# ATTY. ANGEL AGUIRRE JR. AS CITY LEGAL OFFICER OF MANILA; ATTY. DOMINADOR MAGLALANG, ATTY. MA. THERESA BALAGTAS AND ATTY. ANALYN T. MARCELO, ALL MEMBERS OF THE LEGAL PANEL OF THE...

*G.R. No. 127631. December 17, 1999*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

The city legal officer of Manila has no disciplinary authority over the chief of the Legal Affairs and Complaint Services of the Division of City Schools of Manila. Inasmuch as the said official was appointed by and is a subordinate of the regional director of the Department of Education, Culture and Sports, she is subject to the supervision and control of said director. The power to appoint carries the power to remove or to discipline. The mere fact that her salary is sourced from city funds does not ipso facto place her under the city legal officer's disciplinary jurisdiction, absent any clear statutory basis therefor.

The Case

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking reversal of the October 22, 1996 Decision[2] of the Court of Appeals (CA)[3] in CA-GR SP No. 40183, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the petition is GRANTED and the public respondent City Legal Office of Manila is directed to permanently cease and desist from further proceeding with Administrative Case CLO No. 24-96."[4]

Likewise assailed is the CA's December 23, 1996 Resolution[5]denying reconsideration.

The Facts

The undisputed facts of the case are summarized by the Court of Appeals as follows:

> "[Respondent][6] Atty. Evangeline C. De Castro is the Chief of the Legal Affairs and Complaint Services of the Division of City Schools of Manila. On February 1, 1996, [respondent] received a letter from public respondent Angel Aguirre, Jr., City Legal Officer of Manila accompanied by copies of alleged complaints against her. [Respondent] was required in the said letter to explain within seventy two (72) hours upon receipt why no administrative sanctions shall be imposed upon her for gross misconduct and conduct unbecoming x x x a public officer in violation of the Civil Service Law, Rules and Regulations.
>
> "On February 6, 1996, [Respondent] Evangeline de Castro filed her answer-affidavit which was received on the same day by the Office of the City Legal Officer.
>
> "Subsequently, on February 13, 1996, City Legal Officer Angel Aguirre, Jr. notified the [respondent] that her answer-affidavit was found unsatisfactory for which reason she was summoned to appear before the said City Legal Officer for the purpose of conducting a formal investigation.

> "Two (2) days later or on February 15, 1996, [respondent] filed a motion to dismiss. She claimed that she [was] a subordinate of the Secretary of the Department of Education, Culture and Sports (DECS). Thus, the case should be endorsed to the Office of the DECS Secretary or its legal division as nowhere in RA 409, Charter of the City of Manila is there a provision conferring upon the Office of the City Legal Officer jurisdiction to try and investigate personnel of the DECS in general, or the Division of City Schools where petitioner is under, in particular.
>
> "This motion to dismiss of [respondent] was denied in a resolution of the City Legal Officer dated February 21, 1996 citing Sec. 455 b(1) and (V) of the Local Government Code and Section 3(c) of the same code. In the said resolution it was held that the records of the personnel office disclose[d] that [respondent was] included in the plantilla of the City of Manila and therefore her salary derived wholly and mainly from the funds of the City for which reason she [was] subject to the disciplinary authority of the said City Legal Officer.
>
> "Thereafter, on February 26, 1996, [respondent] was notified to appear before the panel formed by the City Legal Officer (CLO Panel) to hear administrative case CLO 24-96 filed against her for grave misconduct and conduct unbecoming x x x a public officer.
>
> "[Respondent] filed a motion to reconsider the resolution dated February 21, 1996. This motion was again denied by the CLO panel in its order dated March 6, 1996.
>
> "Again, [respondent] moved to reconsider the above order which was likewise denied in the resolution of the CLO panel dated March 18, 1996."[7]

Consequently, respondent elevated the matter to the Court of Appeals via a Petition for Certiorari and Prohibition.

Ruling of the Court of Appeals

Citing the Administrative Code of 1987,[8] the Court of Appeals ruled that the authority to discipline herein respondent rests with the regional director for the National Capital Region of the Department of Education, Culture and Sports (DECS), not with the city legal officer of Manila. It also held that the Local Government Code (LGC) did not repeal the pertinent provisions of the Administrative Code. Hence, absent any contrary provision of the LGC, the CA opined that disciplinary authority over petitioner must remain with the DECS.

The CA also noted that officers and staff members of the Division of City Schools were not among those whom the city mayor was authorized to appoint under the LGC. Hence, it ruled that respondent was not an employee of the City of Manila, and that the city legal officer had no authority to investigate her for administrative neglect or misconduct in office.

Assuming arguendo that the city mayor was authorized to make a subsequent appointment to the respondent's position should it become vacant, the CA held that this power was not retroactive and could not apply to respondent who had been appointed by the regional director of the DECS.

Dissatisfied, the city legal officer of Manila lodged this Petition before this Court on January 21, 1997.[9]

Issue

The solitary issue presented for the Court's consideration is "whether or not the Office of the City Legal Officer of Manila has jurisdiction to investigate the complaint for grave misconduct filed against the respondent."[10]

This Court's Ruling

The Petition is bereft of merit.

Sole Issue:

Jurisdiction of the City Legal Officer

Petitioners contend that respondent is a city employee under the supervision of the city mayor, because her salary


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is paid by the City of Manila. They base this argument on Section 455 (b-1-v)[11] of the Local Government Code (LGC), which authorizes the city mayor to appoint city employees whose salaries and wages are wholly or mainly paid out of city funds; and on Section 455 (b-1-x),[12] which states that the mayor may institute administrative or judicial proceedings against erring city officials or employees.

Petitioners' contentions are not persuasive. Under Book IV, Chapter V, Section 7(4) of the Administrative Code of 1987, the power to appoint and discipline first-level employees, which include respondent, is specifically lodged with the regional director of the Department of Education, Culture and Sports.

> "x x x x x x x x x
> (4) Appoint personnel to positions in the first level and casual and seasonal employees; and exercise disciplinary actions over them in accordance with the Civil Service Law."

This is also clear in Book V, Section 47 (2) of the same Code; and in Section 32, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987.

> "SEC. 32. 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. x x x."

We agree with the CA that the LGC did not automatically repeal the provisions in the 1987 Administrative Code, contrary to petitioners' argument. There is no provision in the LGC expressly rescinding the authority of the DECS regional director to appoint and exercise disciplinary authority over first-level employees. On the other hand, "implied repeals are not lightly presumed in the absence of a clear and unmistakable showing of such intention."[13]

Furthermore, respondent's position as senior legal officer in the Division of City Schools is not one of the offices covered by the city mayor's power of appointment under the LGC.

> "SEC. 454. Officials of the City Government. --- (a) There shall be in each city a mayor, a vice-mayor, sangguniang panlungsod members, a secretary to the sangguniang panlungsod, a city treasurer, a city assessor, a city accountant, a city budget officer, a city planning and development coordinator, a city engineer, a city health officer, a city civil registrar, a city administrator, a city legal officer, a city veterinarian, a city social welfare and development officer, and a city general services officer.
>
> (b) In addition thereto, the city mayor may appoint a city architect, a city information officer, a city agriculturist, a city population officer, a city environment and natural resources officer, and a city cooperatives officer.
>
> x x x x x x x x x."[14]

Moreover, petitioners failed to show a specific provision in the LGC showing that the power to discipline officials in the Division of City Schools has been devolved from the regional director of the DECS to the city mayor. All that Section 17 (4) of the Local Government Code states is that the city must provide support for education and other such services and facilities.

Likewise, Section 455 (b-1-x) of the Local Government Code, which provides that the city mayor "may cause to be instituted administrative or judicial proceedings against any official or employee of the city," is not necessarily incompatible with the provisions of the Administrative Code of 1987 authorizing the regional director to discipline national education employees. Nothing prohibits the mayor from filing complaints against respondent before the DECS.

Petitioners cite paragraph 12, Section 2 (a) of Executive Order (EO) 503, which states that devolved personnel are

automatically reappointed by the local chief executive. Since respondent was deemed reappointed by the city mayor, it follows that the latter can exercise disciplinary authority over her.

We are not convinced. First, the above provision applies to devolved personnel, and there is no proof whatsoever that respondent is one of them. Second, even if respondent can be considered as a devolved personnel, the cited paragraph of EO 503 must not be read in isolation from but in conjunction with the other paragraphs in Section 2 (a).

Thus, paragraph 12 -- along with paragraphs 5, 6, 8, 13 and 14[15]of EO 503 -- deals with safeguards against termination, reduction of pay and diminution in rank of existing personnel; it is not about the power of the mayor to discipline personnel of the Division of City Schools. In effect, the said provision serves more to limit the appointing authority of the city mayor, whose acts must be circumscribed by the aforecited conditions. It is not incompatible and can exist with aforecited provisions of the Administrative Code. Indeed, it cannot be deemed to have divested the regional director of his disciplining power.

As to petitioners' argument that respondent's salary is wholly or mainly paid out of city funds, suffice it to say that the source of the wages is not the only criteria in determining whether the payor may be deemed the employer. In fact, the most important factor is the control test; that is, who has the power to supervise and direct the work of the employee concerned?

Absent any contrary statutory provision, the power to appoint carries with it the power to remove or to discipline.[16] Since respondent was appointed by the regional director of DECS, she may be disciplined or removed by the latter pursuant to law.

Finally, respondent's primary duty is to conduct investigations of cases involving teaching and nonteaching personnel of the Division of City Schools of Manila. The report on the results of her investigations is then submitted for final evaluation to the DECS regional director, who may approve, disapprove or allow respondent to modify it. This fact clearly shows that supervision over respondent is lodged with the regional director, not the mayor.

All in all, petitioners have not convinced us that the Court of Appeals committed any reversible error.

WHEREFORE, the Petition is hereby DISMISSED and the assailed Decision AFFIRMED. Costs against petitioners.

**SO ORDERED.**

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 3-31.

[2] Rollo, pp. 27-33.

[3] Sixteenth Division composed of J. Eugenio S. Labitoria, ponente; with JJ Cancio G. Garcia (chairman) and Artemio G. Tuquero (member), both of whom concurred.

[4] Assailed Decision, p. 7; rollo, p. 33.

[5] Rollo, p. 35.

[6] Herein Respondent Evangeline C. de Castro was the petitioner in the assailed Decision.


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[7] Assailed Decision, pp. 1-3; rollo, pp. 27-29.

[8] Book IV, Chapter V, Section 27; and Book V, Chapter IV, Section 47(2).

[9] The case was deemed submitted for resolution on September 14, 1999, upon the receipt by the Court of the OSG's Memorandum which was signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Nestor J. Ballasillo and Solicitor Roland C. Villaluz.

[10] The 5-page Memorandum for the Petitioners, p. 3; rollo, p. 205. This was signed by Maureen T. Vila, Legal Officer III of the City Legal Office of Manila.

[11] SEC. 455. Chief Executive; Powers, Duties and Compensation. --- (a) The city mayor, as chief executive of the city government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government, and in this connection, shall:

x x x x x x x x x
(v) Appoint all officials and employees whose salaries and wages are wholly or mainly paid out of city funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint.

[12] "x x x x x x x x x

(x) Ensure that all executive officials and employees of the city faithfully discharge their duties and functions as provided by law and this Code, and cause to be instituted administrative or judicial proceedings against any official or employee of the city who may have committed an offense in the performance of his official duties."

[13] Magtajas v. Pryce Properties Corporation, Inc., 234 SCRA 255, July 20, 1994, per Padilla, J.

[14] Section 454 of the Local Government Code.

[15] x x x

5. There shall be no involuntary separation, termination, or lay-off of permanent personnel of the NGAs affected by devolution.

6. Devolved permanent personnel shall enjoy security of tenure.

x x x
8. Incumbents of positions, namely, administrator, legal officer and information officer declared by the Code as coterminuous, who hold permanent appointments, shall continue to enjoy their permanent status until theyvacate their positions.

12. Except as herein otherwise provided, devolved permanent personnel shall be automatically reappointed by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992.

13. The rank or tenure of devolved permanent personnel shall not be reduced or impaired.

14. There shall be no diminution in pay or benefits of devolved personnel.


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[16] See Bagatsing v. Herrera, 65 SCRA 434, July 25, 1975; Lacson v. Romero, 84 Phil. 740, October 14, 1949.

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