

GEORGE I. RIVERA, PETITIONER, VS. CIVIL SERVICE COMMISSION AND LAND BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 115147. January 04, 1995

Ponente: VITUG, J.

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VITUG, J.:

This petition for certiorari assails the resolution, dated 25 March 1993, of respondent Civil Service Commission ("CSC") relative to an administrative case, entitled "Land Bank of the Philippines vs. George I. Rivera," as well as its resolution, dated 03 March 1994, denying the motion for reconsideration.

Petitioner George I. Rivera was the Manager of Corporate Banking Unit I of the Land Bank of the Philippines ("LBP"). On the basis of the affidavits of William Lao and Jesus C. Perez, petitioner was charged, on 01 February 1988, by the LBP President with having committed the following offenses:

"(1) Dishonesty;

"(2) Receiving for personal use of fee, gift or other valuable thing, in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons;

"(3) Committing acts punishable under the Anti-Graft laws;

"(4) Pursuit of private business vocation or profession without the permission required by Civil Service Rules and regulations;

"(5) Violation of Memorandum Circular No. 1025, Office of the President, dated November 25, 1977; and

"(6) Violation of Res. 87-A, R. A. No. 337; resulting to misconduct and conduct prejudicial to the best interest of the service." [1]

Rivera allegedly told Perez, the Marketing Manager of Wynner which had a pending loan application with LBP, that he could facilitate the processing, approval and release of the loan if he would be given a ten percent (10%) commission. Rivera was said to have subsequently received a P200,000.00 commission out of the P3,000,000.00 loan proceeds from the LBP. From Lao, who had substantial investments in Wynner, Rivera supposedly likewise received the amount of approximately P20,000.00 pocket money for his trip to the United States, as well as additional funds for his plane ticket, hotel accommodations and pocket money for still another trip to Hongkong.

Rivera was further charged with, among other things, having served and acted, without prior authority required by Civil Service Rules and Memorandum Circular No. 1025 of the Office of the President of the Philippines, as the personal consultant of Lao and as consultant in various companies where Lao had investments. He drew and received salaries and allowances approximately P20,000.00 a month evidenced by vouchers of Edge Apparel, Inc., J & M Clothing Corporation, and JME Trading Corporation.

Once the charges were filed, Rivera was placed under preventive suspension (effective 19 February 1988). After a

formal investigation, the LBP held Rivera guilty of grave misconduct and acts prejudicial to the best interest of the service in accepting employment from a client of the bank and in thereby receiving salaries and allowances in violation of Section 12, Rule XVIII, of the Revised Civil Service Rules. He was also found to have transgressed the prohibition in Section 3, paragraph (d), of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019, as amended). The penalty of forced resignation, without separation benefits and gratuities, was thereupon imposed on Rivera.

On appeal, the decision was modified by the Merit Systems Protection Board ("MSPB") which held. [2]

"In view of the foregoing, the decision appealed from is hereby modified that respondent-appellant George I. Rivera is considered guilty only of committing acts prejudicial to the best interest of the service. Considering that this is his first offense on record, the penalty of Forced Resignation without separation benefits and gratuities to which he may be otherwise be entitled under the laws is reduced to one (1) year suspension." [3]

The LBP filed a motion for the reconsideration of MSPB's decision. In its resolution, [4] promulgated on 08 June 1992, the MSPB denied the motion.

Rivera and the LBP both appealed to the CSC. In its Resolution No. 93-1189, [5] the CSC resolved only the appeal of Rivera (rejecting that of the LBP pursuant to the rule laid down by this Court in *Magpale vs. Civil Service Commission* [215 SCRA 398]). The resolution, in part, read:

"The Commission is inclined to sustain the original decision of the Land Bank of the Philippines. Committing an act punishable under the Anti-Graft and Corrupt Practices Act (RA 3019) is considered a Grave Misconduct. It is a wanton and/or blatant violation of law. As an officer of the Bank, respondent Rivera should know better that it was illegal and improper for him to accept regular monthly allowances from a private firm which is a client of his Bank. More so, that such act is prohibited and punishable under Sec. 3 (d) of RA 3019.

"WHEREFORE, foregoing premises considered, the Commission resolves to dismiss the appeal of Respondent George Rivera. Moreover, the Commission finds him guilty of Grave Misconduct for which he is meted out the penalty of dismissal from the service. Accordingly, the MSPB decision is hereby set aside." [6]

Rivera filed a motion for reconsideration, which the CSC denied in its Resolution No. 94-1276. [7]

Hence, the instant petition.

Petitioner averred that the CSC committed grave abuse of discretion in imposing the capital penalty of dismissal on the basis of unsubstantiated findings and conclusions.

On 26 May 1994, this Court resolved to dismiss the petition for petitioner's failure to sufficiently show that CSC acted with grave abuse of discretion in issuing its questioned resolution. Rivera filed a motion for the reconsideration of the Court's dismissal of the petition, now strongly asserting that he was denied due process when Hon. Thelma P. Gaminde, who earlier participated in her capacity as the Board Chairman of the MSPB when the latter had taken action on LBP's motion for reconsideration, also took part, this time as a CSC Commissioner, in the resolution of petitioner's motion for reconsideration with the CSC. The Court, in its resolution of 05 July 1994, resolved to grant the motion, to reinstate the petition and to require respondents to comment thereon.

The Office of the Solicitor General, in its comment, dated 15 September 1994, sided with petitioner and suggested that the CSC be given an opportunity to submit its own comment. CSC did in due time.

This is not the first time that the Court has been confronted with this kind of prejudicial issue.

In *Zambales Chromite Mining Company vs. Court of Appeals*, [8] the decision of the Secretary of Agriculture and

Natural Resources was set aside by this Court after it had been established that the case concerned an appeal from the Secretary's own previous decision he handed down while he was yet the incumbent Director of Mines. Calling the act of the Secretary a "mockery of administrative justice," the Court said:

"In order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no different view or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the same view since being human, he would not admit that he was mistaken in his first view of the case."

The Court similarly struck down a decision of Presidential Executive Assistant Jacobo Clave over a resolution of the Civil Service Commission, in which he, then concurrently its Chairman, had earlier "concurred." [9]

Given the circumstances in the case at bench, it should have behooved Commissioner Gaminde to inhibit herself totally from any participation in resolving Rivera's appeal to CSC if we are to give full meaning and consequence to a fundamental aspect of due process. The argument that Commissioner Gaminde did not participate in MSPB's decision of 29 August 1990 is unacceptable. It is not denied that she did participate, indeed has concurred, in MSPB's resolution of 03 March 1994, denying the motion for reconsideration of MSPB's decision of 29 August 1990.

WHEREFORE, CSC Resolution No. 94-1276 is SET ASIDE, and the case is REMANDED to respondent Civil Service Commission for the resolution, sans the participation of Commissioner Thelma P. Gaminde, of herein petitioner's motion for reconsideration of CSC Resolution No. 93-1189. No costs.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, and Mendoza, JJ., concur.

Feliciano, J., on leave.

Kapunan, J., no part.

[1] Rollo, p. 33.

[2] Signed by Acting MSPB Chairman Alfredo B. Deza and Board Members Bella A. Amilhasan and Vicente P. Ramos.

[3] Rollo, p. 119.

[4] Signed by MSPB Board Chairman Thelma P. Gaminde and Board Members Jesse J. Caberoy and Angelito G. Grande.

[5] Signed by CSC Chairman Patricia A. Sto. Tomas and Commissioner Ramon P. Ereneta, Jr.

[6] Rollo, p. 36.

[7] Signed by CSC Chairman Patricia A. Sto. Tommas and Commissioners Ramon P. Ereneta, Jr. and Thelma P. Gaminde.

[8] 94 SCRA 261.

[9] Anzaldo vs. Clave, 119 SCRA 353.

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