

**ZORAYDA AMELIA C. ALONZO, IN HER CAPACITY AS CHIEF
EXECUTIVE OFFICER OF HOME DEVELOPMENT MUTUAL FUND,
PETITIONER, VS. HON. IGNACIO M. CAPULONG, PRESIDING JUDGE
OF THE REGIONAL T...**

G.R. No. 110590. May 10, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the order dated March 31, 1993 of respondent judge Ignacio Capulong, which granted a writ of preliminary injunction enjoining petitioner from preventively suspending private respondent Juliet Fajardo as manager of the Administrative Services Department of the Home Development Mutual Fund.

The facts of the case are as follows:

Private respondent Juliet Fajardo is, as already stated, manager of the Administrative Services Department of the Home Development Mutual Fund, otherwise known as the Pag-ibig Fund Foundation.

On December 17, 1992 Celeste G. Al-Jawazneh, who had been supplying office uniforms and providing transportation service to Pag-ibig Fund employees, wrote a letter to the Chief Executive Officer, herein petitioner Zorayda Alonzo, complaining against private respondent. The letter reads:

Ms. Zorayda Amelia C. Alonzo
Chief Executive Officer
Home Development Mutual Fund
Ayala Avenue, Makati Metro Manila

Dear Ms. Alonzo:

As this year approaches its end, we take this opportunity to thank you for giving us the opportunity to serve your good office in the area of transport services.

Our initial year of operations with Pag-ibig had indeed been blessed with the minimum of hassles. We are encouraged by the warmth of your staff, whom we shuttle through their various daily assignments. Ironically, the greatest disappointment does not lie in the entanglement of these activities. Rather, it is in the very oppressive treatment that we receive from the GSD Head - Ms. Juliet Fajardo.

Ms. Fajardo has been our zealous guide in the assumption of our duties during our first months - to the point of carrying on a cordial relationship outside official business. However, the first month saw her making a "loan", followed by several more "loans" thereafter. By mid year and until September, we had decided to discontinue this apparent opportunism - an action which we had bravely dared to take. As expected, the proceeding months saw Ms. Fajardo's volatile temperament turned towards the attempt to discredit our small but honest business. Often,

we had thought of approaching the authority. Our knowledge of her apparent impulsive wrath and distinct vulgarity instinctively taught us to seek the personal safety of our family first.

We are greatly disappointed and disturbed that Ms. Fajardo is a part of the HDMF (together with Mr. Ernie Dy whom she has already brainwashed) panel for the bidding of next years transportation services at the DBM. In their terms and conditions, the Reservation Clause states that HDMF-DBM-PS reserves the right to reject any or all bids ..." Needless to say, the mere presence of Ms. Fajardo and Mr. Dy, whom we know have already made some derogatory remarks about us to the DBM personnel, constitutes a great bias against our bid. May we therefore request that a replacement be made in the interest of fairness which we are all willing to abide with.

The bidding takes place tomorrow, Ms. Alonzo. We rely on your good judgment to rectify this impropriety.

Thank you.

Sincerely,

(SGD) Celeste G. Al-Jawazneh

cc: Ombudsman

Manager-NEW AMANAH

COA

TRANSPORT SERVICES

Acting on the complaint, petitioner directed the legal department of the Pag-ibig Fund to investigate the allegations of Al-Jawazneh. The legal department found prima facie case against private respondent and recommended that the latter be preventively suspended pending formal investigation of the administrative complaint.

On December 28, 1992, a formal charge was filed against private respondent for dishonesty, misconduct, disgraceful and immoral conduct, contracting of loans of money or other property from persons with whom the office of the employee concerned had business relations, and conduct prejudicial to the best interest of the service, for having committed the following acts:

- For having used the influence of your office as ASD Manager to borrow from Ms. Celeste G. Al-Jawazneh, a contractor of the HDMF for employee uniform, on the following occasions:

(a) December 12, 19 -

P 5,000.00

(b) January 9, 1992 -

15,000.00

(c) Sometime between February & March of 1992 -

20,000.00

(d) On June 3 or 4, 1992 -

5,000.00

(e) On August 18, 1992 -

20,000.00

for a total of P65,000.00 the entire amount of which remain unpaid up to this time despite demand for payment;

- For having used the influence of your office as ASD Manager by offering and securing the professional services of Atty. Emil Llanes allegedly your intimate friend, in the amount of P2,000.00 per month as retainer's fee for and in consideration of a promise to award the HDMF transportation contract to New Amanah Transport managed by said Celeste G. Al-Jawazneh and owned by her sister, Ms. Ma Guia San Jose;

- The amount of P2,000.00 per month was collected by you on a monthly basis until sometime April of 1992 when a vehicular accident occurred involving one of the service vehicles of Amanah;

Private respondent was required to answer the charges and indicate whether she desired to have a formal investigation. Meanwhile, she was placed under preventive suspension for 90 days effective December 29, 1992, pursuant to §41 of P.D. No. 807 (Civil Service Law). The formal charge and the order of preventive suspension were served on her on the same day.

Private respondent filed a petition for certiorari and prohibition in the Regional Trial Court of Makati on January 6, 1993, assailing the order of preventive suspension issued against her. The case was docketed as Sp. Civil Action No. 93-033 and raffled to Branch 134 of the court. Private respondent complained that the order of preventive suspension was issued without giving her the right to be heard.

On January 7, 1992, the respondent judge issued a temporary restraining order enjoining petitioner from "executing and/or enforcing the order of preventive suspension." This was followed by the questioned order of March 31, 1993 granting injunction. Petitioner moved for a reconsideration of the order but respondent judge denied her motion in an order dated May 14, 1993. Hence, this petition.

Without necessarily giving due course to the petition, we required private respondent to comment and issued a temporary restraining order enjoining in the meantime respondent Judge Ignacio Capulong from further proceeding with Civil Case No. 93-033.

Petitioner contends that respondent judge committed a grave abuse of his discretion in taking cognizance of the case and stopping the preventive suspension of private respondent whom he ordered to be allowed to continue in office. She contends that the investigation being conducted by her office was purely an administrative one and that private respondent failed to exhaust administrative remedies by appealing to the Civil Service Commission.

We find the petition impressed with merit.

The order of preventive suspension was issued upon recommendation of the legal department of the Pag-ibig Fund which found prima facie case against private respondent. It was issued as a preliminary step to the investigation of charges against private respondent, pursuant to Chapter 7, Title 1, Book V of the Administrative Code of 1987, which provides in pertinent part as follows:

§47. Disciplinary Jurisdiction. -

....

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. . . .

§51. Preventive Suspension.-- The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

As Chief Executive Officer of the Home Development Mutual Fund, petitioner is the proper disciplining authority within the meaning of §51 above. Indeed her power to order the preventive suspension of any employee under her is not denied by private respondent. What private respondent contends is that she was suspended on the basis of an unverified letter and without first giving her the right to be heard in her defense.

This claim is without any basis. It is true that the letter-complaint of December 17, 1992 of Celeste G. Al-Jawazneh was not sworn to, but it was supported by her affidavit and by the sworn statements of several witnesses. Private respondent was required to answer the charges against her and inform the Office whether she wanted a formal investigation to be held. But she did not do so. Instead she brought the action below. She cannot therefore complain of lack of due process of law.

Private respondent argues that a hearing should have been held before she was suspended. Indeed the respondent court restrained enforcement of the order of preventive suspension on the basis of its finding that private respondent had not been heard before she was suspended. The respondent court found:

To controvert petitioner's claims, respondent presented a number of witnesses, the most relevant of whom is Mr. Raul Rimando. Rimando, while claiming that he was the investigator tasked by his office to investigate the accusations of one Celeste Al-Jawazneh against herein petitioner, admitted in his open court testimony that he did not bother to get the side or comment of the petitioner regarding such accusations, neither did he confront the petitioner with the alleged accusations of said Al-Jawazneh. Rimando likewise admitted that all he did in the course of his so-called investigation was to collate the statements of Al-Jawazneh and her witnesses and submitted the same to the Chief, Legal who thereupon recommended the placing under preventive suspension of petitioner.

The movant/petitioner having shown that the invasion of the right to be protected is material and substantial; that her right is clear and unmistakable; that there is an urgent necessity for the writ to prevent serious damage (Dionisio vs. Ortiz, 204 SCRA 742); and in order to preserve the status quo until the merits of the case can be finally determined (Avila vs. Tapucar, 201 SCRA 148).

But prior notice and hearing was not required. It is now settled that the preventive suspension of a civil service employee or officer can be ordered even without a hearing because such suspension is not a penalty but only a preliminary step in an administrative investigation.[1] The purpose is to prevent the accused from using his position or office to influence prospective witnesses or tamper with the records which may be vital in the prosecution of the case against him.[2] In this case, private respondent is manager of the Administrative Services Department. She is in a position to influence employees under her or otherwise impede the investigation. Respondent court's order that there must be a hearing before preventive suspension may be imposed is thus a virtual disregard of the settled rule and for this reason constitutes a grave abuse of its discretion.

WHEREFORE, the petition for certiorari is GRANTED; the writ of preliminary injunction dated April 1, 1993 is ANNULLED and SET ASIDE; and Special Civil Action No. 93-033 of the respondent court is DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Lastimosa v. Vasquez, G.R. No. 116801, April 6, 1995; Buenaseda v. Flavies, 226 SCRA 645 (1993); Espiritu v. Melgar, 206 SCRA 256, 263 (1992); Nera v. Garcia, 106 Phil. 1031 (1960).

[2] Pimentel v. Garchitorena, 208 SCRA 122, 124 (1992); Lacson v. Roque, 92 Phil. 456, 469 (1953).

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