PEDRO C. LAMEYRA, PETITIONER, VS. MAYOR GEORGE S. PANGILINAN, RESPONDENT.

G.R. No. 131675. January 18, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a petition for review under Rule 45 filed by Pedro C. Lameyra seeking to annul and set aside the resolution dated July 15, 1997 of the Court of Appeals which affirmed the resolution of the Civil Service Commission upholding the dismissal of petitioner from the government service as janitor/messenger of the local government of Famy, Laguna. Petitioner's basic contention is that he was unlawfully terminated from the service without just cause and as an act of political harassment by the Municipal Mayor of Famy, Laguna.

Pedro C. Lameyra was a janitor/messenger in the Municipal Hall of Famy, Laguna. He was appointed as such on February 2, 1988 under temporary status and was given a permanent appointment on January 1, 1989 to the same position by then Municipal Mayor Melquiadez Acomular. Mayor Acomular was defeated in the last election for the mayoralty post by respondent Mayor George S. Pangilinan.

On August 21, 1995, petitioner Lameyra received a letter from respondent Mayor Pangilinan informing him that he is dropped from the roll of employees of the local government unit of Famy, Laguna pursuant to Memorandum Circular No. 12, Series of 1994 of the Civil Service Commission due to the following reasons: 1. Insubordination; 2. AWOL.

Petitioner filed a notice of appeal with the Civil Service Commission alleging that he was a permanent employee and that he was terminated without prior written notice of the charges and without investigation and hearing, in violation of his security of tenure and due process. He alleged that the act of Mayor Pangilinan was an act of political vengeance as he was publicly known to have voted for his political rival during the May 8, 1995 election.

Mayor Pangilinan, in his comment stated as follows:

> "1. That the dropping of appellant from the payroll was pursuant to Memorandum Circular No. 12, series of 1994, dated March 10, 1994, of this Honorable Commission due to insubordination and for being absent without official leave, and was resorted to when appellant failed to justify his continued leave of absence without official leave;
>
> "2. The following circumstances led to the dropping of the name of appellant from the payroll, to wit:
>
> "3. On May 31, 1995, undersigned issued a memorandum requiring all heads of offices and employees of local, provincial and municipal agencies to fill up and accomplish the daily time log book pursuant to paragraph 3, Civil Service Rules XV, Executive Order No. 5, series of 1990, with the warning that falsification of time records will subject the offender to summary removal from the service; xerox copy of said memorandum showing that appellant was duly informed of the same is hereto attached as Annex "A";
>
> "4. That appellant despite knowledge of said memorandum deliberately failed and refused to comply with the

> said memorandum and since July 6, 1995 has not been reporting for work; hereto attached as Annex "B is a xerox copy of the certification issued by Mr. Benito L. Vicencio, Personnel Officer, attesting to such fact;
> that appellant's failure to comply with the May 31, 1995 memorandum constitute insubordination and his continued absence without official leave was deemed and considered as abandonment of employment.

"5. That even prior to the issuance of said May 31, 1995 memorandum, Mr. Benito L. Vicencio on January 19, 1995, has reported that appellant was always late in coming to work in violation of Memorandum Circular No. 45, series of 1994 of this Honorable Commission; hereto attached as Annex "C" and made integral part hereof is xerox copy of said report;

"6. That despite several warnings, appellant deliberately failed to comply with said May 31, 1995 memorandum and likewise, failed to see undersigned to explain his side; moreover, did not even attempt to justify his absence without official leave and continuously failed to report for work; hence, his failure to report for work was deemed and considered as abandonment;

"7. Worse, appellant was found to have committed falsification of public document in accomplishing his daily time record for December, 1994; hence, as the disciplining authority, on August 1, 1995, I filed a case for falsification of public document against appellant before the Honorable Deputy Ombudsman for Luzon; xerox copy of which is attached as Annex "D" and made integral part hereof;

"8. That in view of the foregoing, appellant may not argue that he was denied due process."[1]

The Civil Service Commission in Resolution No. 96-0828 dated February 6, 1996 dismissed the appeal and affirmed the action of the Municipal Mayor in dropping him from the roll of employees for absence without leave; the Commission ruled:

> "Undisputedly, Lameyra was absent for the period from July 6, 1995 to August 6, 1995 and that he has not submitted any proof that he actually filed an application for leave. Neither did he present an approved leave application concerning said absences. On the one hand, Benito Vicencio, Personnel Officer/Human Resources Management Assistant, Famy, Laguna, certified that Lameyra did not report for work during the said period. In sum, there is sufficient ground to support the action of the Municipal Government of Famy in dropping Lameyra from the service."[2]

Lameyra filed a motion for reconsideration alleging that he had not earlier been furnished copy of Mayor Pangilinan's comment and disputing the version of Mayor Pangilinan that he refused to report for work. He claimed that upon advice of the Regional office of the Civil Service Commission in Sta. Cruz, Laguna, he reported for work at the office of the Vice Mayor Constancio Fernandez, as he was not allowed by the Personnel Officer, Benito Vicencio, to sign his name in the log book. Attached to his motion was an Affidavit of Vice-Mayor Constancio A. Fernandez attesting to the fact that petitioner was reporting to his office upon advice of the Civil Service Office at Sta. Cruz, Laguna, and that petitioner was not allowed to sign the log book at the Office of the Mayor. Also submitted with the motion for reconsideration was an affidavit of a co-employee, Remegio Jamilan, and petitioner's own sworn statement controverting the allegation of Mayor Pangilinan that he refused to report for work or sign the log book.

In its Resolution No. 970558, dated January 28, 1997, the Civil Service Commission denied petitioner's motion for reconsideration, stating as follows:

> "The first ground of this Motion for Reconsideration is the existence of a new evidence which would materially affect the decision in question.
>
> Movant's claim that he was reporting for duty at the office of the Vice Mayor deserves scant consideration. On the contrary the Office of the Personnel Officer, Municipality of Famy, Laguna, certified that Lameyra has not

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> reported for work for the period from July 6, 1995 to August 6, 1995. While it may be true that he was then within the premises of the Municipal Office, the fact remains that he was not officially reporting for duty as Janitor/Messenger (CSC Resolution No. 94-4822, September 1, 1994).
>
> As to the other grounds alleged in the Motion for Reconsideration, the same are mere reiterations of the arguments raised in his appeal, which have been thoroughly discussed in the resolution now sought to be reconsidered."[3]

Petitioner filed a petition for review before the Court of Appeals, which denied the same. The Court stated that the Commission correctly ruled on the issues raised before it, and rejected the claim of petitioner that he was denied his right to due process, as he had the opportunity to be heard on his motion for reconsideration. Moreover, the Commission's findings are supported by substantial evidence.

Motion for reconsideration of the said decision having been denied by the Court of Appeals, petitioner comes before us alleging that the Court of Appeals committed an error of law:

> "A. BY MISAPPLYING THE CASE OF RUBENECIA V CSC (244 SCRA 652) TO PETITIONER'S CASE;
>
> "B. BY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS;
>
> "C. BY CONCLUDING IN EFFECT THAT PETITIONER ABANDONED HIS EMPLOYMENT UNDER UNDISPUTED FACTS."[4]

and committed grave abuse of discretion in the appreciation of facts.

Essentially, petitioner claims that he was not given due process before Mayor Pangilinan terminated his employment, and that the Civil Service Commission erred in refusing to consider the new evidence submitted with petitioner's motion for reconsideration. Hence, the Court of Appeals erred in evading the factual issues raised before it by petitioner.

Respondent Mayor filed comment, and pointed out that clearly the basis for the petitioner's separation is not abandonment but absence without official leave, and that the affidavits which he submitted before the Civil Service Commission cannot be considered "newly discovered evidence" as they were all along readily available to him" and were no longer admissible at a late stage to set aside the judgment. Respondent maintains that the Civil Service Commission and the Court of Appeals correctly ruled that petitioner was properly terminated for absence without official leave.

We find merit in the instant petition.

Civil Service Memorandum Circular No. 12 Series of 1994 provides as follows:

> "2.1 Absence without approved leave
>
> a. An officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed of his separation from the service not later than five (5) days from its effectivity which shall be sent to the address appearing in his 201 files.[5]

It is clear from a reading of the above provision that the no prior notice is required to drop from the rolls an employee who has been continuously absent without approved leave (AWOL) for at least thirty (30) calendar days. It appears that solely on the basis of the certification of the Personnel Officer/Human Resources Management Assistant Benito Vicencio to the effect that petitioner did not report for work for the period from July 6, 1995 to August 6, 1995, and the undisputed fact that he has not submitted any proof that he actually filed

an application for leave nor presented any approved leave application for the said period, petitioner's termination from the service was upheld by the Civil Service Commission and the Court of Appeals.

However, petitioner contests the finding that he was absent at all. He claims that he reported for work but was prevented from signing the log book by the very officer, Benito Vicencio, who certified that he did not report for work on the dates in question. He alleges in his petition and insists in his reply, that he was not furnished a copy of Mayor Pangilinan's comment, and was able to secure a copy only after receiving a copy of the Resolution of the Civil Service Commission upholding the termination of his service. This allegation of petitioner, which was raised even in the Court of Appeals[6] was not disputed by respondent Pangilinan in his Comment to the Petition[7] nor in his Comment to the Petition filed in the Court of Appeals.[8] Accordingly, the first opportunity that petitioner had to contest the sufficiency of the evidence to support his dismissal was when he filed his motion for reconsideration from the Resolution of the Civil Service Commission dated February 6, 1996. The three sworn statements which were annexes to said motion directly controverted Vicencio's certification that he was absent without leave, cannot be considered new evidence belatedly submitted as there was no notice and hearing when he was dropped from the rolls. Considering that one of the affiants is Vice-Mayor Fernandez, whose acts as a public official are also entitled to a presumption of regularity in the performance of duty, it would be in compliance with the requirements of due process to have given said sworn statement due consideration in view of the circumstances prevailing in this case. This is in consonance with the respondent's own theory that petitioner was afforded his right to be heard when he filed his motion for reconsideration in the Civil Service Commission.[9]

While it is settled doctrine that findings of fact of an administrative agency must be respected and this Court should not be tasked to weigh once more the evidence submitted before the administrative body, it is axiomatic that such findings of fact should be supported by substantial evidence. We are not convinced that the certification of the personnel officer that petitioner did not report for work from July 6, 1995 to August 6, 1995 constitutes such substantial evidence in light of the petitioner's submission that said personnel officer precisely prevented him from signing the log book, that he has been replaced by one Leynes in July, 1995, and that he has been asked to submit his resignation which he refused to do. Under these circumstances, it is believed that, in equity, and in proper compliance with the requirements of due process, petitioner should be given a last full opportunity to prove his contention that the termination of his services was illegal.

WHEREFORE, the judgment appealed from is reversed and set aside. Let the case be remanded to the Civil Service Commission for further proceedings in accordance with the tenor of this decision.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Rollo, pp. 50-51.

[2] Rollo, pp. 51-52.

[3] Rollo, p. 85.

[4] Rollo, p. 15.

[5] Rollo, p. 40.

[6] p. 163, Rollo.

[7] p. 211 et seq. Rollo.

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[8] p. 129 et seq. Rollo.

[9] Comment of the Respondent; p. 211, Rollo.

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