

LACSASA M. ADIONG, PETITIONER, VS. COURT OF APPEALS AND NASIBA A. NUSKA, RESPONDENTS.

G.R. No. 136480. December 04, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

In this petition for review on certiorari,[1] petitioner seeks the review of the decision[2] of the Court of Appeals as well as its resolution[3] denying reconsideration thereof.

The Facts

On December 6, 1994, Mayor Sultan Serad A. Batua issued a permanent appointment to Nasiba A. Nuska to the position of Municipal Local Civil Registrar. The same appointment was duly approved by the Civil Service Commission Office, Marawi City on December 9, 1994.[4]

On June 30, 1995, Mayor Lacsasa M. Adiong issued a memorandum[5] informing all municipal employees of the termination of their appointment and directing them to clear themselves from money and property accountabilities. On July 1, 1995,[6] another memorandum clarified this by specifying that the mass termination of services applied only to temporary or casual workers and requiring those holding approved permanent appointments to submit copies of their appointments.

Due to respondent Nuska's failure to submit a copy of her appointment coupled with her failure to make a courtesy call on the petitioner as the new mayor, he terminated her services and appointed a certain Nanayaon Samporna in her stead.[7]

On August 27, 1995, respondent Nuska wrote Mayor Adiong requesting for her reinstatement and payment of salaries covering the period July 1, 1995 to August 31, 1995.[8] Mayor Adiong failed to act on the request. Hence, on March 11, 1996, respondent Nuska appealed to the Civil Service Commission.[9]

On January 28, 1997, the Civil Service Commission issued Resolution No. 970688, which held that:

"WHEREFORE, the Commission finds the termination of the services of Nasiba A. Nuska as Municipal Local Registrar not in order. Accordingly, she should be reinstated or restored to her position. The Personnel Officer/Human Resource Management Officer and Cashier, Municipality of Ditsaan-Ramain, Lanao del Sur, are hereby directed to enter her name in the rolls of employees of said municipality and to pay her back salaries from the date of her illegal separation until her reinstatement." [10]

On March 17, 1997, petitioner Mayor Adiong filed a motion for reconsideration.[11] On December 11, 1997, the Civil Service Commission denied the motion.[12]

On February 18, 1998, Mayor Adiong filed with the Court of Appeals a petition for review with preliminary injunction and temporary restraining order.[13]

On September 15, 1998, the Court of Appeals promulgated a decision[14] dismissing the petition and affirming the resolution of the Civil Service Commission.

On November 18, 1998, the motion for reconsideration[15] filed by Mayor Adiong was denied by the Court of Appeals.[16]

Hence, this petition.[17]

Issues

The issues raised are whether the termination of respondent Nuska's employment was proper; whether Adiong was denied due process in the proceedings before the Civil Service Commission; and whether the administrative case against Nuska[18] validated her termination.

The Court's Ruling

The petition is without merit.

The Constitution provides that:

"No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."[19]

It further mandates that:

"No officer or employee of the civil service shall be removed or suspended except for cause provided by law."[20]

Section 1, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 provides that:

"No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process."

In this case, respondent Nuska had a permanent appointment to the position of municipal civil registrar of Ditsaan-Ramain, Lanao del Sur. She thus enjoyed security of tenure as guaranteed by law. As an employee in the civil service and as a civil service eligible, respondent Nuska is entitled to the benefits, rights and privileges extended to those belonging to the classified service. She could not be removed or dismissed from the service without just cause and without observing the requirements of due process.[21]

The reasons advanced by petitioner why respondent Nuska's employment was terminated were the following: failure to make a courtesy call, failure to submit her appointment papers, and failure to report to work which was tantamount to abandonment.

We agree with the Solicitor General that failure to make a courtesy call to one's superior is not an offense, much less a ground to terminate a person's employment.[22]

Respondent Nuska's failure to submit her appointment papers is not a cause for her outright dismissal. It was not shown that respondent Nuska was informed of the July 1, 1995 memorandum requiring those with permanent appointments to submit their papers. At the very least, petitioner could have reminded her to submit the documents without terminating her employment immediately.

On the alleged abandonment by respondent Nuska of her position, we agree with the stand of the Civil Service Commission in Resolution No. 970688 when it said that:

"As to the alleged abandonment of office, the same is without any basis. It is significant to note that Nuska, in her letter dated 27 August 1995, informed Mayor Adiong that she did not resign and that the termination of her services was not in accordance with existing Civil Service rules and regulations. She requested that she be reinstated to her lawful position and her back salaries be paid accordingly. The foregoing explains that although Nuska was physically absent in the office premises, all the while, she had the intention to return to work. Hence, she could not be deemed to have abandoned or relinquished her right to the position under an appointment with permanent employment status." [23]

Generally speaking, a person holding a public office may abandon such office by non-user or acquiescence. [24] Non-user refers to a neglect to use a right or privilege or to exercise an office. [25] However, nonperformance of the duties of an office does not constitute abandonment where such nonperformance results from temporary disability or from involuntary failure to perform. [26] Abandonment may also result from an acquiescence by the officer in his wrongful removal or discharge, for instance, after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate his rights may constitute an abandonment of the office. [27]

In this case, respondent Nuska's failure to perform her duties was involuntary and cannot be considered as acquiescence. In her August 27, 1995 letter to petitioner, she claimed that she did not resign and she considered her termination from the service as illegal. She insisted on her reinstatement. Clearly, there was no abandonment of office.

Hence, the reasons given by petitioner for separating respondent Nuska from office are not just causes for terminating the services of an official or employee in the civil service. Assuming that the grounds for removal relied upon by petitioner were sufficient, still, the dismissal was illegal, as it was done without compliance with the requirements of due process.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of. This requirement is met where one is given a chance to explain his side of the controversy, even if no hearing is conducted. [28]

In the case at bar, respondent Nuska was not given such an opportunity. Petitioner Adiong did not bother to ask respondent Nuska to explain why she had not submitted her appointment papers as required nor did he take time to act on her letter of August 27, 1995. In addition, he appointed a certain Nanayaon Samporna to take the place of respondent Nuska as municipal civil registrar.

For failure to accord due process to respondent Nuska, the termination of her employment is illegal. Consequently, she is entitled to reinstatement, plus payment of backwages.

However, according to jurisprudence, a civil service employee illegally terminated from the service is entitled to back salaries limited only to a maximum period of five years, [29] not to full back salaries from her illegal termination up to her reinstatement.

After respondent Nuska filed her letter-appeal to the Civil Service Commission on March 11, 1996, Director Angelito G. Grande, Office of Legal Affairs, Civil Service Commission, directed petitioner to submit his comment on the appeal within five (5) days from receipt of the order. Thus, on June 29, 1996, petitioner submitted the required comment.

Notice and hearing, as a requirement of due process, does not connote full adversarial proceedings. [30] As mentioned, the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. [31]

As to the pendency of an administrative charge [32] against respondent Nuska for dishonesty, grave misconduct

and conduct prejudicial to the best interest of the service, the same will not change the ruling of the Court.

The charge was filed only on May 14, 1999,[33] whereas the illegal termination of respondent Nuska occurred in the year 1995. It is apparent that it was only an afterthought on the part of petitioner to use the charge as an excuse to terminate respondent Nuska's employment. The evidence that he would be using in the administrative case were only gathered after the termination in July 1995.

When the Constitution mandated that a government official or employee may not be removed or suspended without due process of law, the law presumes, in protecting such rights, that "a person acting in a public office was regularly appointed or elected to it,"[34] and that "official duty has been regularly performed." [35]

Until after final determination of respondent Nuska's guilt in the administrative case, she cannot be made to suffer the extreme penalty of termination of her employment.

The Fallo

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the decision of the Court of Appeals[36] and the resolution denying reconsideration thereof.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Under Rule 45, Revised Rules of Court.

[2] In CA-G.R. SP No. 47146 promulgated on September 15, 1998, Petition, Annex "A", Rollo, pp. 36-41, Portia Aliño-Hormachuelos, J., ponente, Buenaventura J. Guerrero and Martin S. Villarama, Jr., JJ., concurring.

[3] Petition, Annex "B", Rollo, p. 42.

[4] Petition, Annex "L", Rollo, pp. 82-110, at p. 102.

[5] Petition, Annex "C", Rollo, p. 43.

[6] Petition, Annex "D", Rollo, p. 44.

[7] Petition, Annex "A", Rollo, pp. 36-41, at p. 37.

[8] Petition, Annex "L", Rollo, pp. 82-110, at p. 110.

[9] Petition, Annex "E", Rollo, pp. 45-46.

[10] Petition, Annex "H", Rollo, pp. 51-53, at p. 53.

[11] Petition, Annex "I", Rollo, 54-56.

[12] Petition, Annex "J", Rollo, 57-58.

[13] Docketed as CA-G. R. SP No. 47146. Petition, Annex "K", Rollo, pp. 59-68.

[14] Petition, Annex "A", pp. 36-41.

[15] Petition, Annex "R", Rollo, pp. 139-143.

[16] Petition, Annex "B", Rollo, p. 42.

[17] Petition, Rollo, pp. 18-35. On July 12, 1999, we resolved to give due course to the petition (Rollo, pp. 184-185).

[18] On October 12, 1999, petitioner filed with this Court a Manifestation and Motion informing the Court that on May 14, 1999 respondent Nasiba A. Nuska was formally charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. (Rollo, pp. 200-203)

[19] Article III, Section 1, Constitution.

[20] Article IX, Section 2(3), Constitution.

[21] *Marohombsar v. Court of Appeals*, 326 SCRA 62, 73 (2000), citing *Cortez v. Bartolome*, 100 SCRA 1 (1980).

[22] Memorandum, Rollo, pp. 222-226, at p. 225.

[23] Petition, Annex "H", Rollo, pp. 51-53, at p. 53.

[24] *Canonizado v. Aguirre*, G. R. No. 133132, February 15, 2001, citing 67 C. J. S. Officers § 100, citing *Herbert v. State Oil and Gas Bd.*, 250 So. 2d 597, 287 Ala. 221; *Bailey v. Berry*, 265 N. Y. S. 865, 240 App. Div. 771.

[25] *Canonizado v. Aguirre*, supra, Note 24, citing *Sangguniang Bayan of San Andres, Catanduanes v. Court of Appeals*, 348 Phil. 303 (1998), citing *Cyclopedic Law Dictionary*, 3[rd] ed. and *Black's Law Dictionary*, 6[th] ed.

[26] *Canonizado v. Aguirre*, supra, Note 24, citing 67 C. J. S. Officers § 100, citing *Doris v. Heroux*, 47 A.2d 633, 71 R. I. 491.

[27] *Canonizado v. Aguirre*, supra, Note 24, citing 67 C. J. S. Officers § 100, citing *Nicholas v. U. S.*, Ct. Cl., 42 S. Ct. 7, 257 U. S. 71, 66 L. Ed. 133; *Corpus Juris Secundum* quoted in *Thompson v. Nichols*. 65 S. E. 2d. 603, 604, 208 Ga. 147; *Haack v. Ranieri*, 200 A. 2d 522, 83 N. J. Super. 526; *People ex rel. Warren v. Christian*, 123 P. 2d 368, 58 Wy. 39.

[28] *Cañete, Jr. v. National Labor Relations Commission*, 315 SCRA 660, 668 (1999).

[29] *Marohombsar v. Court of Appeals*, 326 SCRA 62, 73-74 (2000), citing *San Luis v. Court of Appeals*, 174 SCRA 258 (1989); *Tan, Jr. v. Office of the President*, 229 SCRA 677 (1994).

[30] *Manila Electric Company v. NLRC*, 331 Phil. 838, 851 (1996), citing *Stayfast Philippines Corp. v. NLRC*, 218 SCRA 596 (1993), *Sajonas v. NLRC*, 183 SCRA 182 (1990), *Mendoza v. NLRC*, 195 SCRA 606 (1991).

[31] *Manila Electric Company v. NLRC*, 331 Phil. 838, 851 (1996), citing *Firestone Tire and Rubber Company of the Philippines v. Lariosa*, 148 SCRA 187 (1987).

[32] Manifestation and Motion, Annex "A", Rollo, pp. 204-205.

[33] Docketed as Administrative Case No. 99-12-D-005.

[34] *Rosete v. Court of Appeals*, 332 Phil. 169, 186 (1996), citing Rule 131, Section 5 (1), Rules of Court.

[35] *Ibid.*, citing Rule 131, Section 5 (m), Rules of Court.

[36] In CA-G. R. SP No. 47146.

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