

**APOLINARIO ESBER, JULIETA BABARAN, MA. THERESA RIZARDO,
GRACIANO BUDOY, JR., LUZ DEL CASTILLO, AND RITA ATABELO
PETITIONERS, VS. CHAIRMAN PATRICIA A. STO. TOMAS,
COMMISSIONER SA...**

G.R. No. 107324. August 26, 1993

Ponente: VITUG, J.

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VITUG, J.:

Challenged in this petition[1] for certiorari anchored on grave abuse of discretion, filed pursuant to the provisions of Article IX-A, Section 7 of the 1987 Constitution, are the respondent[2] Civil Service Commission's ("Commission"): (a) Resolution[3] No. 92-230, dated 06 February 1992, which affirmed, with modification, the decision[4] of the Merit Systems Protection Board; (b) Order, dated 10 March 1992, which denied herein petitioners' Notice of Motion for Reconsideration and Motion for Hearing; and (c) Resolution No. 92-1123, dated 20 August 1992, which denied the petitioners' motion for reconsideration.

The relevant facts of the case, together with those involved in related cases earlier resolved by this Court,[5] may be stated, as follows:

On the 17th of September 1990, which fell on a Monday, a regular school day, some 800 public school teachers in Metro Manila, led by the Manila Public School Teachers Association ("MPSTA"), held mass actions which consisted, among other things, of mass absences, assemblies at the Liwasang Bonifacio (Intramuros, Manila), and a rally at the Senate building where the teachers aired what they had perceived to be legitimate grievances or demands. At about 1:00 o'clock p.m., three representatives of the group were allowed to see Secretary Cariño but the latter "****brushed aside their grievances (and) warned them that they would lose their jobs for going on illegal and unauthorized mass leave." Upon leaving Cariño's presence, they were handed an order directing all participants in the mass action to return to work in 24 hours or face dismissal, and a memorandum directing the DECS officials concerned to initiate dismissal proceedings against those who would not comply and to hire their replacements.[6] Those directives notwithstanding, the mass actions continued into the week, with more teachers joining in the days that followed.[7] Concerned about the ongoing events, herein petitioners, led by Apolinario Esber in his capacity as President of the Ramon Magsaysay High School Faculty Club, requested from, and were granted by, their Principal, Mrs. Esperanza Bautista, permission to hold two meetings in the school premises, i.e., a Faculty Executive Board Meeting on 17 September 1990 and a General Faculty Meeting on 18 September 1990.[8] Said meetings had for their agenda what were termed to be "MPSTA updates".[9]

It was on the 19th of September 1990, also a regular school day, when some teachers of the Ramon Magsaysay High School assembled outside said school and held their own mass action.[10] Among those who took part in this assembly were the six (6) petitioners herein.[11] On the same day, petitioner Esber was replaced by a temporary teacher pursuant to a Memorandum of even date to the Principal of the Magsaysay High School from Erlinda Lolarga, Superintendent of City Schools (p.5, rollo). Forthwith and thereafter, Esber was no longer

allowed to continue teaching. The petitioners then wrote a letter, dated 25 September 1990, addressed to respondent Commission stating, inter alia,

"xxx We only begun peaceful assembly in front of our school last 19 September 1990 at 8:00 a.m. to petition the government for redress of grievances x x x and we express our intention to return to work in our school that day but at 11:00 a.m. also of 19 September 1990 we already received a news that some of our teachers had already a replacement. In view of this we tried to return to work on September 20 and 21, 1990 but we were discouraged by the news from our co-teachers that we also have replacement so we have no alternative but to continue our protest action." (underscoring supplied)[12]

On 25 September 1990, the Secretary of the Department of Education, Culture and Sports ("DECS") issued formal charges and preventive suspension orders against herein petitioners.[13] They were charged with having joined or participated in an illegal strike/unauthorized mass action despite a warning, dated 17 September 1990, to all "public school teachers and other DECS personnel that under Civil Service Law and Rules, strikes, unauthorized mass leaves and other forms of mass actions by civil servants which disrupt public services are strictly prohibited x x x.[14] The above charges were answered by the petitioners on different dates, to wit: 02 October 1990 by Esber, 03 October 1990 by Babaran, 05 October 1990 by Castillo and Budoy, and 08 October 1990 by Rizardo and Atabelo.[15] In their answers, the petitioners admitted that they merely staged a peaceful assembly in front of Magsaysay High School beginning 19 September 1990.[16] The petitioners also requested for a formal investigation.[17]

With the filing of the administrative complaints and the receipt of the answers of some of the teachers involved, respondent Secretary Cariño issued on 08 October 1990 a memorandum, forming an Investigation Committee composed of Atty. Reno Capinpin of DECS Administrative Services, as Chairman, Dr. Alberto Mendoza, representing the Division Supervisors, Atty. Evangeline de Castro, representing the City Superintendent of Schools of Manila, and Atty. Isaias Melegrito, representing the National PPSTA Organization, as members.[18] The Committee was authorized to meet everyday even as Special Prosecutors from the Department of Justice on detail with the DECS were designated to handle the prosecution during the formal hearings.[19]

In the meantime, the MPSTA filed a petition for certiorari before the Regional Trial Court of Manila against Secretary Cariño, which was dismissed. Later, the MPSTA went to this Court on certiorari for alleged violation of the striking teachers' right to due process and peaceable assembly.[20] The Alliance of Concerned Teachers (ACT) also filed a similar petition[21]. Both petitions were filed in behalf of the two associations, a few named individuals, and "other teacher-members so numerous similarly situated" or "other similarly situated public school teachers too numerous to be impleaded." [22]

Both cases were ordered consolidated, and the parties were heard in oral argument on the petitioners' common pleas for a temporary restraining order/mandatory injunction to restore the status quo ante and enjoin the public respondents from continuing with the issuance of suspension orders and from proceeding with the administrative cases against the teachers involved in the mass actions.[23]

In the meantime, the petitioners submitted sworn statements, dated 27 September 1990, to the Commission on Human Rights ("CHR") to complain that while they were participating in peaceful mass actions they suddenly learned of their replacement as teachers, allegedly without notice and for reasons completely unknown to them. Their complaints and those of other teachers were docketed as "Striking Teachers" CHR Case No. 90-775.[24]

Going back to the administrative case docketed as Case No. DECS 90-082, in which the petitioners were among the named respondents, their counsel[25] moved for the suspension of the administrative proceedings pending resolution by the Supreme Court of their application for the issuance of an injunctive writ/temporary restraining

order. But when their motion for suspension was denied by Order, dated 08 November 1990, of the Investigating Committee, which later also denied their motion for reconsideration orally made at the hearing of 14 November 1990, the petitioners, led by their counsel, staged a walkout in an apparent attempt to boycott the proceedings.[26] Investigation thus proceeded ex-parte, and counsel for the complainant (the DECS Secretary) presented Mrs. Esperanza Bautista, the Principal of Ramon Magsaysay High School, as sole witness. She reiterated and affirmed her report on the whereabouts of herein petitioners during the 17th to the 21st of September 1990.

After evaluating the evidence, as well as the answers, affidavits and other documents submitted by the petitioners, Secretary Cariño rendered on 17 December 1990 his decision, decreeing the dismissal from the service of Apolinario Esber and the suspension for nine (9) months of Babaran, Rizado, Budoy, Jr., del Castillo and Atabelo.[27]

The Supreme Court, on the other hand, in its resolution, dated 18 December 1990, denied the MPSTA and ACT's plea for restoration of the status quo ante and to restrain/enjoin further suspension of, and the initiation or continuation of administrative proceedings against, the teachers, upon the following postulates:

x x x

3) that from the pleaded and admitted facts, these "mass actions" were to all intents and purposes a strike; they constituted a concerted and unauthorized stoppage of, or absence from, work which was the teachers duty to perform, undertaken for essentially economic reasons;

4) that this Court had already definitively ruled that employees in the public (civil) service, unlike those in the private sector, do not have the right to strike x x x;

5) that upon the foregoing premises, it was prima facie lawful and within his statutory authority for the respondent Secretary of Education to take the actions complained of, to wit; issue a return-to-work order, prepare administrative charges against, and place under preventive suspension, those who failed to comply with said order, and dismiss from the service those who failed to answer or controvert the charges.[28]

Withal, on 07 January 1991, the petitioners filed a letter-appeal to the respondent, Civil Service Commission, seeking the reversal of the DECS decision, the reinstatement to their respective positions, and the payment of all their back salaries and other benefits (Annex "M", Petition, pp. 78-79, rollo). The Merit Systems Protection Board ("MSPB"), acting on the letter-appeal of herein petitioners, promulgated its decision (MSPB No. 91-1094), dated 20 July 1991, finding the latter guilty of gross violation of Civil Service laws and rules but modified the original penalties; viz:

1. Apolinario Esber - six (6) months of suspension
2. Julieta Babaran - six (6) months of suspension
3. Ma. Theresa Rizado - one (1) month, one (1) day, of suspension
4. Graciano Budoy - two (2) months of suspension
5. Luz del Castillo - two (2) months of suspension
6. Rita Atabelo - three (3) months of suspension

with stern warning given to the officials of Ramon Magsaysay High School to be more circumspect in their sworn duties and in the implementation of orders of competent authorities so as to obviate against any aggravation of the situation.[29]

Secretary Cariño, on 06 August 1991, moved for a reconsideration of MSPB's decision.[30] Having been denied,

an appeal was interposed on 10 September 1991 with the respondent Commission. The counsel for herein petitioners was requested to comment on the said appeal. On 30 November 1991, the respondent Commission received the comment of counsel for the petitioners who requested that the case be set for hearing.[31] The Commission took no action on the motion for a hearing; instead, it opted to decide the appeal by promulgating its disputed Resolution No. 92-230, dated 06 February 1992, the dispositive portion of which reads:

"WHEREFORE, foregoing premises considered, this Commission resolves to deny the instant appeal. Accordingly, the decisions of the MSPB dated August 30, 1990 and July 20, 1991, are hereby modified and respondent Apolinario Esber is found guilty of grave misconduct for which he is meted out the penalty of dismissal from the service while the other five (5) respondents herein are found guilty of Gross Violations of Civil Service Law and Rules of serious nature for which they are meted the penalty, thus:

- (1) Julieta Babaran - 6 months suspension
- (2) Graciano Budoy, Jr. - 6 months suspension
- (3) Rita Atabelo - 3 months suspension
- (4) Luz del Castillo - 2 months suspension
- (5) Ma. Teresa Rizado - 1 month and 1 day suspension"[32]

The Petitioners moved for the reconsideration of the decision, and they again requested for a hearing which was denied by the Commission in its order of 10 March 1992.[33] The respondent Commission also denied, in its other assailed Resolution No. 921123, dated 20 August 1992, the petitioners' motion for reconsideration.[34]

Hence, this recourse.

The Petitioners have assigned several errors, but reduced to their essence, the simple questions in this appeal are: (a) were the petitioners accorded due process; and (b) did the respondent Commission act with grave abuse of discretion in affirming, with some modifications, the DECS decision.

The petition lacks merit even as the Solicitor General, commenting on the petition, has expressed a contrary view.[35] The respondent Commission has thus appeared through its own office counsel.

We must stress at the outset that herein petitioners do not appear to have had any direct participation in the mass actions led by the MPSTA on the 17th and 18th of September 1990. But these mass actions did lead to the issuance of the directive of Secretary Cariño ordering all teachers concerned to return to work on pains of severe disciplinary action and reminding them that -

"Under Civil Service Law and Rules, strikes, unauthorized mass leaves and other forms of mass actions by civil service servants which disrupt public services are strictly prohibited."[36]

The said order was posted (as noted by the MSPB) on a bulletin board placed near the entrance of the Magsaysay High School on 17 September 1990. The above warning notwithstanding, herein petitioners showed defiance by engaging in their so-called "peaceful assembly" on 19 September 1990, petitioning the government for redress of grievances.

The formation of the Investigating Committee by then Secretary Cariño to conduct investigations on the cases of herein petitioners and other teachers similarly situated, as well as to submit their report and recommendation, accords with Republic Act No. 4670, otherwise known as the Magna Carta for Public School Teachers. We fail to see any irregularity in the appointment of Atty. Reno Capinpin, DECS Director of Administrative Services, as the head of the Committee, in lieu of Erlinda Lolarga, the Superintendent of City Schools, the latter having been

responsible for sending the memorandum to the principal of Magsaysay High School replacing petitioner Esber by a temporary teacher. The Division Supervisors and the City Superintendent of Schools in Manila were also represented, respectively, by Dr. Alberto Mendoza and Atty. Evangeline Castro. The teachers' organization, on the other hand, was duly represented by Atty. Isaias Melegrito of the National PPSTA Organization. The fact that, instead of three (3) members, four (4) were appointed to compose the Committee can be explained in that it had to have a Division Supervisor in its ranks. It may also be well to consider that the committee was given the monumental task of investigating hundreds, if not thousands, of public school teachers.

Given all the factual settings, we are not convinced that there was any substantial denial of administrative due process. What can be considered really obnoxious is when there clearly is a lack of opportunity to be heard.[37] Here, the petitioners can hardly be said to have been deprived of that opportunity. At one point, they even boycotted the proceedings. They were informed of the charges, allowed to and did, in fact, make known their respective positions. One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably and practicable, through pleadings than by oral argument.[38] In administrative proceedings, moreover, technical rules of procedure are not strictly enforced and due process of law, understood in its strict judicial sense, is not similarly followed.[39] From the adverse decision of the DECS Secretary, the petitioners submitted their letter-appeal[40] to, and considered by, the respondent Commission, thus negating, at least curative of, any supposed denial of administrative due process.[41] It was not at all entirely accurate on the part of the Solicitor-General to state that the alleged "evidence on hand" duly considered by the MSPB were only the reports of the Superintendent, District Supervisors and Principals. It must be noted that the petitioners themselves submitted their own answers to the charges, affidavits and other documents to substantiate their defense.

While the proceedings conducted by the Investigating Committee were short of circumspection and may have indeed left much to be desired, the demands of due process, nonetheless, cannot be said under the circumstances to have been inadequately met.[42]

All told, We are not prepared to conclude that the respondent Commission was guilty of grave abuse of discretion in its questioned orders.

We find, however, the penalty of dismissal decreed against Apolinario Esber to be rather harsh. There is no dispute that employees in the civil service may not engage in strikes, walkouts and temporary stoppages.[43] Verily, strenuous and not totally irrelevant circumstances can well call for compassion. We take note of a portion of the findings of the Merit System and Protection Board to the effect that "xxx appellants (petitioners herein) were consistently rated Very Satisfactory in their performance and this is the first time that they were administratively charged. xxx." [44] Having been out of the service for almost three (3) years now, i.e., since 19 September 1990, this Court considers the same to be more than enough penalty for petitioner Esber himself.

WHEREFORE, finding no grave abuse of discretion on the part of the respondent Civil Service Commission, the assailed Resolutions are hereby **AFFIRMED WITH MODIFICATION** insofar as petitioner Apolinario Esber is concerned who is hereby ordered to be reinstated to his position effective as of the finality of this decision. Without special pronouncements as to costs.

SO ORDERED.

Narvasa, C.J., Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, and Puno, JJ., concur.

Cruz, Feliciano, and Padilla, JJ., see dissenting opinion.

- [1] Counsel for petitioners: Atty. Froilan Bacungan.
- [2] Respondent Commission, in this instance, is represented by Normita Villanueva, Sonia Ednaco and Daisy Garcia-Tingzon.
- [3] Chairman Patricia Sto. Tomas, Commissioners Samuel Barlongay & Ramon Ereñeta, Jr.
- [4] MSPB Case No. 91-1094: Thelma Gaminde, Board Chairman, Jesse Caberoy and Jose Soria, Board Members.
- [5] Joint Resolution, G.R. No. 95445 (Manila Public School Teachers Association, et al. v. Hon. Perfecto Laguio, Jr., etc., et al.) and G.R. No. 95590 (Alliance of Concerned Teachers, et al. v. Hon. Isidro Cariño, etc., et al., 200 SCRA 323 /1991/; G.R. No. 96681 (Hon. Isidro Cariño, etc., et al. v. Commission on Human Rights, et al., 204 SCRA 483 /1991/.
- [6] Joint Resolution, G.R. Nos. 95445 and 95590, *supra*.
- [7] *Ibid*.
- [8] Annexes "E" and "F", Petition, pp. 70-71.
- [9] *Ibid*.
- [10] CSC's Comment, p. 166, rollo.
- [11] Comment of the Solicitor-General, rollo, p. 139.
- [12] Rollo, p. 7.
- [13] Rollo, p. 51.
- [14] Rollo, p. 65; p. 211.
- [15] *Ibid.*, p. 8.
- [16] *Ibid.*, p. 81.
- [17] *Ibid.*, p. 8 and 139.
- [18] Joint Res. G.R. No. 95445 & 95590; Rollo, p. 26; see also Section 9, R.A. 4670.
- [19] Rollo, p. 26.
- [20] MPSTA, et al. v. Hon Laguio, et al., G.R. 95445.
- [21] ACT, et al. v. Hon. Cariño, et al., G.R. 95590.
- [22] G.R. No. 96681, *supra*.
- [23] Joint Resolutions dated August 6, 1991, *supra*.
- [24] This Court, speaking through C. J. Narvasa, in its decision of 02 December 1991 (G.R. No. 96681, *supra*.) restrained the CHR from further hearing resolving the case (i.e., Striking Teachers CHR Case No. 90-775) on the merits.
- [25] Atty. Manuel Diokno.
- [26] G.R. No. 96681, *supra*.
- [27] Annex "D", pp. 68-69, rollo.

[28] Joint Resolution dated August 6, 1991, *supra*.

[29] Annex "N", p. 88, rollo 9

[30] On the same date, the joint Resolution of this Court in G.R. Nos. 95445 and 95590 (MPSTA, et al. v. Laguio, et al. and ACT v. Cariño, et al.), *supra*, penned by C.J. Narvasa was promulgated dismissing the petitions "without prejudice to any appeals, if still timely, that the individual petitioners may take to the CSC on the matters complained of.

[31] CSC's Comment, p. 172, rollo.

[32] Annex "A", p. 57, rollo.

[33] Annex "B", p. 59, rollo.

[34] Annex "C", p. 64, rollo.

[35] Comment of the Solicitor General, pp. 138-154, rollo.

[36] Rollo, p. 211.

[37] Crespo v. Provincial Board of Nueva Ecija, G.R. No. L--33237, 160 SCRA 66 /1988/.

[38] Mutuc v. CA, G.R. No. 48108, 190 SCRA 43/1990/).

[39] Manuel v. Villena, G.R. No. L-28218, 37 SCRA 745/1971/.

[40] Annex "M", pp. 78-79, rollo.

[41] Sampang v. Inciong, G.R. No. 50992, 137 SCRA 56/1985/; see also Assistant Executive Secretary for Legal Affairs v. CA, G.R. No. 76761, 169 SCRA 27/1989/; Cebu Stevedoring v. Regional Director, G.R. No. 542285, 168 SCRA 315/1988/; Sta. Rita and Co. v. Arroyo, G.R. No. 80452, 168 SCRA 581/1988/).

[42] Lindo v. COMELEC, G.R. No. 95016, 194 SCRA 25/1991/.

[43] Social Security Systems Employees Association v. CA, G.R. No. 83279, 175 SCRA 686/1989/.

[44] Rollo, p. 87.

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DISSENTING OPINION

CRUZ, J.:

I am unable to agree with Justice Padilla that the petitioners were denied due process. The statement in the ponencia that the administrative proceedings "left much to be desired" is an unfortunate observation but did not in my view affect the validity of such proceedings. All due process requires is the chance to be heard and I find there was ample opportunity of this, as narrated in detail in the ponencia.

Even so, I must take issue again with the ruling in the SSS case, again affirmed in this decision, prohibiting members of the Civil Service from engaging in strikes and similar activities available to workers in the private sector. The strike is an economic weapon guaranteed by the Constitution for the promotion of the interests of labor. It is a form of expression protected by the Bill of Rights. Denial of the right to strike from workers in the public sector is a derogation of their freedom of expression and a violation of the equal protection clause, besides

being contrary to social justice.

I suggest a re-examination of the ruling in the SSS case as I believe there are many valid arguments calling for its reversal.

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DISSENTING OPINION

PADILLA, J.:

Denial of the constitutional right to due process, the issue raised in the consolidated petitions in G.R. Nos. 95445 and 95590 (Manila Public School Teachers Association vs. Laguio, Jr. and Alliance of Concerned Teachers vs. Carino, 200 SCRA 323) is the same issue raised in the present petition.

It will be recalled that the majority in the above-mentioned consolidated petitions voted to dismiss both petitions "without prejudice to any appeals, if still timely, that the individual petitioners may take to the Civil Service Commission." Unfortunately, the Civil Service Commission in promulgating the resolutions challenged in this case, without granting herein petitioners' motion for hearing, failed to cure any procedural infirmities in the proceedings below. Indeed, even the majority concedes that "the proceedings conducted by the Investigating Committee were short of circumspection and may have indeed left much to be desired."

The conclusion therefore of the majority that "the demands of due process, nonetheless, cannot be said under the circumstances to have been inadequately met" does not follow from the premise that the proceedings "left much to be desired." The right to due process should not be denied to any individual and a finding that the right had not been violated should not be based on unfounded inferences unsupported by concrete factual findings. I therefore vote to grant the petition and remand the case to the DECS for proper re-determination of the culpability of each teacher for the reasons stated above in addition to those set forth in my dissenting opinion in G.R. Nos. 95445 and 95590 (200 SCRA 346, 348).

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