

**HON. ANDREW B. GONZALES, IN HIS CAPACITY AS SECRETARY OF
THE DEPARTMENT OF EDUCATION CULTURE AND SPORTS,
PETITIONER, VS. DR. LILIOSA R. GAYTA, RESPONDENT.**

G.R. No. 143514. August 08, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Respondent Dr. Liliosa R. Gayta was the Division Superintendent of Schools for Lanao del Norte. On March 5, 1999, she received from petitioner Andrew B. Gonzales, then Secretary of the Department of Education Culture and Sports (DECS), a “FORMAL CHARGE”[1] based on a motu proprio complaint for Gross Misconduct, Oppression and Conduct Grossly Prejudicial to the Best Interest of the Service, docketed as Administrative Case No. 99-058. The pertinent portions of the formal charge read:

- That you scolded and caused the transfer of Mrs. Teresita O. Alborido from her previous position as Clerk I in the Division Office of Lanao del Norte, for her being a suspected supporter of the Complainants in your case at the Office of the Ombudsman with docket number OMB-MIN-98-0407;
- That you imposed the penalty of Suspension for three (3) months without pay on Mr. Adonis S. Dayondon in spite of the fact that no Formal Investigation was even held and that a Superintendent has no power to decide an administrative case and impose a penalty. Under the law and pertinent issuances only the Secretary (Exec. Order No. 292, Book V, Sec. 47 [2]) and the Regional Directors (MECS Order No. 48, s 1986 [2, c, 16]) have the power to decide administrative cases involving employees in the Department.

Wherefore, you are hereby required to answer in writing and under oath, the abovementioned charges within a period of not less than seventy-two (72) hours but not more than five (5) days from receipt hereof. x x x.[2]

Along with the formal charge, petitioner placed respondent under preventive suspension for 90 days pending investigation, counted from March 4, 1999, the date of receipt of the Order, until June 2, 1999.[3]

On March 5, 1999, a day after respondent’s receipt of the Formal Charge, she filed an Urgent Motion for Reconsideration.

Subsequently, in an effort to expedite the proceedings of the case against her, respondent sought the help of Director Editha M. De La Peña of the “Mamamayan Muna, Hindi Mamaya Na” Operations Unit of the Civil Service Commission, who wrote a letter to the DECS requesting for an early resolution of respondent’s case.[4] In a letter dated April 7, 1999, respondent requested an early setting of her case for hearing.[5]

On May 3, 1999, petitioner, treating respondent’s Motion for Reconsideration as answer to the formal charge, declared the same to be unsatisfactory. An investigating committee of three was thereafter formed and the case was set for pre-trial conference on May 24, 1999.

At the pre-trial conference, the Committee Chairman noted that respondent was not furnished a copy of Mr.

Adonis S. Dayondon's complaint and that no complaint was filed by Mrs. Teresita O. Alborido. Petitioner contended that it was not necessary to furnish respondent with said complaints because the charges against her were based on a motu proprio complaint signed by petitioner himself. The Committee Chairman, however, directed the parties to submit their position papers in order to determine if there was compliance with the DECS Rules of Procedure, and ordered the resetting of the pre-trial conference to July 28-29, 1999.[6]

On June 3, 1999, after the expiration of the 90-day preventive suspension, respondent reassumed her position. However, respondent subsequently received a copy of an Order dated June 4, 1999 from petitioner, moving the completion of her preventive suspension from June 2, 1999 to August 6, 1999, to wit:

This refers to the case of Respondent Liliosa R. Gayta whose ninety (90) day preventive suspension after the date of its effectivity on March 4, 1999 is supposed to be completed on June 2, 1999. However, since it was the respondent who caused the delay in the disposition of the case by moving for the re-scheduling of the pre-conference hearing to July 28-29, 1999 during the hearing of the Investigation Committee on May 24, 1999 said preventive suspension period shall be completed only nine (9) days after July 28, 1999 or on August 6, 1999 as provided for under Sec. 3, Chapter VIII of DECS Order No. 33, s. 1999.

SO ORDERED.[7]

Aggrieved, respondent filed a petition for certiorari with the Court of Appeals, contending that the extension of her preventive suspension beyond the 90-day period was illegal inasmuch as the delay in the disposition of the administrative case was not due to her fault, negligence or petition.

On February 15, 2000, the petition was granted and the assailed Order of petitioner was set aside. The dispositive portion thereof reads:

WHEREFORE, the petition is hereby GRANTED. Respondent's Order of June 4, 1999 is hereby NULLIFIED. Petitioner is, therefore, entitled to salaries and other emoluments due her as Division Superintendent of Schools for Lanao del Norte effective June 3, 1999 until the expiration of her preventive suspension, as extended, without prejudice to the outcome of [the] administrative case filed against her.

SO ORDERED.[8]

Petitioner's motion for reconsideration was denied. Hence, the instant petition.

The issue to be resolved in this petition is whether or not respondent unlawfully delayed the disposition of her administrative case, thus justifying the non-inclusion of the period of delay in the computation of her 90-day preventive suspension as provided in Sec. 3, Chapter VIII, of DECS Order No. 33, s. 1999 (DECS Rules of Procedure).[9] Said provision states:

Section 3. Ninety-day period. – When the Administrative Disciplinary Case against the respondent under preventive suspension is not finally decided by the Disciplining Authority within the period of ninety (90) calendar days after the date of effectivity of his or her preventive suspension, he or she shall be automatically reinstated in the service. Provided, however, that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar-day period of preventive suspension.

The law considers the period of ninety (90) days as enough time for the investigation and adjudication of an administrative case, counted from the date of suspension of the respondent. This will include not only the filing of required or permitted pleadings and the reception of testimonial, documentary and object evidence, but also the consideration and resolution of incidental motions filed in good faith, with no intent to delay the disposition of the case. The investigating officer is expected to exert and maintain control of the case to ensure, within the time thus

appointed, the orderly and full ventilation of the parties' positions and the expeditious progress and ultimate adjudication of the proceeding. If the investigating officer fail in this function and is thus unable to decide the case within ninety (90) days, or the difficulty or complexity of the case, or other fortuitous cause, precludes decision thereof within said period, reinstatement of the suspended respondent becomes mandatory. On the other hand, the law is clear that when the delay in the disposition of the case results from the suspended respondent's (1) fault, (2) negligence or (3) petition, the period of such delay is not counted in the computation of the 90-day period.[10]

In the case at bar, petitioner holds respondent accountable for the delay in the disposition of the subject administrative case. Contrary to petitioner's claim, however, the Court finds that it was in fact the office of the DECS that caused the delay. As early as March 4, 1999, respondent filed her Motion for Reconsideration of the Formal Charge and the Order of Suspension, which the petitioner treated as her answer pursuant to Civil Service Commission Resolution No. 94-0521, Section 21 (as amended by CSC Resolution No. 98-0683).[11] The records reveal that despite the requests of respondent for an expeditious disposition of her case, petitioner acted on her answer only on May 3, 1999 and set the preliminary conference more than sixty (60) days from the date of receipt by respondent of the formal charge, or only on May 24, 1999. This is clearly contrary to the policy of speedy adjudication of administrative cases. Pertinent provisions of Civil Service Commission Resolution No. 94-0521, provide:

Section 21. Formal Charge. – x x x. The respondent shall be given at least seventy-two (72) hours from receipt of said formal charge to submit his answer under oath x x x.

The Commission shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleading is interposed by the respondent the same shall be considered as an answer and shall be evaluated as such (As amended by MC No. 16, s. 1998)

Section 22. Conduct of Formal Investigation. – A formal investigation shall be held after respondent has filed his answer or after the period for filing an answer has expired. It shall be completed within thirty (30) days from the date of the service of the formal charge, unless the period is extended by the Commission in meritorious cases.

The fact that the pre-hearing conference was set only on May 24, 1999, or 8 days before the completion of the 90-day suspension on June 2, 1999, is evidently a delay in the proceedings attributable only to petitioner, whose mandate is to complete the formal investigation of the case within 30 days from the service of the formal charge to the respondent on March 5, 1999. The blame for the slow disposition of the proceedings, therefore, cannot be placed on respondent it appearing that the delay was caused by petitioner's office.

Petitioner, however, capitalizes on respondent's alleged dilatory tactics in raising procedural matters and questioning the validity of the complaint filed against her. Said issues were allegedly intended to delay, and indeed successfully delayed the proceedings when the Committee Chairman ordered the resetting of the hearing to July 28-29, 1999 and directed the parties to submit their respective memoranda.

The contention is without merit. Suffice it to state that the points brought up by respondent's counsel during the hearing were perfectly within his right to raise. Under Section 3, Chapter V, of the 1999 DECS Rules of Procedure, the following should be attached to the Formal Charge to be served on the respondent, to wit – "[t]he investigation report, copies of the complaint, sworn statements, and other documents submitted..." The purpose thereof is to fully inform the respondent of the nature of the charge or charges against him/her.

In the case at bar, the complaints filed by Mrs. Teresita O. Alborido and Mr. Adonis S. Dayondon, if there are any, as well as other documents relied upon by petitioner in filing a *motu proprio* complaint, should have been

furnished to respondent, so that the latter could adequately prepare for her answer, which if found satisfactory, may cause the dismissal of the administrative case without going through a formal investigation.[12] The fact that the complaint at bar was a motu proprio complaint and signed by petitioner himself does not make respondent less entitled to the documents required to be attached to the formal charge.

It is beyond cavil, therefore, that no delay due to the fault, negligence, or any cause contemplated by Section 3, Chapter VIII of the DECS Order No. 33, s. 1999, or even analogous thereto could be attributed to respondent. Examples of such fault or cause are the respondent's absence at scheduled hearings; or respondent's requests for postponement/transfer venue,[13] which are not present in the case at bar.

As to the entitlement of respondent to back salaries, we agree with the Court of Appeals that respondent should be paid back the salaries for the period during which she was illegally suspended beyond the maximum 90-day preventive suspension pending investigation.

In *Gloria v. Court of Appeals, et al.*, [14] it was held that an employee who is placed under preventive suspension pending investigation is not entitled to compensation because such suspension is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. However, withholding of compensation should be strictly construed to be limited only to the 90-day period of preventive suspension pending investigation, as in fact, automatic reinstatement is mandated after the lapse of said 90-day period, even if the administrative proceedings is not brought to completion. Unless the delay in the disposition of the administrative case is due to the fault, negligence, or petition of the suspended employee, the 90-day period cannot be extended. Beyond said period, the suspension is illegal.[15] Thus, where the investigation is not completed and the decision is not rendered within 90 days due to causes not attributable to the fault, negligence, or petition of the suspended employee, as in the present case, said employee should be awarded back salaries for the period during which he or she is rightfully entitled to be reinstated and compensated, but nevertheless was not so afforded such rights because of the unjust extension of the preventive suspension pending investigation.

The Court of Appeals awarded back salaries and other emoluments to respondent "effective June 3, 1999 until the expiration of her preventive suspension, as extended [or until August 6, 1999]." In her petition before the Court of Appeals, respondent manifested that she is set to retire on July 27, 1999.[16] In view whereof, the award of back salaries and other emoluments as ordered by the Court of Appeals should be computed from June 3, 1999, the day after the expiration of her preventive suspension, up to said date of retirement, without prejudice to the outcome of the administrative case.

WHEREFORE, in view of all the foregoing, the February 15, 2000 decision of the Court of Appeals in CA-G.R. SP No. 53318 is AFFIRMED subject to the modification that respondent is entitled to her back salaries and other emoluments due her as Division Superintendent of Schools for Lanao del Norte effective June 3, 1999 until July 27, 1999, the date of her retirement.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Dated February 5, 1999, Annex "C", Rollo, p. 38.

[2] Ibid.

[3] Dated February 6, 1999, CA Rollo, p. 19.

[4] Rollo, p. 91.

[5] Rollo, p. 92.

- [6] CA Rollo, p. 33; TSN of the May 24, 1999 hearing, Rollo, pp. 45-50.
- [7] Rollo, p. 52.
- [8] Rollo, p. 34.
- [9] Promulgated pursuant to Section 7, Chapter II, Book IV of the Administrative Code of 1987; Effective May 16, 1999.
- [10] *Orbos v. Bungubung*, 191 SCRA 563, 572 1990.
- [11] Further amended by CSC Resolution No. 99-1936, effective September 27, 1999.
- [12] DECS Rules of Procedure, Chapter VI, Section 4. Evaluation of the Answer. – If the answer is found satisfactory, the case shall be dismissed. Otherwise, a Formal Investigation shall be held if expressly requested by the respondent in his or her answer. x x x.
- [13] *Panti v. Alberto*, 106 Phil. 181, 185-186 1959; *Yasay, Jr. v. Disierto, et al.*, 300 SCRA 494, 513 1998, citing *Layug v. Quisumbing*, 182 SCRA 46 1990.
- [14] 306 SCRA 287 1999.
- [15] *Gloria v. Court of Appeals*, *supra*.
- [16] CA Rollo, p. 2.

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