

FRANCISCO M. CUCHARO, PETITIONER-APPELLANT, VS. HON. ABELARDO SUBIDO, COMMISSIONER OF CIVIL SERVICE, HON. VITALIANO BERNARDINO, DIRECTOR OF PUBLIC SCHOOLS AND MR. PEDRO SAN VICE...

G.R. No. L-27887. February 22, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari and prohibition with the prayer for the issuance of a writ of preliminary mandatory injunction was filed by petitioner-appellant Francisco M. Cucharo by way of appeal (p. 144, rec.) from the order dated July 20, 1966 respectively dismissing the petition as well as denying appellant's motion for summary judgment and from the order of August 4, 1966 denying the motion for reconsideration of the order of July 20, 1966 (pp. 128, 142, rec.).

It is undisputed that petitioner-appellant Francisco M. Cucharo was formerly the principal of Calinan Elementary school, Calinan District, Davao City. On January 28, 1956, a senior teacher (regular) examination was given by the Civil Service Commission. When he was promoted as District Supervisor sometime in 1960 by virtue of his junior teacher eligibility, he gave as additional qualification his senior teacher (promotional) eligibility, claiming that he received on March 28, 1958 from the Civil Service Commission a report of his rating showing that he obtained a passing mark of 81.78% in the senior teacher examination. Because he actually failed in the said senior teacher examination, in a third indorsement dated August 27, 1962, the Commissioner of Civil Service required him to explain why "the notice of rating dated March 28, 1958 purporting to show that he obtained a rating of 81.78% in the senior teacher (promotional) examination xx xx contains certain unauthorized erasures and insertions" which make it different from the notice as originally issued.

After a formal investigation at which he denied making the alleged erasures and insertions, petitioner-appellant was found guilty of serious misconduct consisting of falsification of a civil service rating card in Administrative Case No. R-24579 of the Civil Service Commission and was accordingly dismissed from the service by the Civil Service Commissioner effective on the last day of duty with pay in a decision dated August 6, 1965. In the same decision, the Civil Service Commission likewise directed that the said decision be executed immediately in the public interest (Annex A, petition, pp. 12-14, rec.).

The Civil Service Commissioner coursed the aforesaid decision through the respondent Director of Public Schools, who in turn transmitted the same to the respondent superintendent of city schools of Davao City in a letter dated September 30, 1965, directing that the decision of the Civil Service Commissioner be executed immediately "but not beyond ten days from receipt thereof" and requesting that three copies of the special order covering the dismissal of petitioner-appellant from the service together with the advice of the date he acknowledges receipt of the decision be furnished his office (Director of Public schools) by return indorsement thereof (Annex B of the petition, p. 14, rec.).

Pursuant to the aforesaid instructions of the Director of Public schools, the respondent superintendent of city schools of Davao City issued Division Order No. 677, s. 1965, dated December 1, 1965 making of record the separation of the petitioner-appellant from the service pursuant to the order of dismissal by the Commissioner of Civil Service effective that day, December 1, 1965 (Annex C of the petition or Exh. 2 – Motion, pp. 15, 173, rec.); and transmitted the said Division Order No. 677 together with his first indorsement dated December 1, 1965 to petitioner-appellant inviting attention to the basic communication of the Director of Public Schools and to the enclosed decision of the Commissioner of Civil Service, and requesting that petitioner-appellant acknowledges receipt of the enclosed decision of the Civil Service Commissioner by return indorsement (Exh. 1, Opposition, p. 172, rec.).

In his second indorsement dated December 1, 1965, petitioner-appellant acknowledged receipt at 3 o'clock in the afternoon of that day, December 1, 1965, "the said order of dismissal entitled Division Order No. 677, series of 1965, together with a copy of the letter of the Director of Public Schools, dated September 30, 1965, to the Division Superintendent of Schools, Davao City, to execute immediately the alleged decision of the Commissioner of Civil Service in Administrative Case No. R-24579, a copy of which is attached to the said letter", expressly stating therein that he is receiving the same "UNDER PROTEST because the said copy of the decision is ordered executed before he could receive it and before he could have the opportunity to read it, thereby arbitrarily denying and preventing him from filing a motion for its reconsideration or appealing the same xx xx " (Annex D, petition or Exh. T, Motion, p. 16, rec.).

In another letter also dated December 1, 1965 addressed to Mr. Primitivo Raquel, Principal of Calinan Central Elementary School, Davao City, the respondent-appellee superintendent of city schools designated the former "as Principal in Charge of Calinan District vice Mr. Francisco Cucharo, separated, effective immediately" and instructed him to receive all money and property responsibility from Mr. Cucharo, herein petitioner-appellant (Exh. Q, Motion, p. 168, rec.).

In his letter-circular dated December 6, 1965, addressed to all principals/head teachers, Principal In Charge Primitivo R. Raquel quoted verbatim the letter of respondent-appellee superintendent of city schools dated December 1, 1965 for their information and guidance (Exh. R - Motion, p. 169, rec.); and on the same day as such principal-in-charge, he issued another letter circular to all principals/head teachers and teachers-in-charge in the Calinan District informing them that there will be a meeting on December 8, 1965 at 7:30 in the morning (Exh. S, Motion, p. 170, rec.).

Not satisfied with the decision, petitioner-appellant filed on December 2, 1965 the present petition for certiorari and prohibition with writ of preliminary mandatory injunction in the Court of First Instance of Davao; (1) to declare the Civil Service Commissioner with having acted with grave abuse of discretion and without authority of law in ordering his immediate dismissal; (2) to declare null and void the decision of the Civil Service Commissioner dismissing him from the service; (3) to declare the respondent superintendent of city schools as without authority of law in issuing Division Order No. 677, series of 1965, as well as to declare said order null and void; and (4) to declare respondent-appellee Director of Public schools as having acted with grave abuse of discretion and without authority of law in amending the decision of the Civil Service Commission with respect to the execution thereof (pp. 1-21, rec.).

On December 4, 1965, the lower court issued ex parte a writ of preliminary injunction directing the respondents/appellees to refrain from executing the decision in Administrative Case No. R-24579 and to refrain from replacing petitioner-appellant (pp. 22-23, 26-27, rec.).

On December 27, 1965, petitioner-appellant filed a motion to declare respondent division superintendent of city

schools in contempt of court for having designated the principal teacher of Calinan Elementary School to assume the duties of District supervisor of Calinan District in violation of the preliminary injunction, claiming that he never vacated the position, much less turned over the same to the one designated to perform its duties (pp. 30-41, rec.).

On December 27, 1965, the Civil Service Commission received petitioner-appellant's motion for reconsideration of the decision of the Civil Service Commissioner dated August 6, 1965, which motion was referred to the Director of Public Schools by a first indorsement dated January 17, 1966 for comment and recommendation (par. 2[b] of respondent's Answer dated January 21, 1966, pp. 83-84, rec.).

On December 31, 1965, respondent superintendent of city schools filed a motion to quash preliminary writ of injunction and an opposition to the motion to declare him in contempt of court (pp. 45-47, rec.).

On January 3, 1966, petitioner-appellant filed a motion to declare respondent superintendent of city schools in default (p. 42, rec.).

On January 5, 1966, the trial court, after hearing, issued an order dissolving the writ of preliminary injunction issued on December 4, 1965 and denied the motion to declare respondent superintendent of city schools in contempt of court on the ground that respondent superintendent of city schools had already accomplished the acts sought to be restrained (p. 49, rec.). In another order issued on the same day, the lower court denied the motion to declare respondent superintendent of city schools in default (p. 44, rec.).

On January 11, 1966, petitioner-appellant filed an urgent motion for reconsideration of the two orders dated January 5, 1966 dissolving the writ of preliminary injunction and denying the motion to declare respondent superintendent of city schools in default (pp. 50-59, 60-62, rec.).

On July 1, 1966, the date set for pre-trial, the lower court issued an order granting respondent superintendent of city schools five days within which to file a motion to dismiss the petition and petitioner-appellant was given a similar period to file an opposition (p. 107, rec.). On July 6, 1966, a motion to dismiss was filed (pp. 109-111, rec.) and on July 8, 1966, petitioner-appellant filed his opposition thereto with a counter-motion for summary judgment (pp. 112-121, rec.).

On July 20, 1966, the lower court issued an order dismissing the petition and denied as without merit petitioner-appellant's motion for summary judgment (p. 128, rec.).

On July 30, 1966, petitioner-appellant filed a motion for reconsideration (pp. 130-138, rec.), which was denied for lack of merit by the lower court in its order dated August 4, 1966 (p. 142, rec.).

Hence, this appeal (p. 144, rec.).

Petitioner-appellant claims that the lower court erred: (1) in not resolving his urgent motion for reconsideration of the order dated January 5, 1966 particularly the portion dissolving the writ of preliminary injunction, and the motion for reconsideration of the order dated January 5, 1966 denying his motion to declare respondent superintendent of city schools in default before setting the pre-trial on July 1, 1966; (2) in dismissing the petition; and (3) in not granting the motion for summary judgment.

The three errors assigned by petitioner-appellant shall be discussed jointly.

As a major premise, it has been the repeated pronouncement of this supreme Tribunal that the Civil Service Commissioner has the discretion to order the immediate execution in the public interest of his decision separating petitioner-appellant from the service, always subject however to the rule that, in the event the Civil Service Board of Appeals or the proper court determines that his dismissal is illegal, he should be paid the salary corresponding

to the period of his separation from the service until his reinstatement.[1]

As elucidated by Mr. Justice Arsenio Dizon in the Cabigao case, "although the decision of the Commissioner of Civil Service adverse to the government employee under investigation is appeal-able to the Civil Service Board of Appeals, the Commissioner has discretion to enforce it and make it effective pending appeal, to protect public interest. However, the removal or the continued suspension of the employee effected through the execution of the appealed decision shall be considered as unjustified should said decision be reversed by the Civil Service Board of Appeals and, in such case, as provided for in section 35 of the Civil service Act of 1959, the employee 'shall be restored to his position with full pay for the period of suspension'." [2]

Petitioner-appellant is indulging in euphemism when he states that the decision dismissing him from the service cannot be executed immediately before he could receive it and before he could have the opportunity to read the same, thereby arbitrarily preventing him from filing a motion for reconsideration or appealing the same; because he actually received the copy of the decision consisting only of two pages (see Annex A to the petition, pp. 12-13, rec.) which will not take him five minutes to read and comprehend its contents.

While he received only a copy of the decision, he does not impugn its correctness or accuracy. At any rate, he was fortunate that the decision dated August 6, 1965, was executed only on December 1, 1965 or over three months thereafter.

That the Commissioner of Civil Service concluded that "the facts of this case engender reasonable belief that respondent is guilty of the charge" is only one way of expressing the idea that the facts support the reasonable conclusion that petitioner-appellant is guilty of the charge against him. As to the intrinsic merits of the findings of facts of the Civil Service Commissioner, the same would still depend on the appreciation thereof by the Civil Service Board of Appeals. As heretofore stated, should he be exonerated by the Civil Service Board of Appeals or by the Civil Service Commissioner himself acting on his motion for reconsideration, petitioner-appellant would be entitled to recover back salaries.

The basic ground that the petition states no cause of action, upon which respondent superintendent of city schools predicates his motion to dismiss before the lower court, which is also alleged as a special defense in the Answer filed by the Solicitor General (p. 85, rec.), is predicated on the fact that petitioner-appellant has not exhausted administrative remedies by filing a motion for reconsideration of the decision filed with the Civil Service Commissioner (which he subsequently filed on December 27, 1965) and an appeal to the Civil Service Board of Appeals, before he can seek any remedy from the court. There is nothing in the record indicating the status of his motion for reconsideration of the decision of the Civil Service Commissioner or whether he has filed an appeal with the Civil Service Board of Appeals. Such an omission to exhaust all administrative remedies open to him under the law is fatal to his petition, for it signifies lack of a cause of action. [3]

Because the order of the trial court dated August 6, 1966 dismissing the petition and denying his motion for summary judgment, after considering the grounds invoked in the motion to dismiss as well as the reasons advanced by petitioner-appellant in opposition thereto and to support his counter-motion for summary judgment, is proper and legal, there was no need for the lower court to resolve petitioner-appellant's motion for reconsideration of the order dated January 5, 1966 quashing the writ of preliminary injunction and the order dated January 5, 1966 denying his motion to declare respondent superintendent of city schools in default, which would merely be an exercise in futility.

While it is true that exhaustion of administrative remedies is a general rule, the case of the petitioner-appellant does not fall under anyone the recognized exceptions thereto as enunciated by this Tribunal, some of which are re-stated in *Escalante vs. Subicio*, supra.

Petitioner-appellant will not suffer irreparable injury or damage by awaiting a final administrative action in his case;[4] because he can collect back salaries should his dismissal be adjudged illegal.[5] The issues involved in the decision the Civil Service Commissioner separating him from the service are not purely legal questions.[6] The act of the Commissioner of Civil Service is not patently devoid of any color of authority or manifestly illegal; neither did the Civil Service Commissioner act without or in excess of his jurisdiction nor commit a grave abuse of discretion amounting to lack of jurisdiction.[7]

The case of *Guisadio vs. Villaluz, et. al.*[8] does not apply to the case at bar. In the *Guisadio* case, the execution of the decision was enjoined by the trial court; because in said case, while the decision of the Commissioner of Civil Service "considered *Guisadio* resigned from the service effective on (his) last day of service with pay", it did not expressly direct that the said decision is immediately executory in the public interest. It was the respondent District Supervisor therein who wanted its immediate execution, for he directed *Guisadio* to turn over all his (*Guisadio's*) property accountabilities before *Guisadio* received a copy of the decision itself, which immediate implementation was enjoined by trial court therein. In the instant case, the decision of the Civil Service Commissioner expressly directs its immediate execution in the public interest. We ruled in the *Guisadio* case that based "on the facts presented to the trial judge", the trial judge "adopted the proper view" and "did not err" in enjoining the immediate execution of the decision of the Civil Service Commissioner.[9]

However that may be, the cases of *Yarcia vs. City of Baguio*, *Trocio vs. Subido*, *Austria vs. Auditor General* and *Cabigao v. Del Rosario*, which were decided subsequently to the *Guisadio* case, should be decisive of the case at bar since the relevant facts of the aforesaid cases and of the instant case are analogous.

Neither can petitioner-appellant properly invoke the case of *Abaya vs. Villegas, et, al.*,[10] In the instant case, the decision of the Civil Service Commissioner was promulgated after an administrative investigation of the charges against appellant. In said *Abaya* case, the petitioner therein was ordered dismissed from the service without prior investigation or hearing. In the *Abaya* case, only a purely legal question was involved, and the order of dismissal therein was patently illegal by reason of the fact that the petitioner therein was denied due process, which issues removed the *Abaya* case from being governed by the doctrine of exhaustion of administrative remedies.[11] As heretofore stated, such exceptions do not obtain here.

We are therefore constrained to dismiss as we hereby dismiss the appeal. With costs against petitioner-appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, and Zaldivar, JJ., concur.

[1] Sec. 35, Civil Service Act of 1959, otherwise known as R.A. No. 2260; *Yarcia vs. City of Baguio*, L-27562, May 29, 1970, 33 SCRA, pp. 419, 427, 428; *Trocio vs. Subido*, L-23363, May 31, 1967, 20 SCRA 354, 356-357; *Austria vs. Auditor General*, L-21918, January 24, 1967, 19 SCRA, 79, 83-84; *Cabigao vs. Del Rosario*, L-18379, Oct. 31, 1962, 6 SCRA, 578, 582, 583; *Gonzales vs. Hernandez*, L-15482, May 30, 1961, 2 SCRA, 228, 233-234.

[2] *Cabigao vs. Del Rosario*, *supra*.

[3] *Pineda vs. CFI*, L-12602, April 25, 1961, 1 SCRA, 1020, 1026-27; *Escalante vs. Subido*, 30 SCRA 398, 403.

[4] *De Lara vs. Cloribel*, L-21653, May 31, 1965, 14 SCRA 269, 272-73.

[5] *Yarcia vs. City of Baguio*, *supra*.

[6] *Neria vs. Commissioner of Immigration*, 23 SCRA 866, 818; *Abaya vs. Villegas*, 16 SCRA 1034, 1039-40; *Begora vs. Chairman, PVA*, 32 SCRA 466, 472-73.

[7] Neria vs. Commissioner, *supra*; Gutierrez vs. Court of Appeals, 26 SCRA 40; Mangubat vs. Osmeña, L-12837, Apr. 30, 1959, 105 Phil. 1308-1309.

[8] L-15663, Aug. 31, 1982, 5 SCRA 1020.

[9] Antonio Guisadio vs. Villaluz, et. al., *supra*, 1021-22.

[10] L-25641, Dec. 17, 1966, 18 SCRA 1034.

[11] Abaya vs. Villegas, et. al., *supra*, 1039-40.

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