

PAZ M. GARCIA, PETITIONER, VS. HON. CLAUDIO TEEHANKEE, SECRETARY OF JUSTICE AND MANUEL LINTAG, RESPONDENTS.

G.R. No. L-28747. April 28, 1969

Ponente: DIZON, J.

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DIZON, J.:

Original petition for prohibition with a prayer for the issuance of a writ of preliminary injunction filed by Paz M. Garcia against the Honorable Claudio Teehankee and Manuel Lintag, in their respective capacity as Secretary and Special Investigator of the Department of Justice.

It appears that on January 27, 1968 the Honorable Francisco de la Rosa, in his capacity as Judge of, the Court of First Instance of Rizal, Pasay Branch, filed with the respondent Secretary an administrative charge for gross misconduct in office against petitioner.

Previously, that is, on November 21, 1967, by reason of an incident that took place between petitioner and the clerk of court right in the court premises, the former was required by the aforementioned judge to show cause why she should not be investigated and recommended for dismissal from office. On that same date said Judge addressed an official communication to the respondent Secretary recommending petitioner's preventive suspension, and on the 27th of the same month, the respondent Secretary authorized him to order the preventive suspension of petitioner.

Respondent Lintag was designated to investigate the administrative charge on January 11, 1968.

On February 12 of the same year petitioner submitted to said investigator a motion to dismiss the complaint upon the following grounds: that the same was not verified by the head of the office of whose personnel the respondent was a member, in violation of Civil Service Rules, Article 7, Section 34; that at the time of the incident subject matter of the complaint, the Executive Judge or head of the office was the Honorable Pedro Bautista and not Judge de la Rosa; that petitioner was directly under the administrative control and supervision of the said Executive Judge; and that, as a result, the investigator had no jurisdiction to hear and try the case.

On February 14, 1968, the investigator denied, the motion to dismiss and further warned the petitioner that if she insisted in not appearing on the dates scheduled for the hearing, such failure to appear would be considered as a waiver of her right to present evidence in her defense, and the investigator would then proceed to submit the corresponding report to the Secretary of Justice based upon the evidence of record. In this connection it appears that, at the time the motion to dismiss was filed and said order was issued, the witnesses against petitioner had already testified.

Irrespective of whether or not the facts alleged in the administrative complaint mentioned heretofore constitute Grave Misconduct in Office, and of the question of whether petitioner was a Deputy Clerk of Court or a stenographer, the fact is that she was officially assigned to work as either in the branch of the Court of First Instance of Rizal presided by Judge de la Rosa. This can lead to no other conclusion than that, for, purposes

related to the filing of administrative charges against subordinate officials and employees of the government, said judge was the head of the office to which petitioner was officially assigned and working. Therefore, in accordance with Section 24, Rule 18, Civil Service Rules, the complaint heretofore mentioned was properly filed by him and did not have to be sworn to (Diaz vs. Arca G. R. L-21008, October 29, 1965; Maloga vs. Gella, G. R. L-20281, November 29, 1965). Such being the case, the investigation to which herein petitioner had already submitted prior to the filing of her motion to dismiss was in accordance with law and civil service rules.

To be borne in mind also is the fact that the investigation complained of conducted by the Department of Justice is not final because the record thereof is to be forwarded to the Commissioner of Civil Service for appropriate action.

Petitioner's claim that either Judge Bautista - allegedly the Executive Judge at the time material to this case - or the Clerk of Court of the Pasay Branch of the Court of First Instance of Rizal is, under the law, her immediate chief, and that the complaint against her should have been filed by either, is untenable. As Judge De la Rosa was the one presiding the branch of the court to which petitioner was assigned on official duty, he is, in legal contemplation, the Head thereof. To say that he is not would make a judge presiding one of the several branches or salas of a Court of First Instance, a mere figure head, without effective control over the employees working under him and without authority to discipline them. This, of course, would be an intolerable situation. On the other hand, to say that instead of the respondent judge the clerk of the court should be deemed to be the head of the office is too clearly untenable to merit any serious answer.

WHEREFORE, the writ prayed for in the basic petition is denied, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur.

Teehankee and Capistrano, JJ., did not take part.

Concepcion, C.J., and Castro, J., on official leave of absence.

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