

JULIUS M. GALLEGO, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Review under Rule 43 of the Rules of Court seeking to annul and set aside the Civil Service Commission (CSC)'s Resolution No. 1300653[1] dated April 8, 2013, which denied petitioner Julius M. Gallego's motion for reconsideration and upheld the CSC Decision No. 120719[2] dated October 17, 2012.

The Antecedents

On July 26, 2009, petitioner Julius M. Gallego (Gallego) took the Career Service Examination Paper and Pencil Test conducted by the CSC at Catarman National High School, Catarman, Northern Samar. About 30 minutes after the examination started at 8:00 o'clock in the morning, Ariel Javier (Javier), the designated chief examiner for special operations, visited Room No. 10 where Gallego was assigned. He caught Gallego copying vocabulary terms, together with the letters and answers that he chose, from the test booklet to a white mailing envelope that contained Gallego's examination notice. Javier confiscated the white envelope.

On July 28, 2009, the CSC Regional Office No. VIII (CSCRO No. VIII) issued a show-cause notice directing Gallego and the test administrators namely: Magdalena Cuanico (room examiner), Janeth Aliposa (proctor), and Helena Alumbres (supervising examiner) to show cause why they should not be administratively charged.

Gallego submitted his Affidavit dated August 6, 2009 while the others who were notified did not submit any comment. Gallego explained in his affidavit that he was in good faith when he copied the vocabulary terms and the corresponding answers he made in the white envelope. The terms were not familiar to him and he intended to counter-check their meanings at home after the examination. He also said that the test administrators never informed the examinees before the examination that copying test items from the test booklet was prohibited. As proof of his good faith, Gallego averred that he copied the items openly and in plain view of the room examiner and proctors.

After investigating, the CSCRO No. VIII formally charged Gallego for his act that allegedly amounted to unauthorized reproduction of examination-related materials punishable under Republic Act (RA) 9416,[3] otherwise known as the Anti-Cheating Law.

The formal investigation commenced on March 18, 2010 but Gallego failed to appear during the hearing. Subsequently, an Order dated November 26, 2010 was issued for the continuation of the hearing on February 11, 2011. Gallego was duly notified but he still failed to appear. The prosecution presented its evidence ex-parte and thereafter, formally offered its evidence. The continuation of the formal investigation was then set on March 11 and 28, and April 28, 2011 for Gallego to present his evidence; however, he still failed to appear on such dates.

On August 15, 2011, the CSCRO No. VIII rendered a Decision finding Gallego guilty of the charge. He was penalized with dismissal from the government service with all the accessory penalties. Gallego moved for

reconsideration but his motion was denied. He then raised the matter to the CSC through a Petition for Review but the CSC dismissed his petition. It sustained the CSCRO No. VIII's findings, albeit modified the penalty imposed to perpetual disqualification from holding public office and barred Gallego from taking any civil service examination. The dispositive portion of the CSC's decision reads, viz.:

WHEREFORE, the instant motion for reconsideration of Julius M. Gallego is hereby DENIED. Accordingly, CSC Decision No. 12-0719 dated October 18, 2012, modifying the Resolution of the Civil Service Commission Regional Office (CSCRO) No. VIII, Palo, Leyte, finding Gallego guilty of Serious Dishonesty and Grave Misconduct in violation of R.A. No. 9416, and imposing on him the penalty of perpetual disqualification from holding public office, and bar from taking any civil service examination, STANDS.

SO ORDERED.[4]

Gallego moved for reconsideration but the CSC remained steadfast in its ruling. Hence, this petition for review advancing the following issues, to wit:

I.

WHETHER OR NOT PETITIONER SHOULD BE HELD LIABLE FOR VIOLATION OF REPUBLIC ACT 9416 OTHERWISE KNOWN AS "ANTI-CHEATING LAW";

II.

WHETHER OR NOT PETITIONER SHOULD BE IMPOSED WITH THE PENALTY OF PERPETUAL DISQUALIFICATION FROM HOLDING OFFICE, AND BARRED FROM TAKING ANY CIVIL SERVICE EXAMINATION.

On the first issue, Gallego contended that there was mis-appreciation of facts by the CSC when it ruled that his act of copying about four (4) vocabulary terms in his white envelope containing his notice of examination amounted to cheating. Gallego reiterated that his purpose in doing so was not to cheat, but only to counter-check his answers after the exam. He found the terms strange and difficult to understand so he wrote these on the envelope as he could no longer rely on his memory. Gallego highlighted that as evidence of his good faith, he just openly scribbled those words in the view of the proctor and the room examiner who did not stop him from doing so. He claimed that the examinees were not informed beforehand that such act was prohibited; and also pointed that Mr. Javier should not have allowed him to continue with the exam if he was indeed cheating.

Gallego also cited misapplication of the law. He contended that copying the test items from the test booklet to his envelope did not constitute unauthorized reproduction of examination-related materials prohibited by the Anti-Cheating Law. He did not obtain the examination material from an unauthorized source, but instead, from the CSC, which is actually the authorized source for such material. Besides, even if he copied the items from the test booklet, these would be of no more use to him as it would not help him change his score in the examination.

On the second issue, Gallego contended that the penalty imposed upon him was too much for his mistake considering that his act did not constitute a violation of the Anti-Cheating Law. Also, it was his first time to be charged with such offense.

This Court's Ruling

The petition is meritorious.

The Anti-Cheating Law was enacted by the legislature pursuant to the State policy that public office is a public trust. The State shall ensure that honesty, integrity and the merit and fitness principle be always the measure of entry into the public service. Thus, all forms of cheating in civil service examinations including those committed

by private individuals shall be immediately and effectively addressed for the public service should not be a haven for misfits and cheats.[5]

In Section 3(b) of RA 9416, the term cheating has been defined as follows, viz.:

(b) Cheating - refers to any act or omission before, during or after any civil service examination that will directly or indirectly undermine the sanctity and integrity of the examination

such as, but not limited to, the following:

- Impersonation;
- Use of "codigo" or crib sheets;
- Employing a "poste" or a person inside or outside of the examination room who may or may not be a registered examinee but who provides examinees with answers or "codigo" or "crib sheets" or such other assistance purportedly to enhance examinee's better chances of passing;
- Tampering with the examination records such as the Answer Data Files, the Application Forms or the Picture-Seat Plan to facilitate the passing of an examinee who have failed;
- Collusion of whatever nature between examinees and examination personnel;
- Examinee number switching;
- Possession and or use of fake certificate of eligibility;
- Such other acts of similar nature which facilitate the passing of an examination including those committed by review centers or entities offering refresher courses or tutorials. [Emphasis and underscoring supplied.]

The charge against Gallego was for "copying test items from his test booklet to an envelope in his possession." [6] The CSCRO No. VIII considered it as tantamount to unauthorized reproduction of examination-related materials, which is punishable as an act of cheating under Section 5 of the the Anti-Cheating Law, thus:

SEC. 5. Unauthorized Possession of and/or Unauthorized Use of Examination Material. - The unauthorized possession of and/or unauthorized use, reproduction and/or dissemination in any form of examination materials, in whole or in part, by an individual, either private or government employee, group or review center, from an unauthorized source, shall be considered an act of cheating and punishable under this Act.

After a conscientious evaluation of the factual milieu of this case, this Court finds that the CSC erred in adjudging Gallego guilty of the charge against him. His act of writing in his envelope some vocabulary terms that he found strange and difficult to understand, for the purpose of verifying his answers in the exam later, does not constitute the act of cheating contemplated under the aforesaid Section 5 of RA 9416.

To restate, cheating refers to any act or omission before, during or after any civil service examination that will directly or indirectly undermine the sanctity and integrity of the examination. The illustrative acts included in the enumeration under Section 3(b) of RA 9416 appears to have a common attribute, specifically that these are all aimed at illicitly enhancing the chances of, or facilitating the examinee's passing the exam. Consequently, the act of reproducing examination materials under Section 5 of the law must be interpreted in line with the character of the acts enumerated under Section 3(b) thereof.

The established rule in the interpretation of statutes is for courts to seek the legislative intention and give it effect.[7] The spirit, rather than the letter of a law determines its construction; hence, a statute must be read according to its spirit and intent.[8] Pursuant to this tenet, Gallego's act must, thus, be evaluated under the prism

of what the law desires to curb in enacting the Anti-Cheating Law, and that is the examinee's resort to dishonest means to obtain undue advantage over the others who also take the examination. In this case, Gallego did not write or copy the vocabulary terms in his envelope so he could use it to enhance his chances of passing the exam.

Moreover, Gallego correctly argued that he could not be held guilty of violating Section 3(b) since the vocabulary terms he reproduced came from the CSC, the authorized source of the examination material. Indeed, the intent of the law shows that what it seeks to prohibit is the reproduction of illicitly obtained examination materials for cheating purposes. Since this circumstance clearly does not obtain in this case, Gallego could not be held guilty as charged.

In the light of the foregoing discussions, We no longer find it necessary to take up the second issue advanced by Gallego; for without a finding of guilt, there could be no imposition of penalty.

WHEREFORE, the Petition is GRANTED. Resolution No. 1300653 dated April 8, 2013 and Decision No. 120719 dated October 17, 2012, both issued by the Civil Service Commission, are hereby REVERSED AND SET ASIDE.

Julius M. Gallego is ACQUITTED of the charge of violating Section 5 of Republic Act No. 9416 and the case against him is DISMISSED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 48-52.

[2] Rollo, pp. 118-122.

[3] An Act Declaring As Unlawful Any Form Of Cheating In Civil Service Examinations, Unauthorized Use And Possession Of Civil Service Commission (CSC) Examination-Related Materials, And Granting The CSC Exclusive Jurisdiction Over These Cases Including Those Committed By Private Individuals.

[4] Rollo, p. 52.

[5] See Section 1 of RA 9416.

[6] See quoted portion of the formal charge in CSC RO VIII Decision, rollo, p. 112.

[7] See separate opinion of J. Puno in *Defensor Santiago v. Commission on Elections*, G.R. No. 127325. June 10, 1997.

[8] See *Paras v. Comelec*, G.R. No. 123169. November 4, 1996.

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