

## **INOCENCIO GONZALES, PETITIONER, VS. HONORABLE CIVIL SERVICE COMMISSION, RESPONDENT.**

*G.R. No. 105752. September 02, 1993*

Ponente: PUNO, J.

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### **PUNO, J.:**

At stake is the 36 year career service of the petitioner in government. For losing his job without proper notice, petitioner seeks the protection of due process, the guaranty against acts of arbitrariness of government.[1] His plea is not without merit.

It took petitioner Inocencio Gonzales thirty six (36) years to ascend to his position of Administrative Officer III of the Agricultural Training Institute (ATI), an agency of the Department of Agriculture. On his 25th year of service, he received a merit award recognizing his continuous, dedicated, and faithful service in the government. On his 30th year, he repeated the feat. His record of service is without any wart of malfeasance or misfeasance in office.

Early in 1990, certain problems beset his two (2) children in the United States. He had to fly to the United States to attend to his children. He applied for and was granted leaves with pay from February 2, to July 16, 1990. After six (6) months, however, the family problem had not gone away and he decided to spend more time with his children.

On June 25, 1990, petitioner wrote to the Director of ATI requesting approval of a leave without pay starting from the second week of July to December 31, 1991. He cited as additional reason his desire to take advantage of "x x x a physical check-up free of charge due to my childrens' medical plan benefits". The letter was personally delivered by petitioner's wife. It carried his address in the United States at 149 Declaration Way, San Jose, California, 95116.

For unknown reason, the Director of ATI did not act on the letter-request. It was neither approved nor disapproved. Three (3) months later, ATI started acting adversely on petitioner's request. On September 5, 1990, Atty. Ildefonso del Rosario, ATI's Assistant Director and OIC, wrote to petitioner declaring him absent without official leave for more than thirty (30) days and warning him that should he not report within five (5) days from receipt of the letter, he would be dropped from the rolls. The letter was addressed at 30 Ventura St., BF Homes, Quezon City, petitioner's house. The letter, however, was returned to sender (ATI) on September 27, 1990.[2]

What ATI did was to publish a notice of similar import in the October 4, 11 and 18, 1990 issues of the Philippine Journal, a newspaper of general circulation. On October 24, 1990, ATI dropped petitioner from its rolls. He was not furnished a copy of the order. When he came back from the United States and reported for work on November 19, 1990, he found out that Mercedes Puruganan had been appointed to his position. By himself, he protested to the Civil Service Commission on December 14, 1990. His letter-protest was endorsed to the Merit Systems Protection Board (MPSB) for appropriate action. On April 30, 1991, the Board ruled that petitioner was duly notified before he was dropped from the rolls. His appeal was dismissed. His motion for reconsideration was rejected.

Petitioner appealed to the Civil Service Commission. Again, petitioner lost. In its Resolution No. 92-640, dated May 7, 1992, the Commission held: (1) that the requirement of notice was "substantially" complied with by the ATI, and (2) that the failure of ATI to act on his request for leave without pay was of "no moment".

Undaunted by his legal setbacks, petitioner filed this petition for certiorari. He raises the following arguments:

I. GRAVE INJUSTICE WAS COMMITTED BY SUPPOSEDLY BEING ABSENT WITHOUT LEAVE (AWOL), WHEN HE HAD ACCRUED VACATION AND SICK LEAVES AND WAS, THEREFORE, STILL SERVING ON OFFICIAL TIME.

II. GRAVE ABUSE OF DISCRETION WAS COMMITTED WHEN PETITIONER, AN OFFICER WITH THE RIGHT OF SECURITY OF TENURE, WAS DROPPED FROM THE ROLLS WHICH IS TANTAMOUNT TO REMOVING HIM WITHOUT CAUSE.

III. GRAVE ABUSE OF DISCRETION WAS LIKEWISE COMMITTED WHEN PETITIONER WAS SUMMARILY, HASTILY AND INORDINATELY DROPPED FROM THE ROLLS AND HIS REPLACEMENT HURRIEDLY APPOINTED WITHOUT THE OBSERVANCE OF THE REQUISITE DUE PROCESS."

We ordered the Solicitor General to file the Comment in defense of the respondent Civil Service Commission. In his Comment dated September 14, 1992, Solicitor General Raul Goco[3] conceded that petitioner was denied due process and, hence, illegally dismissed. The Civil Service Commission, thru its Legal Department, then defended itself. In its own Comment dated December 14, 1992 it contended that petitioner had "constructive notice" of the letter ordering him to return to work and which he failed to heed.

We find for the petitioner.

We need not be unduly detained by the first two contentions of petitioner which are manifestly devoid of merit. Anent the first argument, WE note that in all the proceedings below, petitioner never took the position that he still had vacation and sick leaves, hence he could not be declared AWOL. His new posture is also diametrically opposed to his letter of June 25, 1990 where he requested leave without pay precisely because he had no more vacation and sick leaves. In any event, it is too late and forbidden for petitioner to alter his theory especially when the new theory rests on allegations not borne by the records of the case. Just as untenable is petitioner's defense of security of tenure espoused in his second argument. It ought to be self-evident that security of tenure can not be a shield against absences without proper approval by the authorities. Leaves are matters of private convenience and cannot prejudice public service. Their approval is discretionary as it depends on the higher needs of public service.

Be that as it may, petitioner's third argument where he invokes the protection of the due process clause of the Constitution should be sustained. CSC Memorandum Circular No. 2, Series of 1985 is the governing rule on notice before an employee can be dropped from the rolls due to absence without leave, viz:

"4. The agency should notify in writing the employee, who is absent without leave (AWOL) for thirty (30) days, to report within five (5) days from receipt of notice, otherwise, he shall be dropped from the rolls."

The Circular does not specifically state where the notice shall be sent. In the case at bar, petitioner's residence is at 30 Ventura St., BF Homes, Quezon City. Nonetheless, in 1990, petitioner left for the United States to attend personally to the problems of his children. When petitioner filed his leave of absence without pay, ATI knew that petitioner was staying at 149 Declaration Way, San Jose, California in 1992. The letter of June 25, 1990 of the petitioner requesting this leave clearly carried his address in the United States. The records do not show that the officials of ATI denied knowledge of petitioner's correct address. Despite this knowledge, however, the letter of

September 5, 1990 written by Atty. Ildefonso del Rosario, ATI's Asst. Director and OIC, directing petitioner to return to work within five (5) days, otherwise, he would be dropped from the rolls was inexplicably mailed to his house at 30 Ventura St., BF Homes, Quezon City. The letter was not received by petitioner. Per certification of Mr. Jesse Santos, Postmaster of the Bureau of Post of Quezon City, this letter "x x x was returned to sender, the Agricultural Training Institute on September 27, 1990 and received by one Victoria Lim, authorized representative."

It is the ruling of the respondent Civil Service Commission that the sending of the said notice to the residence of petitioner constitutes "substantial" compliance with the demands of due process. The ruling would have some allure if the address of petitioner in the United States was not known to the officials of ATI and if his Philippine address was his last known address. But as stressed above, they knew of petitioner's exact address in the United States and there appears no impediment for them to send the notice in this correct address. Petitioner, be it noted, was moving from one residence to another, to avoid service of legal notices. They were aware that petitioner was not momentarily staying in his address in Quezon City where he could receive said notice. Under the circumstances, it is grave abuse of discretion for the respondent Commission to hold that there was "substantial" compliance with the notice requirement of due process. The disputed ruling cuts too deeply on petitioner's right to continue his employment in the government and unduly dilutes the protection of due process. To be sure, the cavalier attitude of respondent Commission is deplorable considering that on line is the thirty six (36) long years of faithful and dedicated service to the government of the petitioner. Nothing less than strict compliance with the demands of due process should have been demanded by the respondent Commission from the officials of ATI in light of the equities of the case. Nor can we give our concurrence to the further ruling of the respondent Commission that the denial of due process to the petitioner was cured by the publication of said notice in three (3) issues of the Philippine Journal. Notice by publication might have been proper if the address of petitioner were unknown. Since the officials of ATI knew the whereabouts of petitioner, they have no legal warrant to notify him thru the newspapers.

There are other acts, both covert and overt, which show that ATI officials did not accord fair treatment to the petitioner. Petitioner filed his request for leave without pay on June 25, 1990 while still in the United States. Though petitioner has no right to presume that his request would be granted, nonetheless, it was no less a duty on the part of officials of ATI to act immediately on the request, if only because petitioner was abroad and needed reasonable time and resources to return to the Philippines on a five (5) day call. For reasons not divulged in the records, they sat on the request. Only on September 5, 1990, did they declare that petitioner had been absent without official leave. In the said letter too, Atty. del Rosario ordered petitioner to return to work within five (5) days allegedly due to the "exigencies of the service." Nonetheless, Atty. del Rosario did not explain why all of a sudden the "exigencies of the service" required the immediate return of the petitioner. If the "exigencies of the service" were real, the Court wonders why he did not deny forthwith the request of petitioner for leave without pay made as far back as June 1992. Worse still, the order dropping petitioner from the rolls' was never sent to him. Petitioner did not also know he had been replaced till he returned to the Philippines on November 16, 1990. In a setting of scarcities, it is bad enough to lose a job; it is worse, if it is taken away by government itself without due process of law. Our Constitution abhors such arbitrariness.

IN VIEW WHEREOF, the petition for certiorari is granted and Resolution No. 92-640 dated May 7, 1992 of the respondent Civil Service Commission is reversed and set aside. The Director of the Agricultural Training Institute is ordered to reinstate petitioner to his position as Administrative Officer III or its equivalent without loss of any right or privilege.

**SO ORDERED.**

Narvasa, C.J., Cruz, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, and Vitug, JJ., concur.  
Feliciano, J., on leave.

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[1] Petitioner seeks to set aside Resolution No. 92--640 dated May 7, 1991 of the CSC.

[2] See Annex "G", Petition, Certification dated June 26, 1991 of Postmaster Jesse Santos of Quezon City.

[3] He was assisted by Asst. Sol. General Deusdedit B. Quijano and Solicitor Renan E. Ramos.

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