

CRISTINA JENNY CARIÑO, PETITIONER, VS. EXECUTIVE DIRECTOR DAVID DAOAS (OFFICE OF THE NORTHERN CULTURAL COMMUNITIES), RESPONDENT.

G.R. No. 144493. April 09, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The petition for review on certiorari before this Court assails the decision, promulgated on 15 September 1999, and the resolution, promulgated on 27 June 2000, both by the Court of Appeals in CA-G.R. SP No. 49802.

Culled from the questioned decision of the appellate court, the facts are as follows:

On 16 August 1995, Cristina Jenny Cariño was appointed Accountant III in the Office of the Northern Cultural Communities (ONCC), now known as the National Commission for Indigenous People.

On 05 November 1996, Cariño was reassigned by Atty. David Daoas, ONCC Executive Director, to the position of Technical Assistant of the Socio-Economic Division of the ONCC. Cariño alleged that her reassignment was an offshoot of her refusal to sign[1] a Disbursement Voucher for the travel expenses to Indonesia of ONCC Regional Director Rosalina Bistoyong. She further alleged that the position was non-existent.

Thereafter, Cariño filed an administrative complaint for Grave Misconduct, Oppression and Conduct Prejudicial to the Best Interest of the Service against Bistoyong. The case was docketed Administrative Case No. 96-049. Bistoyong allegedly asked Cariño a number of times to withdraw the case in exchange for reinstatement to her former position. Cariño refused whereupon Bistoyong threatened to reassign her to the ONCC Region II in Cagayan or in Manila.

On 14 March 1997, Cariño received a faxed memorandum from Bistoyong directing her to report to the ONCC Region II office, effective 17 March 1997, in view of the reassignment of one Milagros Bonnit to the central office. On 17 March 1997, petitioner inquired with the Regional Director of the Civil Service Commission (CSC) regarding the propriety and legality of her reassignment. On 18 March 1997, the CSC Regional Director rendered a legal opinion that the reassignment was not in order. Atty. Daoas and Bistoyong appealed to the Civil Service Commission (hereinafter referred to as the “Commission” to distinguish it from the CSC Regional Office).

Meanwhile, Cariño requested for a deferment of her reassignment to Region II. At the same time, she inquired on the possibility of her going on leave. Her request to go on leave was denied.

On 14 April 1997, Atty. Daoas issued a memorandum to petitioner, reprimanding her for her failure to report at the Region II office, and stating that she was considered Absent Without Leave (AWOL) since 17 March 1997. Still, Cariño continued to report for work in Region I everyday despite the fact that she was not given any assignment. On 29 April 1997, Bistoyong issued a memorandum ordering Cariño to refrain from reporting for work in Region I and to comply with her reassignment in Region II. Henceforth, petitioner stopped reporting for work.

Meanwhile, Atty. Daoas issued a Notice/Order of Separation, dated 25 April 1997, and received by Cariño on 13 May 1997 informing her that she was dropped from the rolls because of her absence without leave for more than thirty (30) days.

On 11 September 1997, the Commission issued Resolution No. 97-3754 dismissing the appeal of Atty. Daoas and Bistoyong and ordering them to return Cariño to Region I. Cariño reported back to work only to be informed, through a memorandum, that the CSC resolution was rendered moot and academic by her having been dropped from the rolls.

On 11 March 1998, the CSC issued Resolution No. 98-0488 dismissing Cariño's appeal and affirming her dropping from the rolls.

Her motion for reconsideration having been denied, Cariño went to the Court of Appeals for relief, via a petition for review.

In its decision, promulgated on 15 September 1999, the Court of Appeals denied due course to and dismissed Cariño's petition. The appellate court denied for lack of merit Cariño's motion for reconsideration in its 27 June 2000 resolution.

Hence, the present recourse.

Following are the issues raised before this Court:

WHETHER OR NOT THE TERMINATION OF THE PETITIONER IS VALID.

WHETHER OR NOT A REASSIGNMENT ORDER THAT IS NULL AND VOID, BEING VIOLATIVE OF THE CONSTITUTIONAL RIGHT TO THE SECURITY OF TENURE OF THE PETITIONER, IMPOSES UPON HER THE OBLIGATION TO COMPLY WITH IT BEFORE IT IS DECLARED ILLEGAL.

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN RULING THAT THE NOTICE/ORDER OF SEPARATION ALTHOUGH SENT FIVE (5) DAYS BEFORE THE EFFECTIVITY OF THE PETITIONER'S DISMISSAL BUT RECEIVED BY THE PETITIONER EIGHTEEN (18) DAYS AFTER ITS SUBSTANTIAL COMPLIANCE OF CSC MEMORANDUM CIRCULAR NO. 12, SERIES OF 1994.[2]

There is merit to the petition.

As correctly stated by the Court of Appeals, the validity of the reassignment of petitioner was already settled by the pronouncement of the Civil Service Commission that such reassignment was not valid and that she could not be transferred to another region without her consent.[3] It is true that the transfer or detail of a public officer or employee is a prerogative of the appointing authority[4] and that it can be done as the exigencies of the public service may require.[5] As such, this Court in a number of cases allowed the reassignment of personnel but in such instances, they were not appointed to a specific station or particular unit or agency.[6] The rule proscribes transfers without consent of officers appointed - not merely assigned - to a particular station,[7] such as in the case of herein petitioner who was appointed as Accountant III in Region I. Hence, she could not be reassigned to another station or region without her consent. Otherwise, the unconsented transfer would amount to a removal.[8]

The question that remains is whether or not petitioner should have, in the meanwhile, complied with the reassignment order, and whether she could be considered AWOL for her refusal to report to her new assignment during the pendency of respondents' appeal.

In this case, petitioner, instead of complying with the reassignment order, continued to report to her workstation in Region I. For her failure to report to Region II, she was considered AWOL and was dropped from the rolls. The

dropping of petitioner from the rolls was sustained by the Court of Appeals. The appellate court cited Resolution No. 98-0488 of the Civil Service Commission which mandates that “a reassigned employee who does not agree with the order must nevertheless comply until its implementation is restrained or it is declared to be not in the interest of the service or have been issued with grave abuse of discretion.” According to the appellate court, petitioner should have asked the Commission to enjoin the effectivity of her reassignment order, and for her failure to do so, she had only herself to blame.

We do not agree. It was not petitioner who appealed to the Commission as there was no need for her to do so. The situation prevailing in the case at bar was that the CSC Regional Officer issued a legal opinion that petitioner’s reassignment was “not in order” and that her “present assignment at the ONCC Regional Office No. 1 must not be disturbed.” It was in fact due to this legal opinion that private respondents went to the Commission on appeal, which appeal was eventually denied. As we stated earlier, the Commission eventually declared the reassignment of petitioner as not valid, and respondent Daoas was directed to return petitioner to Region I.

The CSC Regional Office must be accorded the presumption of regularity in the performance of its duties. Hence, when it rendered a legal opinion as regards the reassignment of petitioner, it must be considered in order and should be respected pending appeal by private respondents. Petitioner is thus justified in not heeding her reassignment order because her basis was not, as stated by the appellate court, her “firm belief” that her transfer was illegal, but the legal opinion of a regional office of the Civil Service Commission. Petitioner could not therefore be considered AWOL because she was in fact reporting for work in Region I until 29 April 1997 when Bistoyong issued a memorandum ordering her to refrain from reporting for work therein.

Considering the foregoing, the petition is hereby given DUE COURSE. Respondent is hereby directed to effect the reinstatement of petitioner to her former position or, if it is no longer feasible, to another position of equivalent rank and compensation. Respondent is likewise ordered to pay petitioner her back salaries counted from the time she received the 29 April 1997 memorandum of Ms. Bistoyong ordering her to refrain from reporting for work in Region I.

SO ORDERED.

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

[1] On 17 October 1996.

[2] Rollo, at 22.

[3] CSC Resolution, dated 11 September 1997; Rollo, p. 51.

[4] See *People vs. Reyes*, 247 SCRA 328 (1995).

[5] See *Regalado, Jr. vs. Court of Appeals*, 325 SCRA 516 (2000); See also CSC Resolution No. 96-3114, dated 02 May 1996.

[6] See *Miclat vs. Ganaden*, *id.*; *Jaro vs. Valencia*, 8 SCRA 729 (1963); *Fernando vs. Sto. Tomas*, 234 SCRA 546 (1994).

[7] See *Miclat vs. Ganaden*, *et al.*, 108 Phil. 429 (1960); *Sta. Maria vs. Lopez*, 31 SCRA 637 (1970); *Teotico vs. Agda, Sr.*, 197 SCRA 675 (1991).

[8] See *Divinagracia, Jr. vs. Sto. Tomas*, 244 SCRA 595 (1995).

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