

UNIVERSITY OF THE PHILIPPINES AND ALFREDO DE TORRES, PETITIONERS, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 132860. April 03, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

As part of its academic freedom, the University of the Philippines has the prerogative to determine who may teach its students. The Civil Service Commission has no authority to force it to dismiss a member of its faculty even in the guise of enforcing Civil Service Rules.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to set aside the October 31, 1997 Decision[1] of the Court of Appeals (CA)[2] in CA-GR SP No. 40128. The CA upheld Resolution Nos. 95-3045[3] and 96-1041[4] issued by the Civil Service Commission (CSC) on May 5, 1995 and February 15, 1996, respectively. In these Resolutions, the CSC held that Petitioner "Alfredo De Torres is considered to have been dropped from the service as of September 1, 1989. Hence, his re-employment requires the issuance of an appointment subject to the requirements of the Civil Service Law and Rules."

De Torres' Motion for Reconsideration of the CA Decision was denied in the February 25, 1998 Resolution of the Court of Appeals.[5]

The Facts

The undisputed factual antecedents are summarized by the Court of Appeals thus:

"Dr. Alfredo B. De Torres is an Associate Professor of the University of the Philippines in Los Baños (UPLB) who went on a vacation leave of absence without pay from September 1, 1986 to August 30, 1989. During this period, he served as the Philippine Government's official representative to the Centre on Integrated Rural Development for Asia and [the] Pacific (CIRDAP).

"When the term of his leave of absence was about to expire, CIRDAP requested the UPLB for an extension of said leave of absence for another year, but was denied by Dr. Eulogio Castillo, the then Director of the Agricultural Credit Corporation, Inc. (ACCI) of UPLB. In the same letter, Dr. Castillo advised Dr. De Torres to report for duty at UPLB not later than September 15, 1989; while the then UPLB Chancellor Raul P. de Guzman apprised him on the rules of the Civil Service on leaves and warned of the possibility of being considered on Absence Without Official Leave (AWOL) if he failed to return and report for duty as directed.

"On August 27, 198[9], Dr. De Torres wrote UPLB that he had `no alternative but x x x to pursue the matter in continuing his commitment to CIRDAP.' In response thereto, Chancellor de Guzman warned De Torres, in a Letter dated November 20, 1989, that in case of the latter's failure to report `within 30 days from today,' UPLB would be forced to drop him from the rolls of personnel. Despite the warning, Dr. De Torres did not report to work.

"On January 3, 1994 or after almost five years of absence without leave, Dr. De Torres wrote the incumbent

Chancellor Ruben L. Villareal that he was reporting back to duty at ACCI-UPLB effective January 3, 1994 x x x. However, Chancellor Villareal notified Dr. De Torres that 'when an employee reports back for duty, he should have been from an approved leave ...' Likewise, Director Leodegacio M. Ilag, of ACCI-UPLB, in a Letter dated February 10, 1994, informed De Torres that in the absence of any approved application for leave of absence, he [was] considered to be on AWOL. Thus, he was advised to re-apply with UPLB.

"On June 30, 1994, Dr. De Torres wrote Chancellor Villareal seeking reconsideration [of] the two aforementioned decisions x x x. On July 4, 1994, Chancellor Villareal reversed his earlier stand and notified De Torres that since records at UPLB do not show that he ha[d] been officially dropped from the rolls he may report for duty effective January 3, 1994 x x x.

"Mesdames Juanita Baskinas and Winifreda Medina, members of Academic Personnel Committee, ACCI-UPLB, requested the Civil Service Commission regarding the employment status of Dr. De Torres x x x.

"On May 5, 1995, the Commission issued CSC Resolution No. 95-3045 x x x, the dispositive portion of which reads:

'WHEREFORE, the Commission hereby rules that Dr. De Torres is considered to have been dropped from the service as of September 1, 1989. Hence, his re-employment requires the issuance of appointment subject to the requirements of Civil Service Law and Rules.'

"On June 9, 1995, Dr. De Torres and the University of the Philippines at Los Baños (UPLB) filed separate requests for reconsideration of aforesaid CSC Resolution No. 95-3045 dated May 5, 1995. In its CSC Resolution No. 96-1041 x x x, the commission denied the motion for reconsideration, further stating that CSC Resolution No. 95-3045 [stood] and that since separation from the service [was] non-disciplinary in nature, the appointing authority may appoint Dr. De Torres to any vacant position pursuant to existing civil service law and rules." [6]

The CSC rationalized its ruling in this manner:

"It could be gleaned from the foregoing circumstances that De Torres was already on AWOL beginning September 1, 1989 since his request for extension of leave of absence for one year was denied by then Chancellor De Guzman. It is a fact that De Torres' absence from work was not duly authorized by UPLB. Despite the advice of Chancellor De Guzman to him that he should report for duty on or before September 5, 1989, De Torres failed to do so. Thus, his failure to assume duty as ordered caused his automatic separation from the service."

The Ruling of the CA

From the unfavorable Resolutions of the CSC, petitioners sought recourse before the Court of Appeals. But, finding "no grave abuse of discretion amounting to lack or x x x excess of jurisdiction on the part of the respondent commission in the issuance of the questioned Resolutions," the appellate court dismissed the Petition for lack of merit. Petitioners' Motion for Reconsideration was denied in the CA Resolution dated February 25, 1998. Thus, this Petition for Review.[7]

Issues

Petitioners submit the following questions of law for the Court's consideration:[8]

"I

Whether or not a new appointment is still necessary for Dr. de Torres to resume his post at the UNIVERSITY despite having remained continuously with the Civil Service, not having been dropped from the rolls of the University, and after returning to fulfill his service contract as a government scholar.

"II

Whether or not the issuance by the COMMISSION of Resolution Nos. 95-3045 and 961041, was in excess of its authority.

"III

Whether or not the COMMISSION violated the Subido-Romulo Agreement which is still in force and effect.

"IV

Whether or not the express repeal of the old law had the effect of doing away with the policy of automatic dropping from the government service in favor of notice before dropping.

"V

Whether or not Section 33 of Rule XVI is ultra vires as it does not relate or is not in any way connected with any specific provision of R.A. No. 2260.

"VI

Whether or not Resolution No. 95-3045 violated Dr. de Torres' constitutional right to due process."

In the main, the issue is the validity of Dr. Alfredo de Torres' automatic separation from the civil service due to his prolonged absence without official leave.

The Court's Ruling

The Petition is meritorious.

Main Issue:

Validity of Automatic Separation from the Civil Service

In brief, petitioners argue that (1) the issuance of a new appointment in favor of Petitioner De Torres is not needed, because he was not formally dropped from the rolls of the University of the Philippines; (2) the assailed CSC Resolutions were issued in excess of authority, because the CSC had violated the Subido-Romulo Agreement and disregarded the University's academic freedom, which includes the right to determine who may teach and who may be dropped from the service; (3) Section 33, Rule XVI of the Revised Civil Service Rules -- based on which respondent justified Petitioner De Torres' automatic separation from the service -- has been repealed and superseded by PD 807, as well as EO 292 (Administrative Code of 1987) which decrees prior notice before actual dropping; (4) even assuming that the said provision was not repealed, the issuance of the Rule was ultra vires because it was not related to or connected with to any specific provision of the mother law, RA 2260; and (5) the assailed CSC Resolutions violated petitioner's right to due process, because he had not been given prior notice of his actual separation.

On the other hand, respondent, through the solicitor general, contends that (1) "[i]t is of no legal moment that petitioner De Torres' name is still listed in the rolls of UPLB faculty members since his mandatory separation from the government service was ipso jure upon his failure to report for duty within the period prescribed by his superiors"; (2) the new Civil Service Rules did not repeal but complement Section 33, Rule XVI of the Revised Civil Service Rules, with the additional provision on notice of actual dropping; (3) Section 33 was a valid exercise by the CSC of its rule-making power to discipline erring employees of the civil service; and (4) sufficiently constituting due notice of his separation from the service were the denial of Petitioner De Torres' request for an extension of his leave of absence, coupled with the advice for him to report for work and the UPLB Chancellor's subsequent letter informing him that in case he failed to report within thirty (30) days, he would be dropped from the rolls of its personnel.

We now rule on these arguments. The Civil Service Commission predicated its ruling on Section 33, Rule XVI of

the Revised Civil Service Rules, which was in effect at the time. The provision states:

"Under no circumstances shall leave without pay be granted for more than one year. If an employee who is on leave without pay for any reason fails to return to duty at the expiration of one year from the effective date of such leave, he shall be considered automatically separated from the service; Provided, that he shall, within a reasonable time before the expiration of his one year leave of absence without pay, be notified in writing of the expiration thereof with a warning that if he fails to report for duty on said date, he will be dropped from the service."

According to respondent, this provision speaks of automatic separation from the service, even without prior notice and hearing. It extensively cites *Quezon v. Borromeo*,^[9] which supposedly held that the absence of notice to or investigation of the erring employee "is not jurisdictional in cases involving Section 33, Rule XVI of the Revised Civil Service Rules."

The case cited involved the chief nurse of the Iligan City Hospital who had initially been authorized to go on special study detail to take up or complete a degree in nursing for a period of not more than twelve (12) months. Afterwards, she requested two extensions of her leave, which were both granted, albeit charged to her accumulated leave credits and, after exhaustion thereof, without pay. Her extended leave totaled nineteen (19) months. Subsequently, she sought a third extension of leave, which was, however, not acted upon by the authorities. Notwithstanding the lack of approval, she remained on leave and further requested a fourth extension. By indorsement of the regional director, this fourth request was disapproved, with the statement that her continuous leave of absence was in violation of Section 33, Rule XVI of the Civil Service Rules. Subsequently, an appointment was issued to another person as chief nurse.

More than two years after the expiration of her last approved leave, the petitioner reported for duty, but she was informed that she had been dropped from the government service. The Court held that she had automatically been dropped from the service after failing to return to work at the end of her approved leave. With respect to the lack of written notice of the impending expiration of her leave, with a warning that she would be dropped from the service if she failed to report for duty upon such expiration, the Court adverted to an earlier case, *Isberto v. Raquiza*.^[10] In that case, the Court held that the employee, who had been absent without official leave, ought to have known that he was deemed automatically separated from the service from the time his approved leave expired. The High Court pointed out that he was not excused by his ignorance of the rule providing for automatic separation from the service upon failure to return to work after the lapse of the leave of absence without pay.

The Court also referred to *Ramo v. Elefaño*,^[11] which had sustained the dropping of the petitioner from the service for her failure to return to duty after the expiration of her leave of absence. The letter disapproving her request for extension of leave on the ground of Section 33, Rule XVI was communicated to her "for her information and compliance" only after her leave had already expired.

The core of the holdings in the above-cited cases was whether the absence of prior written notice by the appropriate government agency would prevent the dropping of the employee concerned from the service. The Court held that under the rules then prevailing, such absence did not.

This issue, however, is not determinative of the present case. There is no question that the UPLB Chancellor had advised petitioner on the Civil Service Rules regarding leaves. The former warned the latter of the possibility of being considered on AWOL (absence without leave) and being dropped from the service, if he failed to return and report for duty upon the expiration of his authorized leave. Consistent with the cases discussed above, this action constituted sufficient notice.

The pivotal issue herein, however, is whether petitioner was indeed dropped from the service by the University.

By respondent's contention, Section 33 of Rule XVI automatically operates; thus, whether or not to give effect to the provision is not within the discretion of the government agency concerned.

We do not agree, insofar as institutions of higher learning are concerned. In the three cases mentioned earlier, the concerned employees were actually dropped from the rolls by their respective agencies. As a matter of fact, in Quezon, the petitioner-employee was replaced by a new appointee. In Isberto, the petitioner-employee's position had initially been declared vacant, then filled up by another. Also, in Ramo the school's board of trustees passed a resolution dropping the petitioner from the service for her failure to return to duty after the expiration of her leave of absence; it then passed another Resolution appointing her replacement.

In the case at bar, however, Petitioner De Torres was never actually dropped from the service by UP. He remained in the University's roll of academic personnel, even after he had been warned of the possibility of being dropped from the service if he failed to return to work within a stated period. Indeed, as Vice Chancellor for Academic Affairs Emiliana N. Bernardo explained to the CSC in her October 12, 1994 letter:[12] "UPLB records show that no notice or order of dropping Dr. de Torres from the rolls was ever issued by the UPLB Chancellor. On the contrary, UPLB records show that his salary was increased several times during his absence - on January 1, 1988, March 16, 1988, and July 1, 1989. His appointment was also reclassified with promotion in rank from Training Specialist II to Assistant Professor IV effective March 16, 1988. This promotion was approved by the UP Board of Regents during its 1015th meeting held on August 25, 1988."

Verily, these acts are clearly inconsistent with separation or dropping from the service. Private petitioner was not only retained in the roll of personnel; his salary was even increased three (3) times. Moreover, he was promoted in rank with the explicit approval of the Board of Regents, the highest governing body of UP.[13] Since the commencement of the Complaint before the CSC, the University has consistently stood by his side. When respondent ruled against him in its assailed Resolution No. 95-3045, the University promptly filed a Motion for Reconsideration favoring his cause. Then, UP joined Dr. De Torres in his appeal before the Court of Appeals, as well as in the Petition now before us. All these circumstances indubitably demonstrate that the University has chosen not to exercise its prerogative of dismissing petitioner from its employ.

UP's actuations, in spite of Section 33, Rule XVI of the Revised Civil Service Rules, are consistent with the exercise of its academic freedom. We have held time and again that "the University has the academic freedom to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." [14] Clearly, this freedom encompasses the autonomy to choose who should teach [15] and, concomitant therewith, who should be retained in its rolls of professors and other academic personnel. This Court declared in *Ateneo de Manila University v. Capulong*: "As corporate entities, educational institutions of higher learning are inherently endowed with the right to establish their policies, academic and otherwise, unhampered by external controls or pressure." [16] Similarly, Vicente G. Sinco, a former UP president and delegate to the 1973 Constitutional Convention, stressed that the Constitution "definitely grants the right of academic freedom to the University as an institution as distinguished from the academic freedom of a university professor." [17]

We are not unaware that academic freedom has been traditionally associated with freedom of thought, speech, expression and the press. [18] But, as explained by Constitutional Commissioner Adolfo S. Azcuna during the deliberations on Section 5 (2), Article XIV [19] of the 1987 Constitution, "[S]ince academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom." [20]

Thus, we hold that by opting to retain private petitioner and even promoting him despite his absence without

leave, the University was exercising its freedom to choose who may teach or, more precisely, who may continue to teach in its faculty. Even in the light of the provision of the Revised Civil Service Law, the Respondent CSC had no authority to dictate to UP the outright dismissal of its personnel. The former could not have done so without trampling upon the latter's constitutionally enshrined academic freedom. Moreover, in *Chang v. Civil Service Commission*,^[21] the Court stressed that "[t]he CSC is not a co-manager, or surrogate administrator of government offices and agencies. Its functions and authority are limited to approving or reviewing appointments to determine their concordance with the requirements of the Civil Service Law." In short, on its own, the CSC does not have the power to terminate employment or to drop workers from the rolls.

Needless to say, UP definitely recognizes and values petitioner's academic expertise. As the vice chancellor for academic affairs explained, "[d]ropping him from the rolls will utterly be a waste of government funds and will not serve the best interest of the country which is suffering from 'brain-drain'."^[22] Even UP President Emil Q. Javier advised Complainants Baskiñas and Medina to "give Dr. de Torres the opportunity to honor his service obligation to the University,"^[23] referring to petitioner's required return service in view of a fellowship abroad earlier granted him by the institution.

Consequently, there is no need for the issuance of a new appointment in favor of Dr. De Torres. His service in UP is deemed uninterrupted during his tenure at CIRDAP.

WHEREFORE, the Petition is hereby GRANTED. The assailed Decision of the Court of Appeals and the Respondent Civil Service Commission's Resolution Nos. 95-3045 and 96-1041 are SET ASIDE. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 33-40.

[2] Special Third Division composed of JJ Gloria C. Paras (chairman and ponente), Lourdes K. Tayao-Jaguros and Oswaldo D. Agcaoili (members).

[3] Rollo, pp. 61-65; penned by Comm. Thelma P. Gamende and concurred in by chairman Corazon Alma G. de Leon and Comm. Ramon P. Ereneta Jr.

[4] *Ibid.*, pp. 82-86.

[5] Seventeenth Division composed of JJ Oswaldo D. Agcaoili (ponente), Corona Ibay-Somera (chairman) and Rodrigo V. Cosico (member).

[6] Assailed Decision, pp. 1-3; rollo, pp. 33-35.

[7] This case was deemed submitted for resolution upon receipt by the Court on October 26, 1999, of petitioners' Memorandum signed by Attys. Carmelita P. Yadao-Guno and Kathryn Rosalie B. Faderon. Through the Office of the Solicitor General, respondent prayed in a Manifestation and Motion (received by the Court on August 26, 1999) that its Comment be considered its Memorandum. The Manifestation and Motion was signed by Asst. Sol. Gen Azucena R. Balanon-Corpuz and Sol. Raymund J. Rigodon.

[8] Petitioners' Memorandum, pp. 17-18; rollo, pp. 172-73.

[9] 149 SCRA 205, April 9, 1987, per Feliciano, J.

[10] 67 SCRA 116, September 25, 1975.

[11] 106 SCRA 221, July 30, 1981

[12] Annex "J" of Petition; rollo, pp. 52-54.

[13] §4, Act 1870 (UP Charter).

[14] Reyes v. Court of Appeals, 194 SCRA 402, 415, February 25, 1991, per Medialdea J.; citing Garcia v. The Faculty Admissions Committee, 68 SCRA 277, November 28, 1975; the latter in turn cited Justice Frankfurter's concurring opinion in Sweezy v. New Hampshire, 354 US 234, 263 (1957).

[15] Cagayan Capitol College v. NLRC, 189 SCRA 658, September 14, 1990; citing Dizon, Law on Schools and Students, pp. 289-292, which cited Wilsons Institutional Academy. See also La Salette of Santiago v. NLRC, 195 SCRA 80, March 11, 1991.

[16] 222 SCRA 644, 661, May 27, 1993, per Romero, J. (*Italics supplied.*)

[17] Sinco, Philippine Political Law, 1962 ed., p. 489; *ibid.*

[18] Ateneo de Manila University v. Capulong, *supra*.

[19] "Sec. 5. x x x

(2) Academic freedom shall be enjoyed in all institutions of higher learning."

[20] IV Constitutional Commission Record 439.

[21] 21 191 SCRA 663, November 26, 1990, per Narvasa, J.

[22] Annex "J" of Petition, *supra*.

[23] Annex "K" of Petition; rollo, p. 55.

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