

VICTOR D. MENDOZA, PETITIONER AND APPELLEE, VS. SOCIAL SECURITY COMMISSION AND FLORENCIO N. ONGKINGCO, IN HIS CAPACITY AS OFFICER-IN-CHARGE, ADMINISTRATIVE DEPARTMENT, SOCIAL SE...*G.R. No. L-29189. April 11, 1972*

Ponente: REYES, J.B.L., J.

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Direct appeal by the Social Security Commission and Florencio N. Ongkingco from a judgment of the Court of First Instance of Rizal, Branch IV (Quezon City), in its Civil Case No. Q-10847, ordering respondents-appellants to desist from enforcing the penalties of demotion in rank and salary imposed on the appellee Victor D. Mendoza by Resolution No. 198, dated 9 February 1967, of the social Security Commission, and making permanent the preliminary injunction issued in said case, with costs against respondents.

The case arose in this wise: appellee herein, Victor D. Mendoza, then Manager of the Commercial and Industrial Loans Department in the Social Security System was subjected to formal investigation for various irregularities allegedly committed by him. Hearings were duly conducted by the Investigating Committee on the formal charges filed and the explanations offered by appellee. The records and proceedings were reviewed by a Committee of Commissioners that found Mendoza guilty on four charges, and recommend-ed his separation from the service. But the Commission en banc decided instead that said officer be only demoted in rank and salary, from that of Manager, Commercial and Industrial Loans Department to that of Division Chief. The decision was embodied in Resolution No. 198 dated 9 February 1967.

Mendoza then resorted to the Court a quo in quest of a writ of prohibition, with preliminary injunction, contending that the Commission had no authority to impose the penalties embodied in its Resolution No. 198, the petitioner being covered by the Civil Service Law of 1962 (Republic Act 2260), Section 33 whereof provided the following:

"SEC 33. Administrative Jurisdiction for Disciplining Officers and Employees.- The Com-missioner may, for dishonesty, oppression, misconduct, neglect of duty, conviction of a crime involving moral turpitude, notoriously disgraceful or immoral conduct, improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children, violation of the existing Civil Service law and rules or of reasonable office regulations, or in the interest of the service, remove any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine him in an amount not exceeding six months' salary.

In meting out punishment, like penalties shall be imposed for like offenses and only one penalty shall be imposed in each case."

The Commission answered the petition averring that it was empowered by section 5 of the Social Security Act

(Republic Act No. 1161); that the petitioner (appellee now) had failed to exhaust his administrative remedies, and that the Court of First Instance had no jurisdiction to review the resolutions of the Commission.

After due trial, the court below, by decision of 13 January 1968, ruled that section 5 of the Social Security Act was inapplicable to the case since it did not involve a settlement of benefit claims: that the assailed Resolution No. 198 was void ab initio, the Commission having no power to discipline and penalize civil service officers to the exclusion of the Commissioner of Civil Service, and that the rule of exhaustion of administrative remedies did not apply, since the issue involved was one of law, to wit, the jurisdiction of the Social Security Commission. The latter duly appealed to this Court.

It is clear that under section 33 of the Civil Service Act (Republic Act 2260) heretofore quoted, before the amend-ments introduced therein by Republic Act No. 6040), the sole power to impose disciplinary sanctions on Civil Service employees was vested exclusively in the Commissioner of Civil Service. This is emphasized by the provisions of section 27 of the Civil Service Rules requiring the Department Head concerned -

"within 15 days from receipt of the complete record of the case, to forward such record with his comment and recommendation to the Commissioner for decision",

so that, as pointed out by the court below, the Department Head's powers were purely recommendatory; it had no power to decide nor impose any penalty, much less to implement the decision or carry it out into execution.

That the petitioner, as Manager of the Loans Department in the Social Security System, was and is a civil service official is plain from Article II (section 3) of the Civil Service Act of 1959, as well as from section 3 of the Social Security Act of 1954, as amended by Republic Act No. 2658.

" 'ARTICLE II. Scope of the Civil Service

"SEC. 3. Positions Embraced in the Civil Service. The Philippine Civil Service shall embrace all branches, subdivisions and instrumentalities of the Government, including government-owned or controlled corporations, and appoint-ments therein except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination. Positions included in the civil service fall into three categories; namely, competitive or classified service, non-competitive or unclassified service and exempt service. The exempt service does not fall within the scope of this law. (Emphasis supplied)"

" 'SEC. 3. Social Security System.- * * * * *

'(c) The Commission, upon the recommendation of the Administrator, shall appoint an actuary, medical director, and such other personnel as may be deemed necessary, shall fix their compensation, prescribe their duties and establish such methods and procedures as may insure the efficient, honest and economical administration of the provisions and purpose of this Act: Provided, however, That the personnel of the System shall be selected only from civil service eligibles certified by the Commissioner of civil Service and shall be subject to civil service rules and regulations.' (Emphasis supplied)"

By way of avoidance of the application of the legal dispositions cited, the respondent Social Security Commis-sion contends that its officers and employees are not covered by the Civil Service Law and Rules, invoking the memoran-dum circulars of Commissioner Abelardo Subido, dated 8 January 1964 and 23 January 1964 (Exhibits "4" and "5", pages 217 and 218, Record), that -

"officers and employees of government owned or controlled corporations performing proprietary functions who have entered into collective bargaining contracts with the management of their respective corporations, through their labor unions, fall in the exempt service and are not covered or protected by the Civil Service Act of 1959." (Exhibit "4")

In the memorandum of 23 January 1964 (Exhibit "5"), the Commissioner of Civil Service further broadened the pre-ceding circular, remarking that -

"This office has observed that there are officers and employees of these corporations who, while not union members, accept benefits under the collective bargaining contract between union and management and in so doing, have by implied acquiescence, become parties to said collective bargaining contract. They, therefore, likewise fall under the exempt service and are not governed or protected by the Civil Service Act of 1959."

We entertain serious doubts on the validity of the foregoing circulars, in view of the fact that under section 6 of the Civil Service Act of 1959, the Exempt Service -

"shall consist of the following:

- (a) Elective officers
- (b) Members of the commissioned and enlisted service of the Army, Navy and Air Force of the Philippines.
- (c) Persons employed on a contract basis."

It is clear from the foregoing that in order to belong to the exempt service and thus forfeit the protection of the Civil Service law, a civilian non-elective officer must have obtained employment through a contract. In fact, section 2, paragraph (j), of the Civil Service Rules, interpreting section 6 of the Act declares that

"(j) the term 'persons employed on a contract basis' refers to independent contractors and those who may be employed by them; it does not include employees or laborers who serve under the direction and supervision of a governmental agency, except aliens who may be thus employed on a contract basis when the exigencies of the service so require. In this context, the term 'independent contractor' refers to one who under-takes to do a piece of work for the government under his own responsibility, with minimum interference on the part of any government agency in the performance or accomplishment thereof."

Plainly, the circulars in question invoked by respondent Commission improperly attempted to broaden the scope of the exempt service under the law, which was not within the powers of the Civil Service Commissioner to do.

There is not an iota of evidence to show that the services of appellee Mendoza as Manager of the Loans Department were secured through contract by the Social Security System; nor could he as a Manager holding an executive and policy-determining position, be a member of any employee's or supervisor's union; for which reasons he must be deemed to hold a civil service position, subject to the apposite rules and regulations (section 3, Republic Act No. 1161, as amended).

We are not unmindful of the fact that by Republic Act No. 6040 the Legislature extended the scope of the exempt service to persons "employed in government owned or controlled corporations primarily performing proprietary functions with collective bargaining agreements" and that furthermore, the same Act also amended section 33 of the Civil Service Act by adding at the end of the original section the following provisos:

"Provided, however, that heads of departments, agencies and instrumentalities, provinces and chartered cities, shall have original jurisdiction to investigate and decide on matters involving disciplinary action: Provided further, that when the penalty imposed is a reprimand or a fine not exceeding one month salary or suspension without pay for a period not exceeding one month, the decision of the aforementioned heads shall be final; but if the penalty imposed is heavier the decision shall be appealable to the Commission as provided in this Act: Provided finally that a decision imposing removal shall always be subject to review by the Commission.

Had the present case arisen, therefore, under Republic Act No. 6040, the Social Security Commission would have had jurisdiction, after due investigation, to impose the penalty of demotion subject only to appeal by the officer or

employee affected to the Civil Service Commission. Unfortunately for appellant Commission, Republic Act No. 6040 was enacted on 4 August 1969, and the case at bar had been litigated, decided and appealed to the Supreme Court and submitted for decision as of February, 1969. Republic Act No. 6040 can not be retroactively applied to the case, specially since the same act expressly provides in its section 47 that

"rights and privileges vested or acquired under the provisions of the Civil Service law, rules and regulations prior to the effectivity of this Act shall remain in force and effect."

Appellant Security Commission finally argues that the appellee official had not exhausted his administrative remedies: but it is by now a well established rule that the principle of exhaustion of non-judicial remedies does not apply where the question is purely legal (*Tapaies vs. President and Board of Regents of U.P.*, L-17523, 30 March 1963, 7 SCRA 553; *Cariño vs. ACCFA*, L-19808, 29 September 1966, 18 SCRA 183), or where the act complained of was done without or in excess of jurisdiction (*Mangubat vs. Osmeña*, 105 Phil. 1308; *Baguio vs. Rodriguez*, 105 Phil. 1323).

Petitioner Mendoza holding an executive position and not being a union member, the lower court did not err in declaring him governed by the Civil Service law and regulations, and not by the bargaining contracts with the employees' unions.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against appellant, Social Security Commission.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., concurs in the result.

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