

NORBERTO ORCULLO, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION AND COORDINATING COUNCIL OF THE PHILIPPINE ASSISTANCE PROGRAM, RESPONDENTS.

G.R. No. 138780. May 22, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioner Norberto A. Orcullo, Jr. was hired as Project Manager IV by the Coordinating Council of the Philippine Assistance Program (CCPAP)-BOT Center effective March 11, 1996. His employment was contractual and co-terminous with the said project which was to end on January 30, 2000.[1] On September 23, 1996 or six (6) months from his assumption to office, petitioner received a Memorandum, dated September 20, 1996, from one Jorge M. Briones, Assistant Director of CCPAP, terminating petitioner's contractual employment with said agency effective September 30, 1996.[2]

In a Letter dated September 20, 1996, Undersecretary Francisco F. del Rosario, Executive Director of CCPAP, confirmed petitioner's termination as project manager of CCPAP.

Aggrieved by his dismissal, petitioner appealed the same to the Civil Service Commission (CSC).

On April 2, 1997, the respondent CSC issued Resolution No. 972309 dismissing petitioner's appeal. The CSC found that:

x x x the appointment of Orcullo is contractual and co-terminous with the Philippine Assistance Program Support Project and that it carries the stipulated condition "Unless terminated sooner." The latter condition has not been qualified by any safeguard. Appellant Orcullo, when he accepted said contractual-coterminous appointment, was aware that his services might be terminated anytime. He is, thus, not protected by the security of tenure clause of the Constitution. The contract is the law between the parties. And whatever is stipulated therein governs the relationship between the parties. Said stipulations in the contract may include the mode or manner of separations. And the cause therefore includes and is not proscribed to derogatory record, misbehavior or incompetence or hostile attitudes. In the instant case, appellant was separated from the service particularly for unsatisfactory performance. (Underscoring ours)

On the issue of the proper official who should effect such termination, the next lower official of the Center may do so. In this case, said separation was later validated by the confirmation of the head office.[3]

Petitioner filed a motion for reconsideration of the above resolution. On June 17, 1997, the CSC denied said motion in its Resolution No. 973099.

On July 30, 1997, petitioner, through counsel, filed a petition for review with the Court of Appeals.

On August 14, 1998, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, for lack of merit, the petition in the above entitled case is hereby DISMISSED. Costs against petitioner.

SO ORDERED.[4]

Hence, this petition. Petitioner raises the sole issue of whether employees in the public service, regardless of their status of employment, are protected by the tenurial security right embodied in the Constitution.

Petitioner argues that, contrary to the findings of the CSC, the phrase "unless terminated sooner" refers not to the duration of his employment, but the duration of the PAPS support project itself. He claims that since the PAPS project was still ongoing, his services cannot be terminated without just cause and without the observance of due process. He asseverates that even co-terminous employees like himself enjoy security of tenure as embodied in the Constitution.

Petitioner's arguments are bereft of merit.

It is undisputed that petitioner's employment with CCPAP is contractual and co-terminous in nature. Such a co-terminous employment falls under the non-career service classification of positions in the Civil Service:

Sec. 9. Non-Career Service. - The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made. (Underscoring ours)

The Non-Career Service shall include:

xxx

(4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency.

xxx[5]

Additionally, Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides:

Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds. (Underscoring ours)

The co-terminous status may thus be classified as follows:

- (1) Co-terminous with the project - when the appointment is co-existent with the duration of a particular project for which purpose employment was made or subject to the availability of funds for the same;
- (2) Co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority or at his pleasure; (Underscoring ours)
- (3) Co-terminous with the incumbent - when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent the position shall be deemed automatically abolished; and
- (4) Co-terminous with a specific period - appointment is for a specific period and upon expiration and upon thereof, the position is deemed abolished.

A perusal of petitioner's employment contract will reveal that his employment with CCPAP is qualified by the phrase "unless terminated sooner." Thus, while such employment is co-terminous with the PAPS project, petitioner nevertheless serves at the pleasure of the appointing authority as this is clearly stipulated in his employment contract. We agree with the appellate court's interpretation of the phrase "unless terminated sooner" to mean "that his contractual job as Project Manager IV from March 11, 1996 to January 30, 2000 could end anytime before January 30, 2000 if terminated by the other contracting party-employer CCPAP." We quote with approval said court's ruling on the matter, thus:

xxx. The employment contract is written in plain and unambiguous language. With petitioner's stature, he could not have misunderstood it. Petitioner cannot now renege from the stipulation invoking security of tenure under the Constitution and the Civil Service Law. The fact is he belongs to the non-career service whose appointment is co-terminous, meaning his entrance and continuity in the service is based on trust and confidence of the appointing power.[6] (Underscoring ours)

Granting *arguendo* that said disputed phrase refers not to the duration of petitioner's employment, but to the project itself, nevertheless, petitioner was validly terminated for cause. The records will show that petitioner garnered an unsatisfactory rating during the probationary period of his employment.[7] After due notice, he was subsequently dismissed because of his inability to work with the other staff members of the project and to participate effectively in meetings regarding the project, resulting in loss of trust in him by his superiors. This much can be gleaned from the Memorandum, dated September 20, 1996, sent by Mr. Briones to the petitioner, which reads as follows:

This is to confirm my verbal advise to you made last 4 September 1996 regarding your unsatisfactory performance during the probationary period of your contractual employment with the CCPAP BOT Center.

As advised, your inability to work with the other staff in the Center as well as participate in outside meetings are the main reasons for the rating which have resulted in the loss of my confidence in your ability to do your job as a Manager. (Underscoring supplied)

xxx[8]

Finally, we find petitioner's claim that he was deprived of due process unavailing. The Court of Appeals found that petitioner was informed of his unsatisfactory performance in his job as project manager about two weeks prior to his termination. Thereafter, upon receipt of the memorandum terminating his services, petitioner filed a complaint-appeal to the CSC. When the CSC affirmed his dismissal in its Resolution, dated April 2, 1997, petitioner filed a motion for reconsideration thereof. Thus, he cannot now claim that he was not given the opportunity to be heard.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

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

[1] Rollo, p. 40.

[2] *Id.*, at 9.

[3] *Id.*, at 46.

[4] Id., at 61.

[5] Revised Administrative Code, Sec. 9 on the Civil Service Commission.

[6] Rollo, p. 58.

[7] Id., at 41.

[8] Id.

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