

**DEMOCRITO D. PLAZA II AND VIRGINIA V. TUAZON, PETITIONERS,
VS. CAROLINA M. CASSION, ALBERTA M. SAMPAYAN, JOSEPHINE
NATALIA U. LOPEZ, JOCELYN M. ALMANZOR, LUZVIMINDA G.
ARDECER, ...**

G.R. No. 136809. July 27, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Republic Act No. 7160, otherwise known as The Local Government Code of 1991, aims to transform local government units into self-reliant communities and active partners of the national government in the attainment of effective services to the people. As a result of the devolution of concerned personnel from the national government to the various local government units pursuant to the same Code, the interest of the service demands that their working relations with the local employees should be harmonious.

This is a petition for review on certiorari[1] assailing the Decision[2] of the Court of Appeals dated February 14, 1996 and its Resolution dated December 9, 1998 in CA-G.R. SP No. 55052, “Carolina M. Cassion, et al. vs. Civil Service Commission, et al.”

Before the passage of Republic Act No. 7160, the task of delivering basic social services was dispensed by the national government through the Department of Social Welfare and Development (DSWD). Upon the promulgation and implementation of the Local Government Code, some of the functions of the DSWD were transferred to the local government units.

The City of Butuan, through its Sangguniang Panglungsod (Sanggunian) passed SP Resolution 427-92,[3] entitled “Resolution Authorizing the City Mayor, Honorable Democrito D. Plaza II, to Sign the Memorandum of Agreement for the Devolution of the DSWD to the City of Butuan.”

Pursuant to the Memorandum of Agreement (MOA)[4] entered into between the City of Butuan, through then Mayor Democrito Plaza II, petitioner, and the DSWD, the latter’s services, personnel, assets and liabilities, and technical support systems were transferred to its city counterpart.

By virtue of the same MOA, Mayor Plaza issued Executive Order (EO) No. 06-92[5] dated October 5, 1992 reconstituting the City Social Services Development Office (CSSDO), devolving or adding thereto 19 national DSWD employees headed by petitioner Virginia Tuazon, Social Welfare Officer V. Mayor Plaza designated her Officer-in-Charge of the reconstituted CSSDO. Its office was transferred from the original CSSDO building to the DSWD building.

The CSSDO was originally composed of herein respondents, headed by Carolina M. Cassion, Social Welfare Officer IV. Aggrieved by such development, they refused to recognize petitioner Tuazon as their new head and to report at the DSWD building. They contended that the issuance of EO No. 06-92 by Mayor Plaza and the designation of petitioner Tuazon as Officer-in-charge of the CSSDO are illegal.

Despite Mayor Plaza's series of orders to respondents to report for work at the DSWD building, they failed to do so.

On January 18, 1993, Mayor Plaza issued a memorandum to the City Legal Officer directing him to conduct an administrative investigation against respondents. They then submitted their respective explanations. Thereafter, they were charged administratively for grave misconduct and insubordination and were preventively suspended for 60 days. This prompted them to file with the Civil Service Regional Office No. 10 a complaint against Mayor Plaza for violation of the Civil Service Law. However, their complaint was dismissed for lack of merit.

Upon expiration of their preventive suspension, respondents informed Mayor Plaza that they are willing to return to work, but to their old office, not to the DSWD building.

For the last time, or on April 14, 1993, Mayor Plaza notified respondents to report to petitioner Tuazon at the new office in the DSWD building, but they remained obstinate.

On February 9, 1994, Mayor Plaza inquired from the Civil Service Commission (CSC) on what appropriate action could be taken against respondents for their continued refusal to report for work since April 1993. In turn, the CSC, through Atty. Lorea, Director II, informed the Mayor that respondents could be dropped from the rolls pursuant to CSC Memorandum Circular No. 38, Series of 1993.

On February 16, 1994, Mayor Plaza issued an Order dropping respondents from the rolls pursuant to the said CSC Memorandum Circular.

Forthwith, respondents appealed to the CSC.

On August 22, 1994, the CSC issued Resolution Nos. 94-4626 and 94-6243 dismissing respondents' appeal. In affirming Mayor Plaza's Order dropping respondents from the rolls, the CSC held:

"CSC Memorandum Circular No. 38, series of 1993 dated September 10, 1993 provides as follows: 'Officers and employees who are absent for at least thirty (30) days without approved leave are considered on Absence Without Official Leave (AWOL) and may be dropped from the service without prior notice.

'A notice or order of the dropping from the rolls of an employee shall be issued by the appointing authority and submitted to the CSC Office concerned for record purposes.'

"Based on the above-quoted provision, it is undeniable that the appointing authority has the legal right to drop from the rolls a civil service officer or employee. Nowhere in the quoted provision is it stated that only the Commission has the exclusive authority to drop from the rolls civil service officers or employees. Hence, contrary to the first contention of the appellants, Mayor Plaza acted in conformity with the law when he ordered the dropping from the rolls of herein appellants. The records of the case show the fact that appellants did not report for work from April 1993 up to the time they were dropped from the rolls. Although they manifested intention to return to work upon expiration of their preventive suspension, still they adamantly insisted that they would report only in their old office and not in the new one created by Executive Order No. 06-92. The legal excuse being given by the appellants is highly untenable. The Executive Order issued by the Mayor is presumed valid until annulled by the proper authorities. The same presumption shall also apply insofar as the designation of Mrs. Tuazon as OIC is concerned. The proper course of action for the appellants is to comply with the Mayor's directives and then challenge the questioned Executive Order before the proper forum, otherwise, the appellants should suffer the consequence of their acts.

"We find without merit the contention of the appellants that they were denied due process for lack of notice and opportunity to be heard before they were dropped from the rolls. The separation of an employee who is dropped

from the rolls is a non-disciplinary action wherein the respondent is entitled to notice and hearing. In the above-quoted provision, an officer or employee may be dropped from the rolls if he was continuously absent without official leave for a period of at least thirty days. Prior notice is not necessary.

“As to the last contention of the appellants that it was really the intention of the mayor to systematically remove them, the Commission likewise finds it without merit. No evidence was submitted by the appellants to support such contention.”

Respondents then filed with the Court of Appeals a petition for review.

On February 14, 1996, the Appellate Court rendered its Decision setting aside the assailed CSC Resolutions and EO No. 06-92 issued by Mayor Plaza and reinstating respondents to their former positions without loss of seniority rights and emoluments with full back wages and other benefits corresponding to the period from January 1993 up to actual reinstatement. Petitioners filed a motion for reconsideration but was denied.

The Court of Appeals ratiocinated as follows:

“The fundamental rule of due process, on the other hand, requires that a person be accorded notice and opportunity to be heard (*Rebuena v. Civil Service Commission*, G.R. No. 115942, 31 May 1995; *Klaveness Maritime Agency, Inc. v. Palmos*, 232 SCRA 448 [1994]). ‘Ample opportunity’ contemplated by law connotes every kind of assistance which must be accorded to the employee to enable him to prepare adequately for his defense including legal representation (*Segismundo v. NLRC*, G.R. No. 112203, 13 December 1994, 329 SCRA 167, citing *Abiera v. NLRC*, 215 SCRA 476 [1992]). Non-compliance with the twin requirements of notice and hearing is fatal because these requirements are conditions sine qua non before a dismissal may be validly effected (*Maneho v. NLRC*, 229 SCRA 240 [1994], citing *Tiu v. NLRC*, 215 SCRA 540 [1992]). In fact, notice and hearing must be accorded an employee even though the employee does not affirmatively demand it (*Century Textile Mills v. NLRC*, 161 SCRA 528 [1988]).

“A circumspect scrutiny of the record leaves Us unconvinced that petitioners were accorded this opportunity to be heard when they sought relief before respondent CSC’s Regional Office No. X which dismissed their complaint, docketed as ADM. Case No. ND 93-023, against respondents City Mayor and Virginia V. Tuazon for violation of the Civil Service Law and its implementing rules and regulations. x x x

x x x

“As regards the validity of the issuance of E.O. No. 06-92, there can be no dispute over the power of the government to reorganize, whether traditional, progressive or whatever adjective is appended to it. However, the essence of constitutional government is adherence to basic rules. The rule of law requires that no government official should feel free to do as he pleases using only his avowedly sincere intentions and conscience to guide him. The fundamental standards of fairness embodied in the bona fide rule can not be disregarded (*Mendoza v. Quisumbing*, 186 SCRA 108 [1990]; see also *Romualdez-Yap v. CSC*, 225 SSCRA 285 [1993].”

In the main, petitioners contend that the Court of Appeals erred in setting aside the CSC Resolutions dropping respondents from the rolls and EO No. 06-92 directing the devolution of 19 national DSWD employees to the local or city DSWD to be headed by petitioner Virginia Tuazon.

Private respondents, on the other hand, aver that their refusal to report for work is justified since EO No. 06-92 is not valid as it was issued without prior approval by the Sanggunian in violation of Article 164, Rule XXII of the Rules and Regulations Implementing the Local Government Code.

Section 17 of the Local Government Code authorizes the devolution of personnel, assets and liabilities, records of basic services, and facilities of a national government agency to local government units. Under this Code, the term

“devolution” refers to the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.

As a consequence of the devolution of national agencies, Executive Order No. 503 was enacted by then President Corazon C. Aquino to govern and ensure the efficient transfer of responsibilities to the local government unit concerned. Section 2 (g) provides:

“The local chief executive shall be responsible for all devolved functions. He may delegate such powers and functions to his duly authorized representative whose position shall preferably not be lower than the rank of a local government department head. In all cases of delegated authority, the local chief executive shall at all times observe the principle of command responsibility.”

Section 2 (a) states that:

“Except as herein otherwise provided, devolved permanent personnel shall be automatically reappointed by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992.”

Likewise, Section 22 of CSC Memorandum Circular No. 19, Series of 1992, specifies that:

“The positions absorbed by the local government units from the national government agencies shall be automatically created upon transfer of their corresponding budgetary allocation.

“Devolved permanent personnel shall be automatically reappointed by the local chief executive concerned immediately upon their transfer.

“However, pending the completion of the new organizational structure and staffing pattern, the local government executives may assign devolved personnel to divisions/sections/units where their qualifications are best suited or appropriate.”

It is thus clear that Mayor Plaza is empowered to issue EO No. 06-92 in order to give effect to the devolution decreed by the Local Government Code. As the local chief executive of Butuan City, Mayor Plaza has the authority to reappoint devolved personnel and may designate an employee to take charge of a department until the appointment of a regular head, as was done by the Mayor here.

CSC Memorandum Circular No. 19, Series of 1992, provides further that heads of departments appointed by the local chief executive must have the concurrence of the majority of all the members of the Sanggunian concerned. While initially, the Sanggunian rejected petitioner Tuazon’s appointment as the City Government Department Head II of the CSSDO, however, it later confirmed her appointment.

The Court Appeals erred in ruling that EO No. 06-92 violated respondents’ security of tenure as they were transferred to another office without their consent. There was no such transfer. Transfer is a movement from one position to another which is of equivalent rank, level or salary without break in service and may be imposed as an administrative penalty.[6] The change of respondents’ place of work from the original CSSDO office to the DSWD building is not a transfer. It was only a physical transfer of their office to a new one done in the interest of public service. There were no new movements or appointments from one position to another.

Private respondents argue that they were denied due process when they were dropped from the rolls.

CSC Memorandum Circular No. 38, Series of 1993, provides:

“VI. Requirements For Certain Mode of Separation.

Dropping from the Rolls – Non-disciplinary in nature, executory but appealable to the CSC office concerned within fifteen (15) days from receipt of the order or notice.

Officers and employees who are absent for at least thirty (30) days without approved leave are considered on Absence Without Leave (AWOL) and may be dropped from the service without prior notice.

A notice or order of the dropping from the rolls of an employee shall be issued by the appointing authority and submitted to the CSC office concerned for record purposes.”

Pursuant to the above provisions and as ruled by the CSC, the dropping from the rolls of private respondents is not disciplinary in nature. Thus, their assertion that they were denied due process is untenable. Since the dropping from the rolls is not an administrative sanction, they need not be notified or be heard.

WHEREFORE, the Decision dated February 14, 1996 of the Court of Appeals is REVERSED. The CSC Resolution No. 94-4626 dated August 22, 1994, and Resolution No. 94-6243 dated November 17, 1994 dropping private respondents from the rolls are AFFIRMED.

SO ORDERED.

Panganiban, (Chairman), and Carpio-Morales, JJ., concur.
Corona, J., on leave.

[1] Pursuant to Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Consuelo Ynares-Santiago (now a member of this Court), with Associate Justices Arturo B. Buena, now a retired member also of this Court, and Ruben T. Reyes, concurring.

[3] Rollo at 118.

[4] Id. at 120-124.

[5] Id. at 125.

[6] Cruz, The Law of Public Officers, 1999 Edition at 68.

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