

FELIX MONTEMAYOR, PETITIONER, VS. HON. SECRETARY OF LABOR, BLAS F. OPLE AND ARANETA UNIVERSITY FOUNDATION, RESPONDENTS.*G.R. No. L-44251. December 29, 1977*

Ponente: FERNANDO, J.

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Considerable stress is laid by petitioner in this motion for the reconsideration of our decision of May 31, 1977 dismissing the certiorari proceeding to set aside a resolution of respondent Secretary of Labor granting clearance to private respondent, the Araneta University Foundation, for his dismissal as professor in such University, but without payment to him of P14,480.00 as accrued back wages. As will be shown, there is lack of support in law for such a contention. While there is sympathy for the plight in which petitioner now finds himself, still the norm followed by this Court in suits for certiorari directed against the Secretary of Labor does not call for an affirmative response. Moreover, his own motion for reconsideration categorically stated that he would not "like anymore to teach in the [Araneta University Foundation] and so [he is] not asking for reinstatement." [1]

1. In the petition for certiorari, what was complained of was lack of procedural due process not in the proceeding before the labor officials but before the Araneta Foundation.[2] Such a charge was reiterated in the memorandum filed on his behalf by his then counsel, the principal point raised being that the members of the panel of investigators were all prejudiced against him and that it was not "therefore amazing that the poor petitioner in the instant case does not have a chance." [3] It was admitted though that a previous investigation that took place on April 24, 1974 "was attended by petitioner as well as complainant with his two witnesses." [4] In the decision sought to be reconsidered, mention was made of such a fact. After which, there was reference to a denial of a motion for postponement filed by petitioner in the second investigation. Such a deficiency, as was explained in our decision, was remedied in view of the fact that petitioner had the chance to air his side before the Labor Commission. It is well-settled that an infirmity that would vitiate the original proceeding could thereafter, either on a motion for reconsideration or on review by another body, be subject to correction.[5] In this motion for reconsideration, petitioner had shifted ground.

The major thrust now is that the hearing before the National Labor Relations Commission did not conform with the requirements of procedural due process as the witnesses against petitioner were not called before it so that they could be cross-examined. As pointed out in the comment of Solicitor General Estelito P. Mendoza: "This argument is untenable. It is a well-established principle that the right of an accused or a party to be confronted by the witnesses against him is a personal privilege which the latter may avail himself of or which he may waive, as he may see fit. The waiver may take the form of an express consent, by failure to assert it on time, or by conduct inconsistent with a purpose to insist on it. In the case at bar, petitioner's lack of objection in the formal hearings before the labor Arbiter to the presentation of the testimonies of his complainants and their witnesses taken during the school investigations and his lack of assertion of his right to cross-examine them on their affidavits submitted thereat, coupled with the fact that he presented his evidence, together with his affidavit, impugning the regularity

of the proceedings before the investigating committees and assailing the legality of his removal, are clear indications that petitioner had waived his right to confront his complainants and elected to rely solely on the strength of his own evidence. He cannot now complain that he was denied such a right. It is significant to note in this regard that petitioner never impugned the regularity of the proceedings before the Labor Arbiter. On the contrary, he admitted that 'indeed, the NLRC Hearing Officer, the Labor Arbiter, strictly followed the due-process requirements.' (Motion for Reconsideration, p. 10)."[6]

2. Petitioner would seem to mitigate the force of such admission about the observance of procedural due process by asserting that it was incumbent on the respondent University to present the witnesses in the National Labor Relations Commission hearing. There is a misapprehension on his part. All he is guaranteed under the authoritative Ang Tibay doctrine is that he be heard.[7] Implicit in such a concept is that the burden is cast on him to sustain his side of the controversy. If he fails to do so, the administrative agency concerned could rely on the evidence offered by the other party. That was what happened in this case.[8] If at all then, petitioner had only himself to blame.

3. Nor is petitioner's case for reconsideration bolstered by the reference to the high ideal that animates the concept of due process. As was pointed out in *J. M. Tuason and Co. v. The Land Tenure Administration*: [9] "It is a mandate of reason. It frowns on arbitrariness, it is the antithesis of any government act that smacks of whim or caprice. It negates state power to act in an oppressive manner. It is, as had been stressed so often, the embodiment of the sporting idea of fair play. In that sense, it stands as a guaranty of justice. That is the standard that must be met by any governmental agency in the exercise of whatever competence is entrusted to it." [10]

If the various proceedings had in this case, including the first investigation, were considered in their totality, it cannot be said that the decision arrived at by respondent Secretary of Labor is susceptible to the charge of arbitrariness. It is worth noting anew that there was a previous investigation where petitioner had the chance to cross-examine the witnesses against him. At that time, the finding was adverse. It was true his services were not terminated, a lighter penalty being imposed on him. Viewed in such a light, the imputation that respondent Secretary of Labor, which is the only issue before us, acted in disregard of the due process mandate is not borne out. There is no justification for a reconsideration.

4. On the question of the injury to his reputation arising from the dismissal of his petition for certiorari, it should be made clear that the only issue before this Court in this proceeding is whether or not the actuation of an administrative official in the enforcement of the Labor Code could be stigmatized as a denial of due process. The conclusion reached by this Court after a review of the records is that it could not be so considered. That was all that was decided. The decision reached by respondent public official to grant clearance to private respondent Araneta University Foundation was thus upheld. That is the import of the decision. In contemplation of law, it is not strictly accurate to state that there was a finding on the part of this Court that immorality was proven against the petitioner. All that is signified by the decision sought to be reconsidered is that the procedure followed resulting in this clearance for his dismissal cannot be characterized as tainted by a denial of procedural due process. That was the issue before us. That was what was passed upon and decided. His dismissal from the service then could be viewed in a light less damaging to his prestige and reputation. Considering his ability and talent as revealed by his pleadings, whatever injurious effect the decision may have had could be mitigated by the lapse of time.

WHEREFORE, the motion for reconsideration is denied.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.
Santos, J., on official leave.

[1] Motion for Reconsideration of Petitioner, 22.

[2] Petition, 5.

[3] Memorandum for Petitioner, 16-17.

[4] Decision, 2.

[5] Cf. *Demaronsing v. Tandayag*, L-27057, Aug. 21, 1974, 58 SCRA 484; *De Borja v. Flores*, 62 Phil. 106 (1935); *De Borja v. Tan*, 93 Phil. 167 (1953); *Flash Taxicab Co. v. Cruz*, L-15464, March 30, 1963, 7 SCRA 518; *Caltex (Phil.) Inc. v. Castillo*, L-24657, Nov. 27, 1967, 21 SCRA 1071; *Batangas Laguna Tayabas Bus Co. v. Cadiao*, L-28725, March 12, 1968, 22 SCRA 987; *Maglasang v. Ople*, L-38813, April 29, 1975, 63 SCRA 508; *Nation Multi Service Labor Union v. Agcaoili*, L-39741, May 30, 1975, 64 SCRA 274.

[6] Comment, 2. The Solicitor General was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Jesus V. Diaz.

[7] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

[8] The *Ang Tibay* doctrine was subsequently followed in *Antamok Goldfields Mining Co. v. CIR*, 70 Phil. 340 (1940); *Manila Trading and Supply Co. v. PLU*, 71 Phil. 124 (1940); *Mindanao Bus Co. v. MBC Empls. Asso.*, 71 Phil. 168 (1940); *Manila Trading Co. v. PLU*, 71 Phil. 578 (1941); *Leyte Land Trans. Co. v. Leyte Farmers & Laborer's Union*, 80 Phil. 842 (1948); *Shell Co. v. NLU*, 81 Phil. 315 (1948); *Phil. Educ. Co. v. CIR*, 94 Phil. 73 (1953); *Lakas Ng Pagkakaisa sa Peter Paul v. CIR*, 96 Phil. 63 (1954); *Dimayuga v. CIR*, et al., 101 Phil. 590 (1957); *NLU v. OSCO Workers Fraternity Labor Union*, 110 Phil. 627 (1960); *NDC v. Collector of Customs*, 118 Phil. 1265 (1963); *Timbangcaya v. Vicente*, 119 Phil. 169 (1963); *Vigan Electric Light Co., Inc. v. PDC*, L-19850, Jan. 30, 1964, 10 SCRA 46; *Lustre, et al. v. CAR*, L-19654, March 31, 1964, 10 SCRA 659; *Commissioner of Immigration v. Hon. Fernandez*, L-22696, May 26, 1964, 11 SCRA 184; *Borja v. Moreno*, L-16487, July 31, 1964, 11 SCRA 568; *Santos v. Secretary of Public Works*, L-16949, March 18, 1967, 19 SCRA 637; *Phil. Air Lines, Inc. v. CAB*, L-24321, July 21, 1967, 20 SCRA 849; *Ermata-Malate Hotel and Motel Operators Asso. v. City Mayor*, L-24693, July 31, 1967, 20 SCRA 849; *Caltex (Phil.), Inc. v. Castillo*, L-24657, Nov. 27, 1967, 21 SCRA 1071; *Palanan Lumber & Plywood Co., Inc. v. Hon. Arranz*, L-27106, March 20, 1968, 22 SCRA 1186; *Caltex Filipino Mgrs. & Supvs. Asso. v. CIR*, L-28472, April 30, 1968, 24 SCRA 867; *Phil. Air Lines v. CAB*, L-24219, June 13, 1968, 24 SCRA 992; *Alalayan v. NPC*, L-24396, July 29, 1968, 24 SCRA 172; *Serrano v. PSC*, L-24165, Aug. 30, 1968, 24 SCRA 867; *Gracilla v. CIR*, L-24489, Sept. 29, 1968, 25 SCRA 242; *Sanchez v. CIR*, L-26932, March 28, 1969, 27 SCRA 490; *Mateo v. Moreno*, L-21024, July 28, 1969, 28 SCRA 769; *Lakas ng Mangga-gawang Makabayan v. Court of Industrial Relations*, L-32178, Dec. 28, 1970, 36 SCRA 600.

[9] L-21064, February 18, 1970, 31 SCRA 413.

[10] *Ibid.*

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