

COMMISSION ON HUMAN RIGHTS, PETITIONER, VS. CIVIL SERVICE COMMISSION AND ATTY. ELIAS V. PACETE, RESPONDENTS.

G.R. No. 101207. October 01, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Atty. Elias Pacete, a permanent appointee since February 1, 1988 to the position of Division Chief of Region IX of the Commission on Human Rights (CHR) based in Zamboanga City, filed an application for optional retirement pursuant to Rep. Act No. 1616,[1] dated June 17, 1989 effective July 31, 1989 because of failing eyesight. On July 7, 1989, however, Pacete sent a notice of withdrawal of his application for retirement. On July 17, 1989, Pacete was informed by the Chairman of the CHR through a telegram of the acceptance and approval of his application for optional retirement effective July 31, 1989 and the appointment of Atty. Rodrigo Roy as his successor effective August 1, 1989.

On August 25, 1989, the Government Service Insurance System (GSIS) informed private respondent that his application for optional retirement cannot be favorably considered due to his failure to meet the condition provided for in Section 12 (c) of Rep. Act No. 1616,[2] as amended, requiring three (3) years of continuous service preceding retirement. Consequently, the GSIS advised the CHR to allow Pacete to continue in the service to complete the said requirement.

Accordingly, Pacete requested the CHR that he be reinstated to his former position with back wages and allowances and the recall of the appointment of his successor, Atty. Roy. On October 18, 1989, the CHR through a resolution, denied his request and instead formally charged him with incompetence, gross inefficiency in the performance of official duty and failure to account for public funds.[3]

On May 27, 1990, Pacete, after being informed of the action taken by the CHR elevated his case to the Merit Systems Protection Board (MSPB). On August 31, 1990, the MSPB ordered the immediate reinstatement of private respondent to his former position with payment of back wages and other benefits allowed by law without prejudice to the outcome of the formal charges against him.[4]

Upon learning of the favorable decision in favor of private respondent, Atty. Roy forthwith stepped down as Regional Field Officer on October 1, 1990.[5]

The CHR, through its then Chairman, Mary Concepcion Bautista, filed a motion for reconsideration dated October 15, 1990.[6] On January 10, 1991, the Board affirmed its August 31, 1990 decision.[7] On February 11, 1991, petitioner appealed the decision of the MSPB to the Civil Service Commission which affirmed the decision of the MSPB on July 25, 1991.[8]

Meanwhile, because of private respondent's failure to settle his accountability as Regional Field Officer in the amount of P114,758.60, the CHR referred this matter to the Office of the Ombudsman for the filing of appropriate criminal charges against him on July 26, 1991.

Hence this petition, the issue being whether or not public respondent CSC gravely abused its discretion in ordering the reinstatement of private respondent and the payment of his back wages.

It is the argument of petitioner that the disapproval of private respondent's application for optional retirement by the GSIS did not vest in him the right to demand reinstatement from petitioner.[9] Moreover, it is the stand of petitioner that private respondent cannot be reinstated because it has the right to summarily remove and replace incompetent employees under Section 40 of Pres. Decree No. 807 (The Civil Service Decree).

We affirm the decision of the Civil Service Commission.

The issue in this case revolves around the optional retirement of private respondent. The collateral issues of his incompetence and inefficiency are questions of fact which this court has no jurisdiction to pass upon.

We note that the charges of incompetence and inefficiency came belatedly only after petitioner's application for optional retirement had already been approved. But was the petitioner justified in refusing to allow Pacete to continue rendering service to fulfill the requirements under Rep. Act No. 1616? We must refer to the law in point. Petitioner cites paragraph (d) of Section 12 of Com. Act 186 as basis for its power of removal of its personnel on grounds of inefficiency and incompetence:

"(d) The employer concerned may request the retirement of any such employee described in the preceding subsection who, by reason of a disqualification, is unable to perform satisfactorily and efficiently the duties of his position or some other position of the same grade or class as that occupied by the employee and to which he could be assigned, but such request shall be submitted to the Civil Service Board of Appeals only after the said employee had been notified in writing of the proposed retirement. No such employee, however, shall be so retired unless the Civil Service Board of Appeals has given him a hearing and found him after examination that he is so disqualified. The decision of the Civil Service Board of Appeals as to whether or not the said employee shall be retired under this sub-section shall be final and conclusive." (Underscoring supplied)

Indisputably, the aforequoted paragraph allows an employer to request retirement of an employee who is unable to perform satisfactorily and efficiently his duties, but such request must first be submitted to the Civil Service Board of Appeals and only after said employee shall have been notified in writing of the proposed retirement. The above provision recognizes the discretion of the head of office in the approval of an employee's optional retirement, but such discretion must be exercised without violating the tenets of administrative due process.

We find that there was a glaring disregard of this procedure laid down in the law. In fact, the October 18, 1989 resolution of the CHR denying him reinstatement for failure to fulfill the three-year requirement of continuous service preceding retirement was reached without notice and hearing. Much less was there any request for optional retirement of private respondent from the CHR to the Civil Service Board of Appeals based on incompetence and inefficiency. Although he was furnished a copy of the resolution denying his application for reinstatement with the attendant charges against him, he was not afforded the opportunity to refute them prior to the promulgation of the said resolution. The records disclose that the petitioner required private respondent to answer the charges of alleged incompetence and inefficiency in the same resolution which denied his reinstatement. The attempt to observe due process was made only after he had been separated from the service. The refusal of the CHR to restore Pacete to his former position, being tantamount to termination without valid cause, the MSPB decreed back wages in private respondent's favor.

From the facts, it is clear that prior to the withdrawal of his application to retire optionally, Pacete's separation from service was premised on his desire to retire because of defective eyesight. With petitioner's denial of Pacete's reinstatement, it would now appear that the latter's separation was due to incompetence and inefficiency. Such cause was based on the alleged serious administrative charges filed against him which were first formalized by the

CHR in the form of a resolution only on October 18, 1989, 2 months and 18 days after the CHR considered him separated from service due to its acceptance of Pacete's application for optional retirement effective July 31, 1989. Obviously, petitioner had to devise a ground for the separation of private respondent when it realized that its approval of his application for optional retirement failed to separate him definitively from the service.

To aver that the real cause which precipitated the approval of the optional retirement of private respondent was the latter's incompetence and inefficiency based on CHR's proffered evidence and that its approval was an opportune time to separate him from the service^[10] smacks more of a subterfuge to ease him out since the charges were leveled against him only after the GSIS had disapproved his application due to non-fulfillment of the three-year requirement of continuous service preceding retirement.

If petitioner were sincere in its denial of reinstatement to private respondent, it should have filed the administrative charges beforehand, not after it had allowed private respondent to undergo the process leading to his retirement from the service. Granted that an employee is guilty of incompetence and inefficiency, an employer should seasonably file administrative charges against him and marshal the needed evidence instead of springing these on him as he is about to retire. Such a treatment is, to put it mildly, unfair and certainly, totally unexpected and uncalled for from a government agency whose avowed mission is to protect and promote human rights.

Consequently, since the resolution denying reinstatement was issued without conforming to the requirements of due notice and hearing, private respondent's dismissal from service was illegal. It constituted a blatant violation of Section 46 of the Administrative Code of 1987 and Section 36 of Pres. Decree No. 807 which provides that "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process," not to speak of a similar provision under Article IX B, Sec. 2 (3) of the 1987 Constitution on the Civil Service Commission.^[11] If petitioner wishes to dismiss private respondent for cause, the latter must be allowed to return to his previous position so that he may avail himself of the opportunity to refute the charges imputed to him. It should be pointed out, however, that he may not be able to fulfill the three-year requirement if the CHR succeeds in proving the charges of incompetence and inefficiency through a hearing as laid down in paragraph (d) of Section 12 of CA 186.

In conclusion, petitioner argues that considering the seriousness of the charges against private respondent, it is justified in summarily dismissing the latter based on Section 40 of Pres. Decree No. 807, known as the Civil Service Decree.^[12] Petitioner can no longer seek refuge in this legal provision since the same has been repealed by Rep. Act No. 6654.^[13]

WHEREFORE, the decision of the Civil Service Commission dated August 31, 1990 is AFFIRMED in toto.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Nocon, Bellosillo, Quason, Puno, and Vitug, JJ., concur.

Melo, J., in the result.

Griño-Aquino, J., on official leave.

[1] Entitled, "An Act Further Amending Section Twelve (12) of Commonwealth Act, Numbered One Hundred Eighty Six (186), as amended, by prescribing two other modes of retirement and for other purposes."

[2] (c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered at least twenty years of service, the last three years of which are continuous... (Underscoring ours)

[3] CHR Resolution, No. A89-130, Rollo, pp. 35-38.

[4] Rollo, pp. 45-48.

[5] Rollo, p. 129.

[6] Rollo, pp. 49-50.

[7] Rollo, pp. 51-54.

[8] Resolution No. 91-903, Rollo, pp. 29-32.

[9] Rollo, p. 181.

[10] Rollo, p. 178.

[11] "No officer or employee of the civil service shall be removed or suspended except for cause provided by law."

[12] Sec. 40. Summary Proceedings. - No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

x x x x x x x x

a) When the charge is serious and the evidence of guilt is strong.

x x x x x x x x

[13] Entitled an Act Repealing Sec. 40 of Pres. Decree No. Eight Hundred Seven otherwise known as the Civil Service Decree. Approved May 20, 1988.

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