

**OSMUNDO G. UMALI, PETITIONER, VS. EXECUTIVE SECRETARY
TEOFISTO T. GUINGONA JR., CHAIRMAN, PRESIDENTIAL
COMMISSION AGAINST GRAFT AND CORRUPTION, THE SECRETARY
OF FINANCE, AND THE...**

G.R. No. 131124. March 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition for review under Rule 45 of the Revised Rules of Court assailing the decision of the Court of Appeals dated April 8, 1997, which set aside the Amended Decision dated December 13, 1995 of the Regional Trial Court of Makati in Civil Case No. 94-3079, and dismissed the petition for Certiorari, Prohibition and Injunction brought by petitioner against the respondents.

The antecedent facts leading to the filing of the present petition are as follows:

On October 27, 1993, petitioner Osmundo Umali was appointed Regional Director of the Bureau of Internal Revenue by the then President Fidel V. Ramos. He was assigned in Manila, from November 29, 1993 to March 15, 1994, and in Makati, from March 16, 1994 to August 4, 1994.

On August 1, 1994, President Ramos received a confidential memorandum against the petitioner for alleged violations of internal revenue laws, rules and regulations during his incumbency as Regional Director, more particularly the following malfeasance, misfeasance and nonfeasance, to wit:

- Issuance of Letters of Authority (LA's) to investigate taxpayers despite the ban on investigations as ordered in Revenue memorandum Order No. 31-93. In numerous cases, revenue officers whose names appeared in the LA's as investigating officers were unaware that such LA's were issued to them. He issued LA's to favored revenue examiners such as his Secretary, Natividad Feliciano;
- Termination of tax cases without the submission of the required investigation reports, thus exempting the same from examination and review;
- Terminated cases with reports were submitted directly to and approved by respondent Umali without being reviewed by the Assessment Division, thus eliminating the check and balance mechanism designed to guard against abuses or errors;
- Unlawful issuance of LA's to taxpayers who were thereafter convinced to avail of the BIR's compromise and abatement program under RMO's 45093 and 54-93, for which the taxpayers were made, for a monetary consideration, to pay smaller amounts in lieu of being investigated;
- Despite the devolution of the authority to issue LA's from Regional Directors to the Revenue District Officers under RMO 26-94, dated April 14, 1994, respondent Umali continued to issue antedated LA's in absolute defiance of the aforesaid issuance, using old LA's requisitioned by him when still Regional Director of San Pablo Region. In one instance, he issued a termination letter bearing the San Pablo Region letterhead even

when he was already Makati Regional Director; and

- In his attempt to cover up his tracks and to muddle the real issue of his violations of the ban in the issuance of LA's and basic revenue rules and regulations, respondent enlisted the support of other regional directors for the purpose of questioning particularly the devolution/centralization of the functions of the Bureau.[1]

On August 2, 1994, upon receipt of the said confidential memorandum, former President Ramos authorized the issuance of an Order for the preventive suspension of Umali and immediately referred the Complaint against the latter to the Presidential Commission on Anti-Graft and Corruption (PCAGC), for investigation.

Petitioner was duly informed of the charges against him. In its Order, dated August 9, 1994, the PCAGC directed him to send in his answer, copies of his Statement of Assets and Liabilities for the past three years (3), and Personal Data Sheet. Initial hearing was set on August 25, 1994, at 2:00 p.m., at the PCAGC Office. On August 23, the petitioner filed his required Answer.

On August 25, 1994, petitioner appeared with his lawyer, Atty. Bienvenido Santiago before the PCAGC. Counsel for the Commissioner of Internal Revenue submitted a Progress Report, dated August 24, 1994, on the audit conducted on the petitioner. As prayed for, petitioner and his lawyer were granted five (5) days to file a supplemental answer.

The hearing was reset to August 30, 1994, during which the parties were given a chance to ask clarificatory questions. Petitioner and his counsel did not ask any question on the genuineness and authenticity of the documents attached as annexes to the Complaint. Thereafter, the parties agreed to submit the case for resolution upon the presentation of their respective memoranda.

Petitioner filed his Memorandum on September 6, 1994 while the BIR sent in its Memorandum on the following day.

After evaluating the evidence on record, the PCAGC issued its Resolution of September 23, 1994, finding a prima facie evidence to support six (6) of the twelve (12) charges against petitioner, to wit:

1.

On the First Charge - Respondent issued 176 Letters of Authority in gross disobedience to and in violation of RMOs 31-93 and 27-94.

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3.

On the Third Charge - There is sufficient evidence of a prima facie case of falsification of official documents as defined in Art. 171, par. 2 and 4 of the Revised Penal Code, against the respondent for the issuance of 9 LA's and who did not investigate the tax cases, each LA being a separate offense.

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7.

On the Seventh Charge - There is sufficient evidence of a prima facie case of falsification of official documents against respondent for antedating the four LA's cited in the charge, each LA constituting a separate offense, under Art. 171 (4) of the Revised Penal Code.

8.

On the Ninth (sic) Charge - There is sufficient evidence to support a prima facie case of falsification of an official document under Art. 171 (4) of the Revised Penal Code against the respondent in the tax case of Richfield International Corp., Inc. for indicating a false date on the letter of termination he issued to the company. There is, however, insufficient evidence against respondent in the other tax case of Jayson Auto Supply Co.

9.

On the Ninth Charge - There is sufficient evidence of a prima facie case of falsification of official documents in each of the two tax cases cited in his charge, under the provisions of Art. 171 (4) of the Revised Penal Code, as the dates of Termination Letters were false.

10.

On the Tenth Charge - Respondent, by his own admission, violated RMO 36-87 requiring turn over of all properties and forms to his successor upon transfer a head of office, and RMO 27-94 requiring the surrender of all unused old forms of Letters of Authority. The Commission noted the defiant attitude of respondent, as expressed in his admission, towards valid and legal orders of the BIR, and his propensity to defy and ignore such orders and regulations.[2]

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On October 6, 1994, acting upon the recommendation of the PCAGC, then President Ramos issued Administrative Order No. 152 dismissing petitioner from the service, with forfeiture of retirement and all benefits under the law.

On October 24, 1994, the petitioner moved for reconsideration of his dismissal but the Office of the President denied the motion for reconsideration on November 28, 1994.

On December 1, 1994, petitioner brought a Petition for Certiorari, Prohibition and Injunction, docketed as Civil Case No. 94-3079 before the Regional Trial Court of Makati, alleging, among others:

- That the petitioner was suspended and dismissed from the service in violation of his constitutional right to due process of law; and
- That the constitutional right of the petitioner to security of tenure was violated by the respondents.

The case was raffled off to Branch 133 of the Regional Trial Court in Makati, which issued on December 2, 1994, a Temporary Restraining Order, enjoining the respondents and/or their representatives from enforcing Administrative Order No. 152, and directing the parties to observe the status quo until further orders from the said Court.

On December 23, 1994, the said Regional Trial Court dismissed the petition. On January 10, 1995, the petitioner presented a motion for reconsideration, this time, theorizing that the Presidential Commission on Anti-Graft and

Corruption is an unconstitutional office without jurisdiction to conduct the investigation against him.

Respondents submitted their Opposition/Comment to the Motion for Reconsideration. Then, the petitioner filed a Motion to Inhibit Judge Inoturan on the ground that the latter was formerly a Solicitor in the Office of the Solicitor General and could not be expected to decide the case with utmost impartiality.

The case was then re-raffled to Hon. Teofilo L. Guadiz, Jr. who, on December 13, 1995, handed down an Amended Decision, granting the petition and practically reversing the original Decision.

Not satisfied with the Amended Decision of Judge Guadiz, Jr., the respondents appealed therefrom to the Court of Appeals.

On April 8, 1997, the Ninth Division of the Court of Appeals[3] promulgated its decision, reversing the Amended Decision of the trial court of origin, and dismissing Civil Case No. 94-3079. Petitioner's motion for reconsideration met the same fate. It was denied on October 28, 1997.

Undaunted, petitioner found his way to this Court via the petition under scrutiny.

In the interim that the administrative and civil cases against the petitioner were pending, the criminal aspect of such cases was referred to the Office of the Ombudsman for investigation.

On July 25, 1995, after conducting the investigation, Ombudsman Investigators Merba Waga and Arnulfo Pelagio issued a Resolution finding a probable cause and recommending the institution in the courts of proper Jurisdiction criminal cases for Falsification of Public Documents (13 counts) and Open Disobedience (2 counts) against the petitioner.

However, acting upon petitioner's motion for reconsideration Special Prosecution Officer II Lemuel M. De Guzman set aside the said Resolution of July 25, 1995, and in lieu thereof, dismissed the charges against petitioner, in the Order dated November 5, 1996, which was approved by Ombudsman Aniano Desierto. Accordingly, all the informations against the petitioner previously sent to the Office of the City Prosecutor, were recalled.

On August 10, 1998, Commissioner Beethoven L. Rualo of the Bureau of Internal Revenue sent a letter to the Solicitor General informing the latter that "the Bureau of Internal Revenue is no longer interested in pursuing the case against Atty. Osmundo Umali" on the basis of the comment and recommendation submitted by the Legal Department of the BIR.[4]

Petitioner raised the issues:

1. WHETHER ADMINISTRATIVE ORDER NO. 152 VIOLATED PETITIONER'S RIGHT TO SECURITY OF TENURE;
2. WHETHER PETITIONER WAS DENIED DUE PROCESS IN THE ISSUANCE OF ADMINISTRATIVE ORDER NO. 152;
3. WHETHER THE PCAGC IS A VALIDLY CONSTITUTED GOVERNMENT AGENCY AND WHETHER PETITIONER CAN RAISE THE ISSUE OF ITS CONSTITUTIONALITY BELATEDLY IN ITS MOTION FOR RECONSIDERATION OF THE TRIAL COURT'S DECISION; AND
5. WHETHER IN THE LIGHT OF THE OMBUDSMAN RESOLUTION DISMISSING THE CHARGES AGAINST PETITIONER, THERE IS STILL BASIS FOR PETITIONER'S DISMISSAL WITH FORFEITURE OF BENEFITS AS RULED IN ADMINISTRATIVE ORDER NO. 152.

Petitioner contends that as Regional Director of the Bureau of Internal Revenue he belongs to the Career

Executive Service. Although a presidential appointee under the direct authority of the President to discipline, he is a career executive service officer (CESO) with tenurial protection, who can only be removed for cause. In support of this theory, petitioner cited the case of *Larin vs. Executive Secretary*[5] where the court held:

"xxx petitioner is a presidential appointee who belongs to the career service of the Civil Service. Being a presidential appointee, he comes under the direct disciplining authority of the President. This is in line with the settled principle that the "power to remove is inherent in the power to appoint" conferred to the President by Section 16, Article VII of the constitution. xxx This power of removal, however, is not an absolute one which accepts no reservation. It must be pointed out that petitioner is a career service officer. xxx Specifically, Section 36 of P.D. No. 807, as amended, otherwise known as Civil Service Decree of the Philippines, is emphatic that career service officers and employees who enjoy security of tenure may be removed only for any of the causes enumerated in said law. In other words, the fact that petitioner is a presidential appointee does not give the appointing authority the license to remove him at will or at his pleasure for it is an admitted fact that he is likewise a career service officer who under the law is the recipient of tenurial protection, thus, may only be removed for cause and in accordance with procedural due process."

Petitioner maintains that as a career executive service officer, he can only be removed for cause and under the Administrative Code of 1987,[6] loss of confidence is not one of the legal causes or grounds for removal. Consequently, his dismissal from office on the ground of loss of confidence violated his right to security of tenure; petitioner theorized.

After a careful study, we are of the irresistible conclusion that the Court of Appeals ruled correctly on the first three issues. To be sure, petitioner was not denied the right to due process before the PCAGC. Records show that the petitioner filed his answer and other pleadings with respect to his alleged violation of internal revenue laws and regulations, and he attended the hearings before the investigatory body. It is thus decisively clear that his protestation of non-observance of due process is devoid of any factual or legal basis.

Neither can it be said that there was a violation of what petitioner asserts as his security of tenure. According to petitioner, as a Regional Director of Bureau of Internal Revenue, he is a CESO eligible entitled to security of tenure. However, petitioner's claim of CESO eligibility is anemic of evidentiary support. It was incumbent upon him to prove that he is a CESO eligible but unfortunately, he failed to adduce sufficient evidence on the matter. His failure to do so is fatal.

As regards the issue of constitutionality of the PCAGC, it was only posed by petitioner in his motion for reconsideration before the Regional Trial Court of Makati. It was certainly too late to raise the said issue for the first time at such late stage of the proceedings below.

How about the fourth issue, whether in view of the Resolution of the Ombudsman dismissing the charges against petitioner, there still remains a basis for the latter' dismissal with forfeiture of benefits, as directed in Administrative Order No. 152?

It is worthy to note that in the case under consideration, the administrative action against the petitioner was taken prior to the institution of the criminal case. The charges included in Administrative Order No. 152 were based on the results of investigation conducted by the PCAGC and not on the criminal charges before the Ombudsman.

In sum, the petition is dismissable on the ground that the issues posited by the petitioner do not constitute a valid legal basis for overturning the finding and conclusion arrived at by the Court of Appeals. However, taking into account the antecedent facts and circumstances aforementioned, the Court, in the exercise of its equity powers, has decided to consider the dismissal of the charges against petitioner before the Ombudsman, the succinct and unmistakable manifestation by the Commissioner of the Bureau of Internal Revenue that his office is no longer

interested in pursuing the case, and the position taken by the Solicitor General,[7] that there is no more basis for Administrative Order No. 152, as effective and substantive supervening events that cannot be overlooked.

WHEREFORE, in light of the foregoing effective and substantive supervening events, and in the exercise of its equity powers, the Court hereby GRANTS the petition. Accordingly, Administrative Order No. 152 is considered LIFTED, and petitioner can be allowed to retire with full benefits. No pronouncement as to costs.

SO ORDERED.

Gonzaga-Reyes, J., concur.

Romero, Vitug, and Panganiban, JJ., in the result.

[1] Administrative Order No. 152, Rollo, pp. 141-142.

[2] PCAGC Resolution, Rollo, pp. 186-189.

[3] Associate Justice Ramon Mabutas Jr., ponente; Associate Justice Jorge Imperial, Chairman; Associate Justice Portia Aliño-Hormachuelos, member.

[4] Rollo, p. 534.

[5]280 SCRA 713.

[6] Section 46, Book V, Title I, Subtitle A, Revised Administrative Code.

[7] Rollo, p. 409.

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