HON. ERLINDA C. PEFIANCO, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, PETITIONER, VS. MARIA LUISA C. MORAL, RESPONDENT.

G.R. No. 132248. January 19, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SECRETARY ERLINDA C. PEFIANCO of the Department of Education, Culture and Sports (DECS) seeks to nullify through this petition for review the Decision of the Court of Appeals[1] dismissing the petition for certiorari filed by then DECS Secretary Ricardo T. Gloria for lack of merit, as well as its Resolution dated 13 January 1998 denying reconsideration thereof.

On 26 July 1994 former DECS Secretary Ricardo T. Gloria filed a complaint against respondent Maria Luisa C. Moral, then Chief Librarian, Catalog Division, of the National Library for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The complaint charged respondent Moral with the pilferage of some historical documents from the vaults of the Filipiniana and Asian Division (FAD) of the National Library which were under her control and supervision as Division Chief and keeping in her possession, without legal authority and justification, some forty-one (41) items of historical documents which were missing from the FAD vaults of the National Library.

The DECS Investigating Committee conducted several hearings on the complaint. Atty. Jose M. Diaz, Special Prosecutor from the Department of Justice, represented the DECS Secretary in the administrative case while respondent was represented by her own private counsel. On 25 September 1996 Secretary Gloria issued a resolution finding respondent "guilty of the administrative offenses of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service, for the commission of pilferage of historical documents of the national library, to the prejudice of the national library in particular, and the country in general." She was ordered dismissed from the government service with prejudice to reinstatement and forfeiture of all her retirement benefits and other remunerations.

On 30 September 1996 respondent received a copy of the resolution. Thereafter, or on 1 October 1996, she received another resolution correcting the typographical errors found on the first resolution. Respondent did not appeal the judgment.

On 2 October 1996 respondent filed a Petition for the Production of the DECS Investigation Committee Report purportedly to "guide [her] on whatever action would be most appropriate to take under the circumstances."[2] Her petition was, however, denied.

Unfazed, she filed a Reiteration for DECS Committee Report and DECS Resolution dated September 25, 1996, which Secretary Gloria similarly denied in his Order of 23 October 1996. Respondent moved for reconsideration but the motion was merely "noted" in view of the warning in the 23 October 1996 Order that the denial of the request for the production of the Investigation Committee Report was final.[3] As earlier stated, respondent did

not appeal the Resolution dated 30 September 1996 dismissing her from the service. Instead, she instituted an action for mandamus and injunction before the regular courts against Secretary Gloria praying that she be furnished a copy of the DECS Investigation Committee Report and that the DECS Secretary be enjoined from enforcing the order of dismissal until she received a copy of the said report.[4]

Secretary Gloria moved to dismiss the mandamus case principally for lack of cause of action, but the trial court denied his motion. Thus, he elevated the case to the Court of Appeals on certiorari imputing grave abuse of discretion to the trial court. In its assailed Decision of 24 November 1997 the appellate court sustained the trial court and dismissed Secretary Gloria's petition for lack of merit holding that -

> FIRST. Petitioner Gloria acted prematurely, not having filed any motion for reconsideration of the assailed order with the respondent judge before filing the instant petition to this Court. This constitutes a procedural infirmity x x x x SECOND. Even if the aforesaid procedural defect were to be disregarded, the petition at hand, nevertheless, must fail. The denial of the motion to dismiss is an option available to the respondent judge. Such order is interlocutory and thus not appealable. The proper recourse of the aggrieved party is to file an answer and interpose, as defenses, the objection(s) raised by him in said motion to dismiss, then proceed with the trial and, in case of adverse decision, to elevate the entire case on appeal in due course.

His motion for reconsideration having been denied by the Court of Appeals on 13 January 1998, Secretary Gloria filed the instant petition for review.

Meanwhile, Secretary Gloria was replaced by Secretary Erlinda C. Pefianco who was thereafter substituted in the case for Secretary Gloria.

The issues before us are: whether the Court of Appeals erred in dismissing the petition for certiorari for failure of petitioner to file a motion for reconsideration of the order denying the motion to dismiss, and in holding that the trial court did not commit grave abuse of discretion in denying the motion to dismiss.

Petitioner contends that there is no need to file a motion for reconsideration as the trial court's order denying the motion to dismiss is a patent nullity, and a motion for reconsideration would practically be a useless ceremony as the trial court virtually decided the case, and that there is no law requiring the DECS to furnish respondent with a copy of the Report of the DECS Investigation Committee so that the petition for mandamus has no leg to stand on hence should have been dismissed for lack of cause of action.

Excepting thereto respondent argues that the denial of the motion to dismiss is interlocutory in nature as it did not dispose of the case on the merits, and petitioner still has a residual remedy, i.e., to file an answer, thus her substantive rights have not been violated as she contends; that respondent is clearly entitled to the remedy of mandamus to protect her rights; and, that petitioner has not shown any law, DECS order or regulation prohibiting the release of the petitioned documents for reasons of confidentiality or national security.

We grant the petition. Section 3, Rule 16, of the 1997 Rules of Civil Procedure mandatorily requires that the resolution on a motion to dismiss should clearly and distinctly state the reasons therefor -

> After hearing, the court may dismiss the action or claim, deny the motion or order the amendment of the pleading.
>
> The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.
>
> In every case, the resolution shall state clearly and distinctly the reasons therefor (underscoring supplied).

Clearly, the above rule proscribes the common practice of perfunctorily denying motions to dismiss "for lack of

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merit." Such cavalier disposition often creates difficulty and misunderstanding on the part of the aggrieved party in taking recourse therefrom and likewise on the higher court called upon to resolve the issue, usually on certiorari.

The challenged Order of the trial court dated 23 April 1997 falls short of the requirements prescribed in Rule 16. The Order merely discussed the general concept of mandamus and the trial court's jurisdiction over the rulings and actions of administrative agencies without stating the basis why petitioner's motion to dismiss was being denied. We are reproducing hereunder for reference the assailed Order -

> This treats of the Motion to Dismiss filed by respondent Gloria on 14 March 1997 to which petitioner filed their (sic) opposition on April 8, 1997.
>
> Respondent premised his motion on the following grounds: (a) Mandamus does not lie to compel respondent DECS Secretary to release the Report of the DECS Investigating Committee because the Petition does not state a cause of action; (b) The DECS Resolution dismissing petitioner is legal and valid, and therefore, the writ of preliminary injunction cannot be granted to enjoin its execution; while petitioner alleged among others that she has no plain, speedy and adequate remedy in the ordinary course of law.
>
> Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. "Purely ministerial" are acts to be performed in a given state of facts, in a prescribed manner in obedience to the mandate of legal authority without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. While the discretion of a Constitutional Commission cannot be controlled by mandamus x x x x the court can decide whether the duty is discretionary or ministerial x x x x
>
> Generally, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and finding of fact. Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion or as when there is capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law x x x x
>
> WHEREFORE, in regard to the foregoing, the motion to dismiss by herein respondent is hereby denied for lack of merit and is hereby ordered to file its (sic) responsive pleadings within ten (10) days from receipt of this Order. Copy furnished petitioner who is likewise given ten (10) days to submit his (sic) comment or opposition.

Indeed, we cannot even discern the bearing or relevance of the discussion therein on mandamus, vis-a-vis the ground relied upon by petitioner in her motion to dismiss, i.e., lack of cause of action, and the dispositive portion of the order. The order only confused petitioner and left her unable to determine the errors which would be the proper subject of her motion for reconsideration. Judges should take pains in crafting their orders, stating therein clearly and comprehensively the reasons for their issuance, which are necessary for the full understanding of the action taken. Where the court itself has not stated any basis for its order, to be very strict in requiring a prior motion for reconsideration before resort to higher courts on certiorari may be had, would be to expect too much. Since the judge himself was not precise and specific in his order, a certain degree of liberality in exacting from petitioner strict compliance with the rules was justified.

Ordinarily, certiorari will not lie unless the lower court, through a motion for reconsideration, has been given an opportunity to correct the imputed errors on its act or order. However, this rule is not absolute and is subject to

well-recognized exceptions. Thus, when the act or order of the lower court is a patent nullity for failure to comply with a mandatory provision of the Rules, as in this case, a motion for reconsideration may be dispensed with and the aggrieved party may assail the act or order of the lower court directly on certiorari.[5]

On the second issue, the nature of the remedy of mandamus has been the subject of discussions in several cases. It is settled that mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its main objective. It does not lie to require anyone to fulfill a discretionary duty. It is essential to the issuance of a writ of mandamus that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely expressed, it must nevertheless be clear. The writ will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[6]

In her petition for mandamus, respondent miserably failed to demonstrate that she has a clear legal right to the DECS Investigation Committee Report and that it is the ministerial duty of petitioner DECS Secretary to furnish her with a copy thereof. Consequently, she is not entitled to the writ prayed for.

Primarily, respondent did not appeal to the Civil Service Commission the DECS resolution dismissing her from the service.[7] By her failure to do so, nothing prevented the DECS resolution from becoming final and executory. Obviously, it will serve no useful purpose now to compel petitioner to furnish her with a copy of the investigation report.

Moreover, there is no law or rule which imposes a legal duty on petitioner to furnish respondent with a copy of the investigation report. On the contrary, we unequivocally held in Ruiz v. Drilon[8] that a respondent in an administrative case is not entitled to be informed of the findings and recommendations of any investigating committee created to inquire into charges filed against him. He is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee. Respondent no doubt had been accorded these rights.

Respondent’s assertion that the investigation report would be used "to guide [her] on what action would be appropriate to take under the circumstances,"[9] hardly merits consideration. It must be stressed that the disputed investigation report is an internal communication between the DECS Secretary and the Investigation Committee, and it is not generally intended for the perusal of respondent or any other person for that matter, except the DECS Secretary. As correctly ruled by Secretary Gloria in his Order of 2 October 1996 -

> Respondent’s (Moral) counsel is reminded that the Report of the DECS Investigating Committee is not an integral part of the Decision itself x x x x [t]he report is an internal communication between the Investigating Committee and the DECS Secretary, and, therefore, confidential until the latter had already read and used the same in making his own determination of the facts and applicable law of the case, to be expressed in the Decision he may make.
>
> The Report remains an internal and confidential matter to be used as part - - although not controlling - - of the basis for the decision. Only when the party adversely affected by the decision has filed and perfected an appeal to the Civil Service Commission may all the records of the case, including the aforesaid Report be forwarded to the CSC. In the latter appellate tribunal, the respondent’s counsel may be allowed to read and/or be given a copy of the Report to enable the appellant to file an intelligent and exhaustive appellant’s Brief Memorandum.

More importantly, the DECS resolution is complete in itself for purposes of appeal to the Civil Service

Commission, that is, it contains sufficient findings of fact and conclusion of law upon which respondent's removal from office was grounded. This resolution, and not the investigation report, should be the basis of any further remedies respondent might wish to pursue, and we cannot see how she would be prejudiced by denying her access to the investigation report.

In fine, the trial court's Order of 23 April 1997 denying petitioner's motion to dismiss is not a mere error of judgment as the Court of Appeals held, but a grave abuse of discretion amounting to lack or excess of jurisdiction because, to capsulize, the Order is a patent nullity for failure to comply with the provisions of the rules requiring that a resolution on a motion to dismiss should clearly and distinctly state the reasons therefor; and, respondent is clearly not entitled to the writ of mandamus as she did not appeal the DECS resolution dismissing her from service, and there is no law or rule which imposes a ministerial duty on petitioner to furnish respondent with a copy of the investigation report, hence her petition clearly lacked a cause of action. In such instance, while the trial court's order is merely interlocutory and non-appealable, certiorari is the proper remedy to annul the same since it is rendered with grave abuse of discretion.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals of 24 November 1997 sustaining the trial court's denial of petitioner's motion to dismiss, as well as its Resolution dated 13 January 1998 denying reconsideration, is REVERSED and SET ASIDE. The petition for mandamus filed by respondent before the court a quo to compel petitioner to furnish her a copy of the DECS Investigation Committee Report is DISMISSED for want of cause of action.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] CA-G.R. SP No. 44432, promulgated 24 November 1997.

[2] Rollo, p. 40.

[3] Rollo, p. 42.

[4] Docketed as Civil Case No. 97-81493 entitled "Moral v. Gloria," and assigned to RTC-Br. 50, Manila.

[5] See Regalado, Florenz D., Remedial Law Compendium, Vol. 1, 1997 Ed., pp. 710-711.

[6] University of San Agustin, Inc. v. Court of Appeals, G.R. No. 100588, 7 March 1994, 230 SCRA 761.

[7] PD No. 807, EO No. 292, and Rule II, Sec. 1 of Memorandum Circular No. 44, Series of 1990, of the Civil Service Commission, spell out the initial remedy of respondent against dismissal. These categorically provide that the party aggrieved by a decision, ruling, order or action of an agency of the government involving termination of services may appeal to the Civil Service Commission within fifteen (15) days from notice.

[8] G.R. No. 101666, 9 June 1992, 209 SCRA 695.

[9] Records, p. 44.

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