

RAMON A. DIAZ, ET AL., PETITIONERS VS. HON. FRANCISCO ARCA, ET AL., RESPONDENTS.*G.R. No. L-21008. October 29, 1965*

Ponente: BAUTISTA ANGELO, J.

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On October 28, 1958, Manuel G. Coral became Manager Of the Property Insurance Fund of the Government Service Insurance System by virtue of an appointment extended to him by its Board of Trustees. On March 5, 1962, Ramon A. Diaz, General Manager of said office, sent a memorandum to Coral informing him that as a result of a preliminary investigation conducted of certain charges preferred against him it was disclosed that he committed certain administrative offenses constituting dishonesty or acts unbecoming a public official as well as prejudicial to the best interest of the service, for which reason he was required to explain and answer the charges within 72 hours from receipt of said memorandum. And on the same date, March 5, 1962, he was placed under preventive suspension, pending investigation of the charges.

On March 7, 1962, Coral submitted his answer wherein he requested the dismissal of the charges stating that, in the event his request is denied, a formal investigation thereof be made.

On March 15, 1962, Diaz addressed a second memorandum to Coral informing the latter that additional charges of dishonesty, acts prejudicial to the interest of the service and constituting grave misconduct had been preferred against him thereby requiring him again to submit a written explanation or answer within 72 hours from receipt thereof, and on March 21, 1962, Coral submitted his answer, this time questioning the sufficiency of the charges because of the failure of Manager Diaz to make them under oath.

Then, Diaz created a Special Board of Inquiry to investigate the charges, which was composed of Leovigildo Monasterial, Arsenio B. Favor and Andres Bautista, and when on March 22, 1962 its initial hearing was set, Coral reiterated his objection to the jurisdiction of the Board based on the same ground he advanced regarding the sufficiency of the charges. But the Board laid down a ruling affirming its own jurisdiction. And in order to afford to Coral an opportunity to raise the issue of jurisdiction before the regular courts, the Board of Inquiry postponed the hearing of the charges until such time as such purpose may have been accomplished.

Accordingly, on June 21, 1962, Coral initiated this case before the Court of First Instance of Manila against Ramon A. Diaz and the members of the Special Board of Inquiry alleging, among others, that said Board did not have jurisdiction to act on his administrative case on the ground that the charges preferred against him had not been sworn to as required by law and, averring that his suspension was illegal, prayed that a writ of preliminary mandatory injunction be issued ex parte commanding Manager Diaz to immediately reinstate him to his position before his suspension and that a writ of preliminary injunction be likewise issued enjoining the officials abovementioned from taking further action on his administrative case until the instant action shall have been finally disposed of.

On June 22, 1962, the court a quo issued the preliminary mandatory injunction prayed for commanding the

immediate reinstatement of petitioner, as well as a writ enjoining respondent officials from taking further action on the administrative case then pending against Coral. Wherefore, on the same date, respondent officials immediately filed a petition to dissolve the two writs issued as above-stated, and on June 23, 1962, the court, while it lifted the preliminary mandatory injunction, left pending the ordinary preliminary injunction issued against them.

On July 2, 1962, respondents filed their answer to the complaint alleging that the Special Board of Inquiry created by General Manager Ramon A. Diaz had jurisdiction under the law to investigate the charges preferred against Coral, while the preventive suspension imposed upon him was legal and the 60-day period prescribed by law had not yet elapsed.

Coral filed a motion for reconsideration with regard to the lifting of the writ of preliminary mandatory injunction issued by the court a quo, to which respondents interposed a vigorous objection, but on January 30, 1963, the court a quo granted the motion thereby reinstating the writ of preliminary mandatory injunction it issued on June 22, 1962.

The motion for reconsideration filed by respondents having been denied in an order issued on February 25, 1963, respondents interposed the present petition for certiorari with prohibition and preliminary injunction.

This Court gave due course to the petition, and on March 12, 1963, issued a preliminary injunction enjoining the enforcement of the orders of the court a quo dated January 30, 1963 and February 25, 1963.

Respondents herein filed their answer on April 18, 1963 wherein, among other things, they alleged that respondent judge did not commit any abuse of discretion in issuing the orders herein disputed because the preventive suspension imposed upon Coral by herein petitioners had become unreasonable for having exceeded the 60-day period prescribed by law.

The issues now posed before us are: (1) Is the preventive suspension imposed upon Coral illegal on the ground that it was based on a complaint which was not made under oath?; and (2) Has said preventive suspension already exceeded the 60-day period prescribed by law?

1. It cannot be gainsaid that Coral, being an employee of the Government Service Insurance System, is covered by the new Civil Service Law as well as the regulations applicable thereto issued by the Office of the President, among which is Executive Order No. 399, series of 1951. This is what this Court held in *Government Service Insurance System v. Court of Industrial Relations, et al.*, G.R. No. L-15506, decided on April 29, 1961. And, apparently, Coral is covered by Section 32 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, which provides that "no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant."

But here one thing should be noted: the investigation conducted by the Board of Inquiry created by the General Manager of the Government Service Insurance System was not initiated by virtue of a complaint filed by a party but as result of an administrative proceeding initiated against him in the course of which it was disclosed that he committed certain acts of dishonesty or acts prejudicial to the interest of the service, whereupon said Board was created to investigate him. This case, therefore, is not covered by Section 32 above adverted to. Rather, it is governed by Executive Order No. 370, dated September 29, 1941, which in part provides: "Administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio* or upon complaint of any Person which shall be subscribed under oath by the complainant." And pursuant to this directive, a complaint is not necessary as a pre-requisite to an administrative investigation as was held by this Court in *Bautista v. Negado, et al.*, G.R. No. L-14319, decided on May 26, 1960.

It may be contended that Executive Order No. 370 can be considered as impliedly repealed by Republic Act No. 2260. We do not believe so, since implied repeal can only be entertained if the two concurrent provisions are inconsistent with each other, and here that situation does not obtain.

Thus, Executive Order No. 370 is not inconsistent with Section 32 abovementioned because the latter merely deals with administrative investigations commenced by a sworn complaint, It does not deal with administrative investigations that could be commenced *motu proprio* by the head of an office who can commence an investigation even by an ordinary charge as provided by Executive Order No. 370. Again, the procedure laid down by Republic Act No. 2260 for the investigation of a complaint filed thereunder is substantially similar to that outlined in Executive Order No. 370 for the same purpose with the result that it cannot be said that the former has impliedly repealed the latter (*Pastoriza v. The Division Superintendent of Schools, et al.*, G.R. No. L-14233, September 23, 1959). Finally, the Civil Service Board of Appeals, in a similar case presented before it which calls for an interpretation of the application of Section 32 of Republic Act No. 2260, laid down a ruling to the effect that such section does not require the head of an office or bureau to swear under oath a complaint filed in an administrative investigation because such requirement would be superfluous inasmuch as all official acts of officers of the government are understood to be performed under their oath of office. The finding of this office on the matter follows:

"The investigation of this case was directed by the Undersecretary of Finance thru the Department Administrative Officer, and it can be presumed to have been authorized by the Secretary of Finance in the absence of proof to the contrary. The Bureau of Customs in which the respondents were employed is under the control and supervision of the Secretary of Finance who is empowered to order such investigation. The complaint did not have to be sworn to as the case was commenced *motu proprio* by the Head of the Department. On this point, this Board ruled in *Administrative Case vs. Filomeno L. Pacis* promulgated on June 5, 1962, as follows:

'The Commissioner of Civil Service held that the purpose of Section 32 of Republic Act No. 2260 is to protect a government employee from harassment and unmeritorious charges coming from anonymous sources, and that it could have in mind only private complaints and not heads of office, who under the law enjoy the presumption of regularity in the performance of their official duty. We find this view to be sound and reasonable. The head of an office has the inherent right and the duty to discipline his subordinates. When he acts in the performance of that duty he cannot be placed on the same level as a private individual who complains against an act or conduct of a public servant. It could not have been the intention of the law to require him to sign under oath an official letter to a subordinate employee requiring the latter to show cause why disciplinary action should not be taken against him for an alleged misconduct or irregularity. Such a requirement would be superfluous and uncalled for inasmuch as all official acts of an officer of the government are understood to have been performed under his oath of office.' " (*Administrative Case No. R-19846, Francisco Manalo, et al., Respondents-Appellants*, 58 O.G., No. 27, p. 4835)

On the other hand, we find untenable the claim of respondent Coral that his preventive suspension is null and void simply because it was not made with the prior approval of the GSIS Board, for Executive Order No. 399 does not require such prior approval. It is enough that such approval be given thereafter. In this particular instance the Board of Trustees of said office, in its Regular Meeting No. 25 held on March 9, 1962, confirmed the preventive suspension imposed upon Coral made on March 5, 1962.

2. Respondent Coral does not deny that on March 22, 1962 at the hearing of his case before the Board of Special Inquiry he asked for 15 days postponement which was granted; and that on May 17, 1962, he again asked for postponement in order that he might have time to file a case in court questioning his suspension, which he did on June 21, 1962. From March 5, 1962 to May 4, 1962 is 60 days. However, since Coral asked for 15 days

postponement, the 60 day period would have ended on May 19, 1962. Inasmuch as he asked for postponement on May 17, 1962, the 60-day period was again interrupted. Then, on June 21, 1962, when he filed the case at bar, he asked for the issuance of a writ of preliminary injunction to enjoin further action on the administrative case until the final determination of the instant case, and said petition having been granted, the 60-day period was again suspended until such time as the injunction should have been lifted. This time has not yet come. Consequently, the suspension of Coral has not yet exceeded the 60-day period.

Wherefore, the petition herein is granted. This Court hereby sets aside the orders issued by respondent court dated January 30, 1963 and February 25, 1963, thereby making permanent the injunction issued herein.

Bengzon, C. J., Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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