MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), GWENDOLYN GARCIA, NILO JATICO, MAKABANGKIT LANTO, PATRICIA DAWNIE ROA, MA. LOURDES DEDAL, VALERIANO AVILA, RENATO OSMEÑA, AL...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Under consideration is a Petition for Review[1] under Rule 43 of the 1997 Rules of Civil Procedure filed by petitioners Mactan-Cebu International Airport Authority, et. al praying to set aside the Civil Service Commission Resolution Nos. 08-0353 and 081231[2] which declared the preventive suspension of Adelberto F. Yap as General Manager of Mactan-Cebu International Airport Authority (MCIAA for brevity) null and void on its face.

THE ANTECEDENT

On February 22, 2005, the MCIAA Board of Directors appointed Retired Major General Adelberto F. Yap as General Manager of the MCIAA with a one-year term. The Board renewed respondent Yap's term for another year on February 22, 2006.[3]

Due to several administrative complaints relating to the procurement of supplies for the airport, a Special Board Meeting was conducted at the instance of the petitioners. Being a member of the Board, respondent Yap was present during the said meeting where charges against him were discussed.

In order to investigate the complaints without possible interference from Yap, the Board ordered his preventive suspension and designated Romeo Bersonda as Officer-in-Charge of the airport on July 21, 2006. Five days later, the Board asked Yap to answer the charges against him in writing.[4] Then, respondent Yap on the Board Resolution putting him under preventive suspension, offered an irrevocable resignation. On July 31, 2006, the MCIAA Board issued Resolution No. 2006-1099 terminating respondent's temporary appointment and declaring the position of General Manager vacant.

Aggrieved, respondent Yap questioned the legality of his termination and preventive suspension via appeal before the CSC Regional Office VII. Since the case involved a third-level official, the Regional Office forwarded the case to the Civil Service Commission Central Office (CSC for brevity) and docketed the case as CSC OLA ADM No. 06-067.

On February 19, 2008, the CSC partly granted respondent's appeal and the dispositive portion of the aforesaid resolution reads, to wit:

> "WHEREFORE, foregoing premises considered, the instant appeal is hereby PARTLY GRANTED. The preventive suspension of Adelberto F. Yap is declared NULL and VOID ON ITS FACE, for which reason he is deemed entitled to payment of back salaries corresponding to the period of illegal preventive suspension. However, the termination of his service pursuant to MCIAA Board Resolution No. 2006-1099 dated July 31, 2006 is considered VALID and IN ORDER."[5]

Respondent Yap filed a Motion for Partial Reconsideration of the said resolution insofar as it declared his termination valid and in order. On the opposite side of the spectrum, petitioners MCIAA likewise filed the same motion with respect to the finding that respondent's preventive suspension was null and void.

Both motions were denied. Respondent Yap appealed CSC's denial to the Court of Appeals Manila under CA-GR. SP. No. 105055 insofar as the validity of his termination is concerned. The Court of Appeals Manila limited their discussion on the validity of Yap's termination since they noted that petitioner MCIAA appealed before a different Division that part of the CSC resolution invalidating Yap's preventive suspension.

The Court of Appeals affirmed CSC's Resolution declaring Yap's termination valid and in order. By the issuance of such decision[6], the Motion to Consolidate[7] the case with GR. SP. No. 03720 filed by petitioner MCIAA in another Division concerning the preventive suspension issue became futile. Thus, MCIAA filed a Motion to Withdraw the Motion to Consolidate with Supplemental Motion to Transfer Venue from Manila to Cebu City.[8]

With the denial of respondent Yap's Motion for Reconsideration and without elevating the said Court of Appeals' Decision[9] to the Supreme Court, the Decision promulgated on September 11, 2009 became final and executory as of June 4, 2010. An Entry of Judgment10 was issued in the said case.

Considering that CSC denied MCIAA's partial Motion for Reconsideration by maintaining its previous decision declaring the preventive suspension of respondent Yap null and void, petitioner MCIAA comes before us praying to set aside the CSC's Resolution Nos. 08-0353 and 081231 and to declare the preventive suspension of respondent Yap valid and in order.

The lone issue that needs to be settled by Us then is:

> WHETHER OR NOT THE PREVENTIVE SUSPENSION OF RESPONDENT ADELBERTO F. YAP WAS VALID AND IN ORDER.

THIS COURT'S RULING

We find for the petitioners.

At the onset, the issue on respondent Yap's entitlement to backwages by reason of his preventive suspension has been rendered moot and academic by the finality of judgment rendered by the Court of Appeals in CA-GR. SP. No. 105055[11] which confirms the validity of his termination or cessation from office. Respondent Yap therefore is not entitled to back salaries since Tanjay Water District, et al. vs. Quinit, Jr.,[12] instructed that “back salaries may be awarded to civil servants only if they have been illegally dismissed and thenceforth ordered reinstated, or to those acquitted of the charge against them.”

Moreover, as established in the aforesaid Court of Appeals Decision, respondent Yap's position is primarily confidential, thus, he can be terminated from service on the ground of loss of trust and confidence. As elucidated further in that same case:

> “Indeed, no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. The phrase “cause provided by law,” however, includes “loss of confidence.” It is an established rule that the tenure of those holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures. Their termination can be justified on the ground of loss of confidence, in which case, their cessation from office involves no removal but the expiration of their term of office.
>
> Thus, on the sole issue raised by petitioners, we find and so hold that respondent is not entitled to back salaries.

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> Petitioners are correct in stating that the appellate court took an inconsistent position when it ruled that respondent was a confidential employee who served at the pleasure of the TWD Board, but declared that he was entitled to back salaries because he was denied due process. As held in Paloma, since the Board of Directors of a water district may "abridged the term of the general manager thereof the moment the latter's services cease to be convivial to the former," there is no need of prior notice or due hearing before the incumbent can be separated from office. It is enough that he was informed of the Board Resolution terminating his services for loss of confidence. Thus, in the instant case, the Board afforded respondent due process when they notified him of the approval of Board Resolution No. 49, Series of 1996."

On that score alone, there could have been no query as to the legality of respondent's preventive suspension and his eventual termination since prior notice or hearing is dispensed with in cases where a confidential officer is removed from his post by reason of loss of trust and confidence. Due process is satisfied with by the mere expedient of furnishing him with a copy of the Board Resolution expressing the Board's loss of trust and confidence in him.[13]

Nonetheless, the respondent would have the Court hold that MCIAA's failure to issue any formal or notice of charge prior to the preventive suspension of Yap was a fatal defect in the administrative proceeding that resulted in the illegality of his preventive suspension since it violates one's right to due process.

The argument lacks merit because contrary to respondent's claim, he nevertheless had been afforded due process. The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[14] Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary,[15] and technical rules of procedure are not strictly applied. Ledesma v. Court of Appeals[16] elaborates on the well-established meaning of due process in administrative proceedings in this wise:

> "Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."

Respondent Yap participated in the course of the special meeting conducted by the Board on July 21, 2006 as evidenced by the Minutes of Special Meeting of the Board[17]. During the said meeting, Yap was duly informed of the administrative charges filed against him and was able to explain his side before he was preventively suspended. In fact, he was already informed of the administrative charges filed against him considering that these were the very same cases which had been filed earlier with the Office of the Ombudsman. Respondent Yap was also able to appeal the adverse decision of the Board in preventively suspending and dismissing him from service to the CSC. Also, the order of preventive suspension was reduced into writing through the said Minutes of the Special Board Meeting. That, to us, was sufficient to meet the requirements of administrative due process. It is settled that there is no denial of due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.[18]

In any event, any procedural defect in the proceedings taken against the respondent, like the Minutes of the Meeting is nowhere near in complying with the required notice of charge and the order of preventive suspension which was written in the Minutes of the Meeting cannot be considered as an "order" contemplated under the Civil

Service Law as espoused by respondent, was cured by his appealing the adverse result to the CSC.

The Court held in Gonzales v. Civil Service Commission[19] that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard. In Autencio v. Mañara[20], the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.

Again and to belabor the point, a confidential employee needs no prior notice nor due hearing before he can be removed from office. Jurisprudentially well-entrenched is the rule that "an appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office."[21]

Also, during the said meeting, respondent Yap made an offer of his irrevocable resignation thereto. Gleaned from the Minutes of the Special Meeting[22], to wit:

> "Relative the offer of Gen. Adelberto F. Yap for an irrevocable resignation, since there was no formal presentation of such, the Board will discuss it accordingly, at the proper time.
>
> On the query of BM Roa whether the legal culpabilities of Gen. Yap remains despite his irrevocable resignation, Atty. Sepulveda stated that the resignation will terminate the administrative aspect, but insofar as the criminal and whatever liabilities there may be, there are other agencies tasked to handle the matter."

We adhere to petitioners' postulate that the legality of preventive suspension became moot and academic on that same day when respondent Yap offered his irrevocable resignation. Hence, the Board Resolution putting Romeo Bersonda as the Officer-in-Charge of MCIAA is an implied indication that the Board, being the immediate superior of Yap, accepted the latter's irrevocable resignation since the acceptance of the resignation may be manifested either by a formal declaration or by appointment of a successor.

Lastly, respondent's assertion that petitioners' pleadings suffer congenital defects deserves scant consideration. Settled is the rule that dismissal of appeals on purely technical grounds is frowned upon for it is far more better for the courts to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of substantial justice.[23] Moreso, Sarmiento vs. Zaratan[24] explicated that "it is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections."

IN LIGHT OF the foregoing disquisitions, the petition is GRANTED. The Civil Service Resolution Nos. 08-0353 and 081231 are SET ASIDE. We hereby declare the preventive suspension of respondent Adelberto F. Yap VALID and IN ORDER.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

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[1] Rollo. P. 3.

[2] Annex "A". Rollo. P. 20.

[3] Decision. Court of Appeals Manila. Rollo. P. 288. (With attached Entry of Judgment at page 304)

[4] Ibid.

[5] CSC Resolution.

[6] Supra at note 3.

[7] Rollo. P.26.

[8] Rollo. P. 68.

[9] Supra at note 3.

[10] Rollo. P. 304.

[11] Supra at note 3.

[12] 522 SCRA 529. 2007.

[13] Supra at note 3.

[14] Office of the Ombudsman v. Reyes, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640; citing Ledesma v. Court of Appeals, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

[15] Imperial, Jr. v. Government Service Insurance System, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505, cited in Pat-og, Sr. v. CSC, G.R. No. 198755, June 5, 2013.

[16] GR. No. 166780, December 27, 2007, 541 SCRA 444.

[17] Annex “A”. Rollo. P. 264.

[18] Liguid v. Camano, Jr., A.M. No. RTJ-99-1509, August 8, 2002, 387 SCRA 1, 10.

[19] G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

[20] G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.

[21] Paloma vs. Mora. GR. No. 157783, September 23, 2005.

[22] Supra at note 17.

[23] Sps. Melchor, et al. v. Ronald Bernal, et al. GR. No. 169336. March 18, 2010.

[24] GR. No. 167471. February 2, 2007.

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