

FILEMON CRUZ, PETITIONER, VS. GOVERNMENT SERVICE INS-URANCE SYSTEM, RESPONDENT.

G.R. No. L-21286. February 28, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action of Mandamus for reinstatement of petitioner to his position as clerk expediter with respondent Government Ser-vice Insurance System.

The record discloses that had petitioner and his counsel, Atty. Antonino de los Reyes, dealt with the Court with truth and candor, instead of concealing the true facts and misleading the Court, the petition would not have been given due course at the time of its filing.

Petitioner, in this verified petition, represented to the Court that: - he is a civil service eligible employed as a clerk expediter in respondent GSIS since 1951; in July, 1960, the GSIS filed administrative charges against him for "misconduct or dishonesty" and suspended him from his office since then; on August 23, 1960, prior to the expiration of the 60-day period of preventive suspension, the GSIS forewent the administrative charges against him and "in lieu thereof, it elected to file in the City Fiscal's Office in Manila a criminal complaint (I.S. No. 60-25705) for the crime of estafa thru falsification of commercial and public documents"; on July 17, 1961, the corresponding information was filed against him before the Court of First Instance of Manila;[1] on July 28, 1962, the Court of First Instance of Manila dismissed the information against the petitioner, upon motion of the fiscal, that upon reinvestigation it was found that "he is not in any way connected with the said case,"[2] but the said Court denied his motion for reinstatement with back pay;[3] he then requested the GSIS for reinstatement but the latter refused, alleging the existence of another criminal case for estafa against him before the Court of First Instance of Bulacan; this second criminal case was dismissed upon petition of the fiscal by the Court of First Instance of Bulacan on February 5, 1963, which further directed in its Order that:

"x x x As prayed for by the defense counsel without objection on the part of the Assistant Provincial Fiscal, the immediate reinstatement of the accused Filemon Cruz with payment of salary during the period of suspension is hereby ordered."[4]

Petitioner then wrote the GSIS per his letter of February 6, 1963, notifying it of the dismissal of said criminal charge of estafa by the Bulacan Court, and requesting, for his immediate reinstatement, which request was reiterated in another letter of February 12, 1963;[5] and despite the lapse of more than 30 days since then, the GSIS refused to reinstate him. Petitioner averred;

"That the continuous suspension of the petitioner is, under the circumstances, equivalent to a separation from the service and petitioner has been deprived and/ or excluded of his right to due process of law as he (petitioner) was not given an opportunity to defend himself or through counsel, hence, his separation is therefore unlawful;"[6]

Respondent GSIS, in its documented Answer, showed that petitioner's allegations were far from true; and that far

from being "under continuous suspension" since July, 1960, petitioner had been found guilty in the administrative charges against him and separated from the service effective from the date of his suspension, after due hearing where he testified on his own behalf and was duly represented by another counsel, Atty. Dakila Castro; and that petitioner had been advised several times of his separation from the service. Thus, the records submitted by the GSIS, which have not been disputed by petitioner but on the contrary were admitted by him in his Reply and Memorandum, as shown hereinafter, disclose the following facts:

1. The GSIS, far from foregoing the administrative charges against petitioner and electing to prosecute him criminally in Manila, as claimed by petitioner, formally proceeded with said charges before its 3-member Special Board of Inquiry, the GSIS body created to investigate administrative cases in the System, which formally heard the case, and petitioner testified on his own behalf and was represented by his counsel during the proceedings;[7]

2. As summarized in the GSIS Special Board of Inquiry's 7-page single-spaced memorandum and formal findings of its investigation, dated November 28, 1960,

"The prosecution rested its case after presentation of the three witnesses and documentary evidences, Exhibits "A" to "N" with Messrs. Cornelio Ledda and Rodolfo Buzon utilized as rebuttal witnesses. The defense rested its case after presenting Mrs. Gaudencia Morales and respondent as their witnesses and Exhibit "1" with respondent himself as the sur-rebuttal witness." [8]

x x x x

"After a careful scrutiny of the evidence presented by both the prosecution and the defense and taking note of the contents of the memorandum for respondent as submitted by his counsel, the Special Board of Inquiry deduced the following points which are clearly shown by the facts and the evidence: (1) that both the prosecution and the defense have no dispute as to the fact that the check in question (Exhibit "A") was taken out of the room of the Life Insurance Claims Division, Office, in the afternoon of July 6, 1960, and subsequently encashed by fraudulent means; (2) That the said check was taken unnoticed from the same division by an employee therefrom and passed it over to only one person who is an outsider; and (3) That this person to whom it was passed is Rodolfo Buzon. The only question in issue is, 'Who between Messrs. Filemon Cruz, the respondent herein, and Cornelio Ledda, was the employee who took the check? Was it the respondent or Mr. Ledda? From the words of the very person who received the check himself, Mr. Rodolfo Buzon, respondent was the one who passed the said check to him. His testimony is direct and positive, not vague and circumstantial.'" [9]

Said board, therefore, made the following recommendation and decision:

"Premises considered and as shown by the facts and the evidence, the Special Board of Inquiry finds respondent guilty of the administrative offenses of (1) DISHONESTY, and (2) ACTS PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and recommends that he be considered resigned from the service with prejudice to his reinstatement in the GSIS, effective as of the date of his preventive suspension." [10]

The GSIS Board of Trustees, per its resolution No. 956 approved on March 15, 1961, acting pursuant to said findings of its Special Board of Inquiry and the recommendation of Board Trustee del Rosario (to whom the Board had previously referred the matter) and who noted that petitioner, "participated in the illegal handling and cashing of checks, intercepting their delivery to the prejudice of the payees", resolved "to approve that Mr. Filemon Cruz be considered resigned from the service with prejudice to his reinstatement in the GSIS, effective as of the date of his preventive suspension." Petitioner was advised of his separation per letters to him dated March 17, 1961, sent by registered mail and April 7, 1961. [11]

4. Contrary to petitioner's claims, the subject matter of the administrative case and the criminal case in Manila

against him consisted of two different GSIS checks in favor of two distinct payees lost and fraudulently encashed, and therefore had no relation to each other;[12] similarly, the criminal case against petitioner in Bulacan was an estafa charge filed by certain Bula-can residents and had no relation to the administrative case.[13] After the dismissal in July, 1962 of the criminal case in Manila, the GSIS refused his request for reinstatement, not on the ground of the pendency of the other criminal case in Bulacan, (as alleged by petitioner) but because he had already been separated from the service for cause since March, 1961. The letter-reply of Ramon A. Diaz dated October 29, 1962 clearly reiterated this fact of petitioner's separation in no uncertain terms.

"October 29, 1962

"Mr. Filemon Cruz

Tambobong, Bocaue, Bulacan

"Dear Mr. Cruz:

"We are in receipt of your letter dated October 22, 1962, with its enclosures. Please be informed that per our records in the Special Board of Inquiry, your case had already been resolved as early as March 15, 1961, under Board Resolution No. 956. You were duly in-formed thereof in our letter to you of March 17, 1961, under registered mail of March 20, 1961. We do not have any record of any motion for re-consideration which, according to you in your letter, was filed with this Office.

As the records stand, you are no longer an employee of the System. You were considered resigned with prejudice to reinstatement in the GSIS, effective as of the date of your preventive suspension as decided by the Board of Trustees under Resolution No. 956, series of 1961. Your contention therefore that your case is pending is not true. Your administrative case had been terminated and decided long ago as stated above.

Very truly yours,

(Sgd.) RAMON A. DIAZ

General Manager"[14]

5. It need only be noted furthermore that in alleging that the Court of First Instance of Bulacan had ordered his rein-statement with back-pay upon dismissing the case against him on February 5, 1963,[15] supra, petitioner and his counsel appear to have suppressed willfully the fact that the said Court in its Amendatory Order of February 13, 1963, upon the fiscal's motion, had ordered the deletion of that portion as to petitioner's reinstate-ment, since this obviously was the prerogative of the Department head concerned and beyond said Court's authority.[16]

Petitioner, in his Reply to Answer, as well as in his Memorandum now admit that indeed that he had been duly heard in the administrative case and that the GSIS Board of Trustees had "adopted the initial decision of the Special Board of Inquiry and dismissed the petitioner from the service." [17]

In his Reply, petitioner, through counsel, had earlier contended that the GSIS Board of Trustees' approval of the recommendation "that petitioner be considered resigned effective as of July 27, 1960 is ineffectual because petitioner has not resigned from his position in the respondent corporation"[18] - a patently erroneous and frivolous non-argument, since the penalty of "considered resigned" is but a form of imposing dismissal or separation from the service.

We find, therefore, no basis for the petition in the facts and in the law. Petitioner has not been unlawfully exclud-ed from the position claimed by him, but has in fact been legally separated therefrom for cause effective from the date of his preventive suspension on July 26, 1960 after due hearing where he appeared and was duly

represented by counsel. Respondent owed him no duty of reinstatement, enforceable by the writ of mandamus.

A final note of advertence is required in view of the above recital of the facts of record which show that petitioner and counsel nevertheless filed on May 15, 1963, the verified petition at bar, suppressing the fact of his separation from the service of the GSIS after due hearing, and alleging instead that he had been under "continuous suspension" since July 1960, and that he had not been given an opportunity to defend himself or through counsel -- allegations obviously made to give a delusive semblance of plausibility to the petition. The admonition of the Court, speaking through Justice Fernando, in *Batangas Laguna Tayabas Bus Co. v. Associate Commissioner Josue L. Cadiao*[19] bears apt repetition: -

"This is all then that this petition presents. Clearly it should be dismissed for it is bereft of any support in law. A word more however is required in view of the conspicuous failure of petitioner's counsel to exhibit the candor required of an officer of the Court. The petition, as shown in the motion to dismiss and in the course of the oral argument, left out many facts within the knowledge of the petitioner with the evident purpose of imparting a semblance of plausibility to a petition otherwise clearly lacking merit. While counsel is expected to exhibit the utmost zeal on behalf of a client, it is likewise imperative if the rule of law were to be truly meaningful that the orders of this Court be based on a full and candid disclosure of relevant matters, so that whatever action may thereafter be taken be warranted by the events as they did transpire. Members of the Bar would then be remiss in their duty towards a court of justice if in their undoubtedly earnest effort to serve their client's cause, there is, as in this case, a failure to live up to their exacting responsibility to exert the utmost diligence that their pleadings submitted reflect the facts with truth and accuracy."

The imposition of treble costs against petitioner and his counsel under Rule 143 section 3 is therefore called for.

WHEREFORE, the petition is dismissed. With treble costs against petitioner and his counsel.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Capistrano, and Barredo, JJ., concur.

Sanchez, J., did not take part.

[1] Annex A, Petition.

[2] Annex B, Petition.

[3] Annex C, Petition.

[4] Annex D, Petition.

[5] Annexes E and F, Petition.

[6] Par XIV, Petition.

[7] Annexes A, A-1 to A-4, Answer

[8] Annex A-5, Page 5, Answer

[9] Annex A-5, pp. 6-7, Answer.

[10] Annex A-5, p. 7, Answer.

[11] Annex A-6, A-7, A-8, and Annex B, Answer.

[12] Answer, Paragraph IV.

[13] Answer, Paragraph VII.

[14] Annex B, Answer.

[15] Par. IX, Petition and Annex D thereof.

[16] Annexes C and D, Answer

[17] Petitioner's Memorandum, pp. 1-2.

[18] Petitioner's Reply, p. 1.

[19] G.R. No. L-28725, March 12, 1968; see also *Albert v. CFI of Manila* G.R. No. L-16364, May 29, 1968.

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