

JOVENCIO A. REYES, PETITIONER AND APPELLANT, VS. ABELARDO SUBIDO, COMMISSIONER OF CIVIL SERVICE, RUFINO HECHANOVA, SECRETARY OF FINANCE, MISAEAL VERA, COMMISSIONER OF INTERNAL RE...*G.R. No. L-27916. August 21, 1975*

Ponente: FERNANDO, J.

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This certiorari proceeding could have been disposed of for being moot and academic as petitioner had resigned his position as examiner of the Bureau of Internal Revenue. He has not thus far, however, been granted his retirement and terminal benefits allegedly due him after his long stint in the government service, one close to forty years. There is therefore a justifiable insistence on his part that the merits of the controversy be resolved. In brief, the grievance complained of by him is that respondent Commissioner of Civil Service[1] found him guilty of grave misconduct and imposed the penalty of dismissal without his being heard in his defense. The reliance therefore is on the protection of procedural due process implicit in the constitutional provision that no officer or employee in the civil service shall be removed except for cause as provided by law.[2] After charges of irregularity in the performance of his duty was filed by the Secretary of Finance upon complaint of a private party, an investigator was appointed and a formal hearing was scheduled. On the date designated, however, petitioner appeared but not the complainant. There was a motion to dismiss, which was not, however, favorably acted upon. On the day when the investigation was to take place, the complainant was present but petitioner, not having been notified, could not attend such hearing, resulting in its postponement. Nonetheless, his dismissal from the service was recommended, and on July 1, 1965, the aforesaid decision of respondent, the then Civil Service Commissioner, dismissing him from the service, was rendered. The above facts notwithstanding, he failed in his certiorari petition before the Court of First Instance of Manila primarily on the ground that there was an appeal pending before the Civil Service Board of Appeals. Hence this appeal to this Court from such a decision.

There is merit in the appeal of petitioner. He is entitled to a reversal.

1. The protection accorded by the Constitution[3] to civil service officers or employees has both a substantive and procedural significance. The requirement that cause be shown to justify dismissal will lose much of its worth if procedural due process were not observed. Respondent should know what charges are preferred against him, should be able to confront complainant, and must be heard in his defense. That is of the very essence of the right accorded him. So it was even prior to the 1935 Constitution. Justice Malcolm made it clear, as early as in the leading case of *Cornejo vs. Gabriel*,[4] a 1920 decision, in these words: "It is but fair, x x x that a public official should not be removed or suspended without notice, charges, a trial, and an opportunity for explanation." [5] Thereafter, in *Cornejo vs. Naval*, [6] with the decision being penned by the same jurist, it was noted that an administrative proceeding partakes of a penal character. In the 1935 Charter, what formerly was doctrinal assumes a constitutional dimension. In the leading case of *Lacson vs. Romero*, [7] the first to be decided under such fundamental law, Justice Montemayor, speaking for the Court, after an extensive inquiry into the background and

rationale of such provision, stressed what he termed the inevitable inference "that before a civil service official or employee can be removed, there must first be an investigation at which he must be given a fair hearing and an opportunity to defend himself." [8] So it has been since then. [9]

2. The case for petitioner is thus formidable. He had the right to be heard, but it was not respected. He was available the first time the matter was to be investigated, but there was no complainant. He could not have been present on the next occasion because he was not notified. He ought to have prevailed then in his certiorari and prohibition suit with the lower court, but he did not. Apparently, the contention now reiterated in the brief of respondent Commissioner of Civil Service that the due process requirement is impressed with less than a mandatory character was paid heed to. Thus, witness the following: "His side was fully brought to the attention of the hearing officers. After all, the main purpose of any formal administrative investigation is to find out if there exists any truth to the charge and hear the side of the official or employee accused and to give him full opportunity to prove his innocence." [10] Surprisingly, the brief went to the extent of characterizing such a hearing as "superfluous and a useless waste of government time and money;" [11] relying on a Court of Appeals decision where the person investigated had confessed his guilt. [12] It could have been that because respondent Commissioner of Civil Service was not represented by the Solicitor General, the counsel appearing for him apparently being connected with the Civil Service Commission, there was not full awareness of the applicable Supreme Court decisions. More specifically, in *Abaya vs. Villegas*, [13] where a dismissal was predicated on an admission that a false answer was given to an application for an examination for policemen, this Court, through Justice Sanchez, left no doubt that a hearing was still essential. Thus: "The fact that petitioner made an answer which is at war with the truth does not connote the idea that it was intentionally made. Conceivably, situations may exist which could bring up that answer to the level of one given in good faith. Without evidence, we are loathe to tar and feather petitioner as a perjurer. Short of an inquiry which proves that the false answer was intentionally made, we cannot attribute thereto a meaning which would make a felon out of petitioner. It should then go without saying that the vitality of the constitutional principle of due process cannot be allowed to weaken by sanctioning cancellation of an employee's civil service eligibility and/or his dismissal from service — without hearing — upon a doubtful assumption that he has admitted his guilt for an offense against civil service rules. It is pertinent here to recall that good faith is always presumed. In the context just presented, we are constrained to state that petitioner received less than a fair treatment. Due process, in the end, merely is 'the embodiment of the sporting idea of fair play.'" [14] To be sure that there is no misunderstanding of his opinion, he had this terse but significant summation: "And again we say that petitioner was not accorded his right to due process." [15] It is not amiss to invite the attention of counsel appearing before this Court that to support a proposition advanced, reliance should be placed primarily on decisions of this Tribunal, not of inferior courts, especially so where they are not applicable.

3. *Abaya vs. Villegas* [16] likewise supplies the needed corrective for the error into which the lower court had fallen in dismissing the suit of petitioner, namely, that there was an appeal pending before the Civil Service Board of Appeals. There is then more than just relevance to this excerpt from the opinion of Justice Sanchez in *Abaya vs. Villegas*: "The prematurity of petitioner's complaint is next relied upon by appellant. Appellant's thesis on this score is that petitioner has not exhausted administrative remedies — he did not appeal from the order of dismissal, but went straight to court. Exhaustion of administrative remedies is not an iron-clad rule. Such exhaustion is not necessary here. And for a number of reasons. First, because in the situation in which petitioner was found, dismissed from the job, denied his pay and with a family to support, it is easy to perceive that he had to look up to the courts for speedy relief. In this factual environment, administrative remedy — appeal to the Civil Service Board of Appeals — is not expeditious and adequate. Second, the question presented is 'purely a legal one; 'the controverted act is 'patently illegal,' and 'nothing of an administrative nature is to be or can be done.' Third,

petitioner was denied due process. Each of the three instances just mentioned — and they are all present here — is an exception to the rule of exhaustion of administrative remedies." [17]

WHEREFORE, the lower court decision of March 18, 1967 dismissing the petition for certiorari and prohibition is reversed and set aside. The decision of the Commissioner of Civil Service dated July 1, 1965 finding petitioner guilty of grave misconduct and dismissing him from the service effective his last day of duty is likewise nullified and set aside. No costs.

Makalintal, C.J., Barredo, Concepcion, Jr., and Martin, JJ., concur.

Antonio, J., is on official leave.

Aquino, J., did not take part.

[1] The other respondents are Rufino Hechanova, Secretary of Finance, Misael Vera, Commissioner of Internal Revenue, Vicente Tagle, Director, Regional Office No. 5, and Angel J. Liwag, Chief Revenue Officer, Inspection District No. 24.

[2] According to Article XII, Section 4 of the 1935 Constitution in force at the time his case was decided by respondent Civil Service Commissioner: "No officer shall be removed or suspended except for cause as provided by law."

[3] Under the present Constitution, the equivalent provision of what was found in the 1935 Charter, now Article XII, B, Section 3 reads: "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law."

[4] 41 Phil. 188.

[5] Ibid, 193. It should be noted that it was also decided that there could be preventive suspension without a hearing.

[6] 54 Phil. 809 (1930).

[7] 84 Phil. 740 (1949).

[8] Ibid, 753.

[9] Cf. *Pulutan vs. Dizon*, 99 Phil. 168 (1956); *Unabia vs. City Mayor*, 99 Phil. 253 (1956); *Abaya vs. Villegas*, L-25641, Dec. 17, 1966, 18 SCRA 1034; *Mitra vs. Subido*, L-21691, Sept. 15, 1967, 21 SCRA 127; *Perez vs. Subido*, L-26791, June 22, 1968, 23 SCRA 1074; *Gray vs. de Vera*, L-23966, May 22, 1969, 28 SCRA 268; *Esquillo vs. Subido*, L-30341, Aug. 22, 1969, 29 SCRA 3; *Sta. Maria vs. Lopez*, L--30773, Feb. 18, 1970, 31 SCRA 637; *Villanos vs. Subido*, L-23169, May 31, 1972, 45 SCRA 299; *Cornejo vs. Secretary of Justice*, L-32818, June 28, 1974, 57 SCRA 633.

[10] Brief for Respondents-Appellees, 18-19.

[11] Ibid, 19.

[12] *Paras vs. Commissioner of Civil Service*, CA-GR No. 18162-R, 54 O.G. 1020 (1957).

[13] L-25641, December 17, 1966, 18 SCRA 1034.

[14] Ibid, 1039.

[15] Ibid.

[16] 18 SCRA 1034.

[17] Ibid, 1039-1040.

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