997 and the jurisdiction of the CSC over the same from that time on has commenced to attach. Laws and rules and regulations issued by administrative agencies generally cannot have any retroactive effect unless the contrary is expressly provided. Besides, Section 19 of Executive Order No. 292, otherwise known as the Administrative Code of 1987, is very clear on this point, i.e.: "laws shall have prospective effect unless the contrary is expressly provided." Meaning, this CHR resolution can only be made applicable to administrative complaints filed against officials and employees of the CHR after the date of issuance of the CHR resolution in question.

Moreover, jurisprudence is settled that since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes (and administrative rules and regulations) are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language

used.

In the absence of any provision in the said resolution providing for retroactivity, petitioner cannot successfully argue in favor of such retroactive application. Moreover, a mere administrative rule and regulation cannot amend or supplant the provisions of the Constitution and laws which grant the CSC exclusive jurisdiction over all government employees in the civil service, whether career or non-career[11].

Also, the Uniform Rules on Administrative Cases in the Civil Service issued in 1999 has for its purpose the updating of the existing rules and regulations in administrative cases to make them more responsive to the demands for speedy, fair and judicious disposition of such administrative cases. While the jurisdiction of the CSC under the said Uniform Rules generally encompasses the power to hear and decide administrative case instituted by, or brought before it, directly or on appeal, including contested appointment, and to review decisions and actions of its offices and of the agencies attached to it[12], the jurisdiction of the CSC Central Office has been limited to decisions of its Regional Offices brought before it on petition for review and decisions of the heads of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing penalties exceeding thirty days suspension or fine in an amount exceeding thirty days salary brought before it on appeal. The CSC Central Office is given original exclusive jurisdiction only in cases of complaints against CSC Central Office personnel, third level officials who are not presidential appointees, CSC officials or employees not acted upon by the agencies and other complaints requiring direct or immediate action in the interest of justice.

We can only assume that because of the issuance of the Uniform Rules, the CHR subsequently issued CHR Resolution No. A 2003-097 requiring all complaints against CHR officials and employees to be filed directly with the CHR for investigation and issuance of the Formal Charges, if warranted.[13]

In fine, the CHR was created pursuant to the Constitutional mandate embodied in Article XIII of the 1987 Constitution. In creating this Constitutional Commission, E.O. 163[14] is consistent with the Constitution in defining its powers and functions, and no provision thereto pertains to its exclusive jurisdiction over administrative disciplinary action. It is thus erroneous, as argued by the petitioner, that the power of the CHR to appoint its officer and employees in accordance with law is a statutory grant of its exclusive administrative jurisdiction. Moreover, E.O. 292, Book V, Title II (A) is likewise devoid of such grant of power. Notably, the CSC and CHR's definition of powers and functions are contained in the same Book in the Administrative Code of 1987. Thus, said E.O. should be interpreted as a whole, each provision presumed to be in harmony with one another, which effectively put inconsistencies rare if not totally lacking, unless a hopeful litigant erroneously perceive and interpret the provisions to suit his stance.

On this score, it bears to stress well that the Supreme Court in settling the issue on CSC's jurisdiction ruled in a recent case in this wise:

The Uniform Rules on Administrative Cases in the Civil Service (the Uniform Rules) explicitly allows the CSC to hear and decide administrative cases directly brought before it:

Section 4. Jurisdiction of the Civil Service Commission. – The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

The CA construed the phrase "the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service" to mean that the CSC

could only step in after the relevant disciplinary authority XXX. Regrettably, the CA failed to take into consideration the succeeding section of the same rules which undeniably granted original concurrent jurisdiction to the CSC and belied its suggestion that the CSC could only take cognizance of cases on appeal:

Section 7. Jurisdiction of Heads of Agencies. – Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have original concurrent jurisdiction, with the Commission, over their respective officers and employees.

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Following the earlier disquisition, it can be said that the Uniform Rules does not contradict the Administrative Code. Rather, the former simply provides a reasonable interpretation of the latter. Such action is perfectly within the authority of the CSC, pursuant to Section 12(2), Chapter 3, Subtitle A, Title I, Book V of E.O. No. 292, which gives it the power to "prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws."

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Section 5. Jurisdiction of the Civil Service Commission Proper. – The Civil Service Commission Proper shall have jurisdiction over the following cases:

A. Disciplinary

1. Decisions of the Civil Service Regional Offices brought before it on petition for review;
2. Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities, imposing penalties exceeding thirty days suspension or fine in an amount exceeding thirty days salary brought before it on appeal;
3. Complaints brought against Civil Service Commission Proper personnel;
4. Complaints against third level officials who are not presidential appointees;
5. Complaints against Civil Service officials and employees which are not acted upon by the agencies and such other complaints requiring direct or immediate action, in the interest of justice;
6. Requests for transfer of venue of hearing on cases being heard by Civil Service Regional Offices;
7. Appeals from the Order of Preventive Suspension; and
8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumerations.

It is the Court's position that the Uniform Rules did not supplant the law which provided the CSC with original jurisdiction. While the Uniform Rules may have so provided, the Court invites attention to the cases of *Civil Service Commission v. Alfonso* and *Civil Service Commission v. Sojor* xxx both of which buttressed the pronouncement that the Board of Regents shares its authority to discipline erring school officials and employees with the CSC. It can be presumed that, at the time of their promulgation, the members of this Court, in *Alfonso* and *Sojor*, were fully aware of all the existing laws and applicable rules and regulations pertaining to the jurisdiction of the CSC, including the Uniform Rules. In fact, *Sojor* specifically cited the Uniform Rules in support of its ruling allowing the CSC to take cognizance of an administrative case filed directly with it against the president of a state university. As the Court, in the two cases, did not consider Section 5 of the Uniform Rules as a limitation to the original concurrent jurisdiction of the CSC, it can be stated that Section 5 is merely implementary. It is merely directory and not restrictive of the CSC's powers. The CSC itself is of this view as it has vigorously asserted its jurisdiction over this case through this petition.

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We are not unmindful of certain special laws that allow the creation of disciplinary committees and governing bodies in different branches, subdivisions, agencies and instrumentalities of the government to hear and decide administrative complaints against their respective officers and employees. Be that as it may, we cannot interpret the creation of such bodies nor the passage of laws such as – R.A. Nos. 8292 and 4670 allowing for the creation of such disciplinary bodies – as having divested the CSC of its inherent power to supervise and discipline government employees, including those in the academe. To hold otherwise would not only negate the very purpose for which the CSC was established, i.e. to instill professionalism, integrity, and accountability in our civil service, but would also impliedly amend the Constitution itself.[15]

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Finally, in view of the foregoing, petitioner's strict reliance on CHR Resolution No. A2003-097 recommending all complaints against CHR's officials and employees for administrative discipline should be filed with the said Commission; and on Resolution CHR [III] No. A2008-018 and Resolution CHR [IV] No. A2008-008 recommending the dismissal of the administrative cases filed by Atty. Nacino, should all together fail. The CHR cannot arrogate unto itself the jurisdiction so lawfully acquired earlier by the CSC through mere issuance of the aforementioned CHR resolution. As cogently argued by the Solicitor General, where a court or tribunal has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is not affected by the new legislation placing jurisdiction over such proceedings in another tribunal. Jurisdiction, once it attaches, continues until the case reaches its final end.

WHEREFORE, the petition for review is DENIED for lack of merit. The Decision dated May 3, 2011 and Resolution dated October 17, 2011 of the Civil Service Commission are hereby AFFIRMED.

SO ORDERED.

Carandang (Chairperson) and Gonzales-Sison, JJ., concur.

[1] Rollo, pp. 3-23.

[2] Rollo, pp. 33-39.

[3] Rollo, pp. 34-35.

[4] Rollo, p. 50.

[5] Supra, note 3.

[6] Rollo, pp.51-65.

[7] Supra, note 2.

[[8]] Comment, Rollo. 165-182.

[9] People vs, Court of Appeals (12 the Division), 545 SCRA 52.

[10] Globenciong vs. Court of Appeals, 550 SCRA 502.

[11]Rollo, pp. 176-178

[12] In Section 4, Uniform Rules on Administrative Cases in the Service

[13] Rollo, pp. 179-180

[14] DECLARING THE EFFECTIVITY OF THE CREATION OF THE COMMISSION ON HUMAN RIGHTS AS PROVIDED FOR IN THE 1987 CONSTITUTION, PROVIDING GUIDELINES FOR THE OPERATION THEREOF, AND FOR OTHER PURPOSES.

[15] CSC vs. Court of Appeals G.R. No. 176162; Atty. Honesto Cueva vs. Court of Appeals, October 9, 2012,

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