

EDUARDO G. BAUTISTA, PETITIONER AND APPELLANT, VS. SUSANO R. NEGADO, AS GENERAL MANAGER OF THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, AND THE NATIONAL WATERWORKS AND SEWERA...

G.R. No. L-14319. May 26, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Appeal from an order of the Court of First Instance of Manila dismissing a petition for prohibition with preliminary injunction.

The petitioner-appellant is an employee of the National Waterworks and Sewerage Authority, hereinafter referred to as the NWSA. On November 11, 1957, one Turiano A. Alonzo filed with the General Manager of that office a sworn statement alleging that on September 6, 1957 he gave an amount of P100.00 to petitioner-appellant on the understanding that the latter would have the former's house connected to the water main of the NWSA but that up to the date of said statement the water service connection had not yet been installed.

The respondent-appellee General Manager of the NWSA notified the petitioner-appellant of the sworn statement, giving him seventy-two (72) hours from receipt of the notice to submit a detailed answer thereto, together with whatever evidence he may desire to present in support of his side of the case.

In his answer, the petitioner-appellant alleged that he is a mere timekeeper-capataz in the Construction Division, Engineering Department of the NWSA, and that what transpired between him and Alonzo was a purely unofficial transaction, private in nature and had no relation to or connection with the performance of his official duties. Contending that the acts imputed to him could not be the subject of an administrative investigation, the petitioner-appellant moved to dismiss the case, but the motion was denied.

The case having been later set for a formal investigation, the petitioner-appellant instituted with the Court of First Instance of Manila this proceedings for prohibition to prevent the respondents-appellees from conducting the said investigation. The prayer for the issuance of a writ of preliminary injunction was, after hearing, denied at an earlier stage of the case.

Respondents-appellees then filed a motion to dismiss the petition on the ground that it states no cause of action. In an order dated July 12, 1958, the lower court granted the motion, with the opinion that "the respondents as employers of the petitioner have the right to investigate the acts of the petitioner which have anything to do with the business of the respondent, irrespective of whether they have a direct bearing or not with his official duties as such employee." Motion for reconsideration of the order of dismissal having been denied, the case was appealed directly to us, the issues raised being limited to questions of law.

The pivotal question is whether or not the respondents-appellees have the power and jurisdiction to administratively investigate the petitioner-appellant.

It is urged that the acts imputed to the petitioner-appellant had no connection with his duties as timekeeper-capataz in the Construction Division of the Engineering Department of the NWSA and, therefore, could not be a cause of investigation by the said office. This proposition is untenable. As certified to by the Chief of the Service Department of the NWSA the petitioner-appellant has no authority to accept cash deposits to cover installations of water service connections which are all done by the Service Department. Hence, petitioner-appellant's unauthorized act of receiving cash money with the promise to install a water service with it, and his failure to use the said amount for such purpose, clearly constitute deceit or dishonesty.

Under section 6 of Republic Act 1383 (Charter of the NWSA), employees of the NWSA are subject to Civil Service Law, rules and regulations, except those whose positions may, upon recommendation of the Board of Directors, be declared by the President of the Philippines as policy-determining, primarily confidential, or highly technical in nature. The position of timekeeper-capataz not falling under any of these exceptions, the petitioner-appellant is, undoubtedly, subject to civil service rules.

Among the different acts of misconduct for which a civil service employee may be investigated and/or punished by the chief of a bureau or office under section 694 of the Revised Administrative Code is dishonesty. In the very recent case of *Nera vs. Garcia*, 106 Phil., 1031, it has been held that dishonesty on the part of an employee to warrant his punishment or dismissal need not be committed in the course of the performance of his duties. Said this court in that case:

"As to the holding of the trial court about dishonesty or misconduct in office having connection with one's duties and functions in order to warrant punishment, this involves an interpretation of Section 694 of the Revised Administrative Code, which for purposes of reference we reproduce below:

'Sec. 694. Removal or suspension.—No officer or employee in the civil service shall be removed or suspended except for cause as provided by law.

"The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper head of department, the chief of a bureau or office may likewise suspend any subordinate or employee in his bureau or under his authority pending an investigation, if the charge against such subordinate or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty.' (Italics supplied.)

It will be observed from the last four lines of the second paragraph that there is a comma after the words dishonesty and oppression, thereby warranting the conclusion that only the phrase 'grave misconduct or neglect, is qualified by the words 'in the performance of duty.' In other words, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

"Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959, which refers to the same subject matter of preventive suspension, throws some light on this seeming ambiguity. We reproduce said section 34:

'SEC. 34. Preventive Suspension.—The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.' (Italics supplied.)

It will be noticed that it introduces a small change into Section 604 of the Revised Administrative Code by placing a comma after the words 'grave misconduct' so that the phrase 'in the performance of duty' instead of qualifying 'grave misconduct or neglect, as it did under Section 694 of the Revised Administrative Code, now qualifies only the last word 'neglect', thereby making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but that when he is charged with dishonesty, oppression or grave misconduct, these need have no relation to the performance of duty. This is really understandable. If a Government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot well tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellowmen, even against offices and entities of the Government other than the office where he is employed; and by reason of his office, he enjoys and possess a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. As the Solicitor General well pointed out in his brief, "the private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and moral of the service."

It is significant that petitioner-appellant's misdeed is not entirely disconnected with the business of the NWSA because the said office is in charge of the construction, maintenance and operation of water and sewerage systems. The petitioner-appellant, in receiving a considerable amount of money under, promise to install a water connection, seems to have capitalized on his being an employee of the NWSA.

Section 695 of the Revised Administrative Code says that "for neglect of duty or violation of reasonable office regulations, or in the interest of the public service," a civil service subordinate officer or employee may be removed, suspended or otherwise punished by a reduction of salary. The act imputed to the petitioner-appellant being one which affects the business of the NWSA, "public interest warrants his investigation. The principle is that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the people's faith and confidence in their Government.

The petitioner-appellant contends that the basis of the investigation is a mere sworn statement or affidavit and is not a complaint in itself. This issue as to whether or not there was filed a valid administrative complaint is of no moment for a complaint is not a prerequisite to an administrative investigation. "Administrative proceedings may be commenced against a government officer or employee by the head of office of the bureau or office concerned *motu proprio* or upon complaint of any person which shall be subscribed under oath by the complainant * * * (Executive Order No. 370, series of 1941.)

Premises considered, the order appealed from is hereby affirmed, with costs against the petitioner-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.
Endencia, J., did not take part.

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