

COURT OF INDUSTRIAL RELATIONS, COMPLAINANT VS. LEONCIO S. SOLIDUM, RESPONDENT.

Adm. Mat. No. P-269. January 30, 1975

Ponente: MUNOZ PALMA, J.

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MUNOZ PALMA, J.:

Respondent Atty. Leoncio S. Solidum is a hearing examiner of the Court of Industrial Relations (CIR for short). On February 28, 1974, charges of disgraceful and immoral conduct under Section 1(e) Presidential Decree No. 6, and violation of an Office Memorandum were brought against respondent in a letter-complaint of then Acting Presiding Judge Ansberto P. Paredes of the CIR, alleged to have been committed as follows:

"1. That on February 14, 1974, you 'punched in' and reported for work at 8:22 a.m. as shown by your daily time card;

"2. That during office hours, at or about 8:30 a.m. of said date, while inside your room, you exhibited yourself through the window and masturbated within the sight of Elizabeth Glorioso, single, 16 years old, a third year highschool student at Espiritu Parochial School, while the latter was at her residence in front of the CIR building at 1838 Oroquieta St., Sta. Cruz, Manila;

"3. That immediately, Miss Glorioso related the incident to her aunt, Dra. Adoracion Glorioso, who in turn shouted at you and soon thereafter reported the matter to the Court;

"4. That you left the Court in a hurry without securing a duly accomplished permission slip; and

"5. That on previous occasions in the month of January, 1974, you also exhibited yourself from the same room, and within the sight of Miss Glorioso, by removing your clothes and pants and showing your vital parts." (p. 17, CIR Record)

Required to answer the foregoing complaint, respondent, on March 4, 1974, answered the same specifically denying the allegations contained in paragraphs 2, 3 and 5 quoted above, and requesting for a formal investigation. (ibid, 26-30)

The complaint was assigned to Atty. Pedro F. Perez, Acting Assistant Chief Hearing Examiner, CIR, who after an investigation submitted a report that the charges were "established by sufficient evidence." (ibid, 78) On the basis of the findings of the investigator, Judge Paredes rendered on April 24, 1974, a decision approving and adopting the report and ordering the dismissal of the respondent herein from the service. (ibid, 80-91) A motion for reconsideration was filed (ibid, 95-99) but the same was denied on May 24, 1974. (ibid, 110-112)

Respondent now appeals to this Court and invokes our supervisory power under the Constitution.[1]

The following incidents which led to the filing of the charges against respondent are brought out in the testimonies of the complaining witnesses, Dra. Adoracion Pascua and her niece, Elizabeth Glorioso, a sixteen-year old third year highschool student at Espiritu Santo Parochial School, given during the preliminary inquiry conducted on February 15, 1974 by Atty. Sofronio A. Ona, Senior Executive Assistant of the CIR, and

continued on February 19, to wit:

Dra. Pascua and her niece Elizabeth are residing at 1838 Oroquieta Street, Sta. Cruz, Manila. Directly opposite their apartment is one of the offices of the Court of Industrial Relations. Between 8:00 and 8:30 o'clock in the morning of February 14, 1974, Elizabeth was cleaning the room of the apartment and as she looked out of the window she saw a man in the opposite room exposing and masturbating himself. Shocked at what she saw, Elizabeth reported the matter to her auntie. Dra. Pascua went up the room to see what the man was doing but all that she saw were the hands of a man dusting the window. She shouted at the man saying: "Magpakilala ka at kaya kitang ireport sa itaas." Dra. Pascua then went directly to the CIR Office and she met Mr. Beltran and Mrs. Cacil, both CIR employees, who accompanied her to the room in question which happened to be the office of the herein respondent, but the man was no longer there. It turned out that respondent herein who had reported earlier in his office had suddenly left the building. (tsn. Feb. 15, 1974, *ibid*, 11-16)

Respondent gives the following explanation concerning the incident: Since December of 1973 he had been suffering from urinary tract infection and often experienced intense pain and difficulty in urinating, and everytime he felt the pain he would press a small towel soaked in hot water and apply "superficial massage" on his organ; on several occasions he applied this "self-treatment" inside his office in the CIR building for he found it difficult to make the "application" in the comfort room; his condition however did not improve but instead it got worse; in the morning of that day, February 14, 1974, he experienced the usual physical discomfort and because his "self-treatment" was not effective as the pain "spread out upward" he thought of seeing a physician, and so he hurriedly went out of his office and proceeded straight to the medical clinic of Dr. Giovanni Ong who since then treated him for his ailment as shown by the following documents:

Exhibit A

—

medical certificate of Dr. Giovanni C. Ong, Veterans Memorial Hospital, dated February 16, 1974, that Mr. Leoncio Solidum is under his medical care for urinary tract infection since February 14, 1974;

Exhibit B

—

medical certificate, C.S. Form 41, Philippine Civil Service, dated February 19, 1974, issued by Dr. Ong certifying that Leoncio Solidum was examined for urinary tract infection on February 14, 1974, and was still under observation up to the date of the certificate;

Exhibit C

—

request of Dr. Ong to the GSIS Hospital for laboratory examination;

Exhibit D

—

results of the laboratory examination conducted by the GSIS Hospital, dated February 18, 1974;

Exhibit E

—

Official receipt No. 31238 of the GSIS Hospital in the amount of P42.30;

Exhibits F, F-1, and F-2

—

prescriptions for medicines issued by Dr. Ong; and

Exhibit G -

—

letter of Atty. Cirilo Paredes, Secretary-Treasurer of Manila-II-Philippine Integrated Bar, addressed to Atty. Leoncio Solidum advising him of his selection as a delegate of Manila II at the Regional Convention of the Greater Manila Integrated Bar scheduled for March 30-31, 1974.[2]

In this appeal of his, respondent seeks a reversal of the decision of Judge Paredes on the following "Statement of Issues":

I

"Whether or not an evidence was presented by the complainant to support the charges.

II

Whether or not the transcript of the stenographic notes dated Feb. 15 and 19, 1974, be considered evidence of the complainant and part of the record of this case.

III

Whether or not the alleged complainant's witnesses are fictitious.

IV

Whether the alleged transcript dated Feb. 15 and 19, 1974, are fictitious.

V

Whether the identity of the respondent-appellant was established in the alleged transcript dated Feb. 15 and 19, 1974." (SC rollo, p. 9)

Respondent contends that "complainant failed to present any kind of evidence to support the charges" because at

the formal hearing held on March 19, 1974, the complainant and her witnesses did not appear and testify against him; that the stenographic transcripts of the alleged hearings before Atty. Sofronio Ona on February 15 and 19, 1974 were not properly identified neither by the stenographers concerned nor by the hearing officer, Atty. Ona; that he (respondent) was not present during said inquiry and consequently he was not afforded the opportunity to confront the alleged witnesses.

It is not true nor is it correct that there is no evidence to substantiate the charges against respondent.

It is a fact borne out by the record of the case that Dra. Pascua and her niece, Elizabeth, testified under oath at a preliminary hearing conducted by Atty. Ona on February 15 and 19, 1974 (CIR record, pp. 11-16), on the basis of which a letter complaint was addressed by Judge Paredes to the herein respondent informing him of the existence of a "prima facie case" of (1) immoral and disgraceful conduct and (2) violation of an office regulation, and requiring him to answer said charges. This letter of Judge Paredes briefly summarized the testimonies of the complaining witnesses on the first charge, and although in his answer to the complaint respondent made general denials, he nonetheless offered an explanation of the incident referred to in the complaint which he repeated when he testified before the investigator, Atty. Perez, on March 19. We cannot comprehend therefore why respondent now claims that there was no evidence to substantiate the charges of immoral conduct when from his own explanation it is clear that he did "expose himself" because according to him it was part of his self-medication or to use his own words, "self-treatment", of his ailment and which act of his was allegedly misunderstood or misconstrued by the persons who may have seen him on that morning of February 14, 1974.

Respondent asserts, however, that he was not given an opportunity to confront and cross-examine the two witnesses in question and he concludes that the latter are "fictitious persons" and that the transcripts of the hearings of February 15 and 19 are also "fictitious". This assertion of respondent is absolutely without merit. The report of the investigator, Atty. Perez, which is substantiated by the transcript of the stenographic notes taken during the hearing on March 19, 1974, attests to the following incidents: when the case was called on March 19 at 9:00 o'clock in the morning respondent appeared for and in his behalf; Atty. Perez informed respondent that he had received a letter from Dra. Adoracion Pascua requesting postponement of the investigation to March 21 because her niece, Elizabeth, was having her examination on that day of the 19[th] and would not be able to appear and testify; respondent was advised by Atty. Perez that the hearing was purposely called to afford him the opportunity to confront and cross-examine the two witnesses on their testimony given at the preliminary hearing, and respondent was shown the transcript of their testimonies; respondent remarked that he was not present during that preliminary hearing, that there was no "further need to cross-examine" the alleged witnesses, and that he was ready to present his evidence; Atty. Perez then addressed himself to respondent in this manner:

"It is therefore clear that you are waiving your right to cross-examine the two witnesses for the complainant and you desire to present your documentary evidence in support of your defense. You may do so.";

to that statement respondent said nothing but proceeded to present his evidence. (ibid, 51, 52, 71)

If there was no confrontation with and cross-examination of the two witnesses, Dra. Pascua, and her niece, Elizabeth, it was due to respondent's own inaction which constituted a waiver of whatever right he had and of which he cannot now complain. Being a lawyer, respondent should have understood the implications of the above-quoted statement of the investigator, and when he reacted to it with sepulchral silence he likewise was aware of the consequences thereof. Not a word of protest or objection came from the lips of respondent, and instead of asserting his right to confront said witnesses or take advantage of the opportunity being given him by the investigator to cross-examine them on March 21 as prayed for in the letter of Dra. Pascua, respondent expressed his desire to present his evidence in his behalf.

The right to confrontation and cross-examination is a personal one which may be waived expressly or impliedly by one's conduct incompatible with an assertion of the right to confront one's accusers. It is a right which one has to assert and demand otherwise it is deemed to have been waived.[3]

It is preposterous to conclude as respondent does that the complainant's witnesses are "fictitious" and so also are the transcripts of the hearings of February 15 and 19 conducted by Atty. Ona. Respondent does not give Us any possible reason for his fellow-employees and colleagues in the Court of Industrial Relations, namely, Attorneys Sofronio Ona, Pedro F. Perez, and the then Acting Presiding Judge Ansberto P. Paredes, to concoct an administrative complaint based on "fictitious" testimonies of witnesses. In truth, during the investigation of the case, respondent never stated nor insinuated at all that he was being harassed with trumped-up charges and that the supposed witnesses Dra. Adoracion Pascua and Elizabeth Glorioso were fictitious persons. As a matter of fact, in the course of respondent's testimony at the hearing of March 19, when he was asked if he knew Dra. Pascua and Elizabeth Glorioso, he said that while he did not know them personally, he was however aware that there were people living in the apartment across his office as he used to see persons there but he did not "mind them". (ibid, 63) If at the time of the investigation of this case respondent believed that the witnesses against him were "fictitious persons", he could have easily dispelled his doubts and probably disproved the complaint by facing the witnesses on March 21. His decision to present his evidence and close the investigation at the hearing of March 19 is a vivid manifestation of respondent's desire to avoid a direct confrontation with his accusers which to Us could only mean harboring a feeling of guilt.

The other point raised by respondent that there was no formal presentation of the evidence of the complainant at the hearing of March 19 is likewise without merit. While it is true that the stenographic transcript of March 19 does not show any formal offering of evidence on the part of the complainant which generally would be required in a judicial proceeding, the fact is that, as indicated before, the stenographic transcripts of the testimonies of Dra. Pascua and Elizabeth Glorioso were made part of the record of this administrative case and were presented to respondent on March 19 for his examination and verification, but that no formal objection thereto was submitted by respondent at any time before he presented his evidence. This Court has time and again held that technical rules of court practice, procedure and evidence are not to be applied with rigidity in administrative proceedings, having in mind the nature of administrative bodies.[4] We have also ruled that an administrative investigation need not be conducted strictly in accordance with court processes,[5] and for that reason it is provided in Sec. 25(c), Rule XVIII, Revised Civil Service Rules that an administrative investigation shall be conducted solely for the purpose of ascertaining the truth and without necessarily adhering to technical rules applicable in judicial proceedings.

Lastly, respondent contends that his identity was not established in the stenographic transcripts of the hearings of February 15 and 19. Although respondent's name was not mentioned in the testimonies of Elizabeth and her aunt, however, a chain of circumstances points to said respondent as the guilty party, to wit: respondent "punched in his time card" at 8:22 o'clock that morning of February 14 as testified to by Mr. Juan Z. Barte, CIR Corporation Auditing Examiner; between 8:00 and 8:30 o'clock Elizabeth saw a man in the room across her apartment "exposing and masturbating himself", and upon being apprised of the incident Dra. Pascua went up to see for herself what the man was doing and seeing someone by the window she shouted: "Magpakilala ka at kaya kitang ireport sa itaas"; Dra. Pascua and Elizabeth immediately went to the CIR office to complain and they were accompanied to the room in question which was the office of respondent; respondent, however, was no longer in the room and upon inquiry it turned out that he had suddenly left the building without any permission slip from the Chief of the office; between 9:00 and 10:00 o'clock that morning respondent phoned Mr. Barte and told the latter that he had to leave the office hurriedly because of his pains and that he was in the clinic of Dr. Ong at the Veterans Memorial Hospital in Quezon City for treatment, and about 11:00 o'clock respondent again called by

phone Atty. Bienvenido M. Millares, CIR Chief Prosecutor, and informed him that he would not be able to return to the office that day because he was still being treated for his urinary trouble (CIR Record, pp. 2-9; tsn. Feb. 15-19); upon being confronted with these incidents by the Acting Presiding Judge, respondent did not deny his presence in his room early that morning but explained that what was witnessed in his room was his "self-treatment" of his ailment. Can We still doubt the identity of the man who was seen by Elizabeth Glorioso committing indecent acts?

In his answer to the charges filed by Judge Paredes respondent says:

"I therefore most respectfully move to dismiss these charges for the simple reason that I was sick. If I had done something improper, it was done without any malice, it was done beyond my control, it being purely an act of God, and it was done in moment of emergency." (p. 4, Answer, CIR Record, p. 29)

We cannot look upon respondent's action in the light he presents. On the assumption that respondent was indeed suffering from pains and difficulty in discharging urine, was it necessary for him to perform his "self-treatment"[6] by standing, according to him, "at the side of the small table located at the center of the room approximately two meters from the window"?[7] Respondent admits that across his office was an apartment and that from his window he could see the persons living there; that being so, respondent should and could have chosen a corner or portion of his office where he was not in open view of others, or he could have taken some precaution in order that his alleged "self-treatment" would not be seen from the outside, as any decent person would have done. As it is, the act of respondent does not call for sympathy because it violates basic norms of decency and morality and is repulsive to normal standards of propriety and decorum. Respondent's act of "superficial massage" was nothing more than plain exhibitionism and masturbation done within the view of a minor which society abhors and condemns and which perforce We must penalize drastically when committed by a public official.

The decision of then Acting Presiding Judge Paredes orders the dismissal of respondent herein from the service. Considering that respondent has been in the employ of the government for at least twenty-one years,[8] We are disposed to mitigate the penalty to one of forced resignation,[9] without forfeiture however of such benefits as he may be entitled to under Commonwealth Act 186 as amended by Republic Acts Nos. 1616 and 3096.

PREMISES CONSIDERED, We hereby find respondent, Atty. Leoncio S. Solidum, guilty of disgraceful and immoral conduct as charged and by way of penalty he is considered resigned with prejudice to reinstatement effective upon finality of this Decision, and subject to the guidelines in the preceding paragraph.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, Esguerra, Fernandez, and Aquino, JJ., concur.

[1] Section 6 Art. X, Phil. Constitution, 1973, provides: The Supreme Court shall have administrative supervision over all courts and personnel thereof.

[2] Answer of respondent, *ibid*, 26-39

[3] U.S. vs. Anastacio, 6 Phil. 413; U.S. vs. Raymundo, et al., 14 Phil. 416; U.S. vs. Binayoh, 35 Phil. 23; Moran, Comments on the Rules of Court, 1970 Ed., Vol. 4 pp. 201-202; Francisco, Rev. Rules of Court, 1969 Ed., Criminal Procedure, pp. 521-522

[4] *Asprec vs. Itchon*, et al., G.R. L-21685, April 30, 1966, 16 SCRA 921, 927.

[5] Sy Chuan, et al. vs. Galang, et al., 104 Phil. 4014

[6] see p. 3 of this Decision

[7] Answer p. 3, CIR Record p. 28

[8] Service Record as per Report submitted to the Court

[9] Guidelines in the Application of Penalties in Administrative Cases . . . Memorandum Circular, Civil Service Commission, MC #8, 1970

x x x x x x x x

"II. The following are the penalties that may be imposed in administrative cases.

1. Dismissal

2. Forced resignation

x x x x x x x x

"IV. The penalties for light, less grave, and grave offenses shall be made in accordance with the following schedule of penalties.

x x x x x x x x

C. For grave offenses:

1. Transfer or demotion in rank or salary from two to three grades or suspension for one year in its minimum period;

2. Forced resignation without prejudice to reinstatement to forced resignation with prejudice to reinstatement in its medium period;

3. Dismissal in its maximum period." (*Italics supplied*)

x x x x x x x x

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