

ARLEO E. MAGTIBAY, APPELLANT, VS. LT. COL. SANTIAGO GARCIA AND CADET COLONEL MARCELO JAVIER, RESPONDENTS.

G.R. No. L-28971. January 28, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the order of the Court of First Instance of Rizal dismissing the appellant's petition for mandamus and quo warranto.

The issue posed for determination is whether the courts may review the exercise of discretion of a public officer on matters in which it is his duty to act. Appellant contends that the lower court erred in refusing to review the actuations of Lt. Col. Santiago Q. Garcia, commandant of the University of the Philippines ROTC as to matters affecting the regulation and supervision of the U.P. ROTC Corps of Cadets.

On March 12, 1966, Lt. Col. Santiago Q. Garcia, then Commandant of the U.P. ROTC Cadet Corps, issued General Orders No. 23 relieving Arleo E. Magtibay of the rank of cadet colonel and as battalion commander of the 1st BCT of the U.P. Cadet Corps, and designating in his stead Cadet Col. Marcelo Javier. In the same order, Magtibay was excluded from the roll of the graduating class of the ROTC Advance Course for having flunked the subject MS-42, a subject necessary for the completion of the Advance Course.

On March 23, 1966, Magtibay filed with the President of the University of the Philippines an administrative case against Lt. Col. Garcia charging the latter with abuse of discretion and seeking his relief as commandant of the U.P. ROTC Cadet Corps.[1] The Honorable Carlos P. Romulo, then President of the U.P., appointed a committee to investigate the complaint and "to review the case of Mr. Magtibay and to evaluate his scholastic record, including his examination papers, if any, in MS-42, and to make recommendations in accordance with the procedure described in paragraph 2, section 374 of the Revised U.P. Code." Said committee, after due investigation, submitted its report to the U.P. President, stating, among other things, that

"Records show that Mr. Magtibay got the following grades in MS-42 for second semester 1965-1966:

Subject Proficiency 37.20%

Aptitude 0

Attendance 26.00%

Total 63.20%

"Mr. Magtibay, due to various offenses to include major infractions of regulations and/or instructions committed during the semester, garnered a total of 140 demerits. Since 100 merits awarded each cadet at the start of the semester is equivalent to 30%, Mr. Magtibay's exhausting its 100 merits accounts for his getting "0" under Aptitude. Adding together the total percentage of 63 is way below the minimum passing grade of 70% hence his failure in MS-2." [2]

On the basis of said report, President Carlos P. Romulo of the University of the Philippines issued a memorandum-decision dismissing the complaint, "without prejudice to re-enrollment of the complainant in the same course (MS-42), in accordance with existing regulations."

Apart from the administrative complaint adverted to, appellant Magtibay instituted in the Court of First Instance of Rizal a petition for mandamus and quo warranto, with prayer for preliminary mandatory injunction, against Lt. Col. Garcia and Marcelo Javier, praying that Javier be relieved as battalion commander of the 1st BCT of the U.P. Cadet Corps; that he (Magtibay) be reinstated to this former rank and command; and that he be included in the roster of the U.P. ROTC Advance Course graduating class.

Upon the filing of the petition, the lower court issued a writ of preliminary mandatory injunction, ordering Magtibay's reinstatement to his former rank and command. Pursuant to said writ, appellant was "reinstated commander of 1st BCT, U.P. ROTC Unit, and Javier relieved of such command." [3]

After joinder of issues, hearing was conducted, and thereafter the lower court issued the questioned order dismissing the petition and lifting the writ of preliminary mandatory injunction. The court rationalized the order of dismissal, thus.—

"... there seems to be merit in the contention that the remedy sought and the body from which the remedy is being sought are not the proper ones. For there does not seem to be any question that the admission, regulation and supervision of ROTC Cadet Corps all over the Philippines are vested in the Commanding General of the Philippines who, in turn, is under the President of the Philippines. Likewise, courts would not be the right branch of government to look into the propriety or impropriety of a discharge or a dismissal of a student from the Cadet Corps of the school in which he is enrolled, for that would be interfering with purely internal matters properly within the cognizance of the school authorities concerned and that arm of the Army of the Philippines which has to do with and is in charge of the training of the youth in the ROTC."

Hence, this appeal.

We dismiss this appeal for being moot and academic. The records disclose that during the pendency of this case before the lower court, Lt. Col. Garcia had been relieved as commandant of the U.P. ROTC Corps of Cadets and assigned to another post, while Cadet Col. Javier had long graduated from the U.P. Moreover, pursuant to the writ of the preliminary mandatory injunction issued by the lower court, appellant was reinstated to his former rank as commander of the 1st BCT of the U.P. ROTC Cadet Corps, which command he held up to the end of the school year 1965-66.

At any rate, appellant's prayer to compel Lt. Col. Garcia to include him in the roster of graduates of the ROTC Advance Course is absolutely bereft of any legal basis to stand on. He was not allowed to graduate because he flunked the subject MS-42, a required subject for the completion of the ROTC Advance Course. That he flunked said subject is not disputed by the appellant. True, an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits his contractual right; and the court should not review the discretion of university authorities. [4]

This Court has consistently adhered to the rule that a writ of mandamus will not issue to control or review the exercise of discretion of a public officer where the law imposes upon said public officer the right and duty to exercise judgment in reference to any matter in which he is required to act. It is his judgment that is to be exercised and not that of the court. [5]

WHEREFORE, the order appealed from is hereby affirmed, with costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

[1] p. 12, rollo.

[2] p. 23, rollo.

[3] General Orders No. 32 issued by Lt. Col. Garcia on April 4, 1966.

[4] Carr, et al. vs. St. John University, 231 N.Y.S. 2d 410 (1962).

[5] Ng Gioc Liu vs. Secretary of Foreign Affairs, 85 Phil. 842; Blanco vs. Board of Medical Examiners, 46 Phil. 190; Frank & Co. vs. Clemente, 44 Phil. 30; Gomez vs. Ventura, 54 Phil. 726.

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