

DIOSCORO F. BACSIN, PETITIONER, VS. EDUARDO O. WAHIMAN, RESPONDENT.

G.R. No. 146053. April 30, 2008

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In this Petition for Review on Certiorari, petitioner Dioscoro F. Bacsin questions the Decision[1] dated August 23, 2000 of the First Division of the Court of Appeals (CA) in CA-G.R. SP No. 51900, which affirmed Resolution No. 98-0521 dated March 11, 1998 and Resolution No. 99-0273 dated January 28, 1999, both issued by the Civil Service Commission (CSC), dismissing petitioner from the service for Grave Misconduct.

Facts of the Case

Petitioner is a public school teacher of Pandan Elementary School, Pandan, Mambajao, Camiguin Province. Respondent Eduardo O. Wahiman is the father of AAA, an elementary school student of the petitioner.

AAA claimed that on August 16, 1995, petitioner asked her to be at his office to do an errand.[2] Once inside, she saw him get a folder from one of the cartons on the floor near his table, and place it on his table. He then asked her to come closer, and when she did, held her hand, then touched and fondled her breast. She stated that he fondled her breast five times, and that she felt afraid.[3] A classmate of hers, one Vincent B. Sorrabas, claiming to have witnessed the incident, testified that the fondling incident did happen just as AAA related it.[4]

Petitioner was charged with Misconduct in a Formal Charge dated February 12, 1996 by Regional Director Vivencio N. Muego, Jr. of the CSC.[5]

In his defense, petitioner claimed that the touching incident happened by accident, just as he was handing AAA a lesson book.[6] He further stated that the incident happened in about two or three seconds, and that the girl left his office without any complaint.[7]

Resolution of the CSC

In Resolution No. 98-0521 dated March 11, 1998, the CSC found petitioner guilty of Grave Misconduct (Acts of Sexual Harassment), and dismissed him from the service.[8] Specifically, the CSC found the petitioner to have committed an act constituting sexual harassment, as defined in Sec. 3 of Republic Act No. (RA) 7877, the Anti-Sexual Harassment Act of 1995.

Petitioner filed a motion for reconsideration, but the same was denied in Resolution No. 99-0273 dated January 28, 1999.

Decision of the Court of Appeals

Petitioner then brought the matter to the CA under Rule 43 of the 1997 Rules of Civil Procedure, the recourse docketed as CA-G.R. SP No. 51900.

Petitioner raised the following issues before the CA:

- Whether or not there were efforts by [AAA], her parents and the Honorable Civil Service Commission to magnify the accidental touching incident on August 16, 1995;

- Whether or not the guilt of the petitioner was supported by the evidence on record; and
- Whether or not there was irregularity in the imposition of the penalty of removal.[9]

In resolving the case, the CA determined that the issue revolved around petitioner's right to due process, and based on its finding that petitioner had the opportunity to be heard, found that there was no violation of that right. The CA ruled that, even if petitioner was formally charged with "disgraceful and immoral conduct and misconduct," the CSC found that the allegations and evidence sufficiently proved petitioner's guilt of grave misconduct, punishable by dismissal from the service.

The Issues Before Us

The petitioner now raises the following issues in the present petition:

- Whether or not the petitioner could be guilty of acts of sexual harassment, grave misconduct, which was different from or an offense not alleged in the formal charge filed against him at the inception of the administrative case.
- Assuming petitioner was guilty of disgraceful and immoral conduct and misconduct as charged by complainant, whether or not the penalty of dismissal from the service imposed by the Civil Service Commission and affirmed by the Court of Appeals is in accord with Rule XIV, Section (23) of the Omnibus Civil Service Rules and applicable rulings.
- Whether or not the charge of Misconduct, a lesser offense, includes the offense of Grave Misconduct; a greater offense.

The petition is without merit.

Petitioner argues that the CSC cannot validly adjudge him guilty of an offense, such as "Grave Misconduct (Acts of Sexual Harassment)," different from that specified in the formal charge which was "Misconduct." He further argues that the offense of "Misconduct" does not include the graver offense of "Grave Misconduct."

This argument is unavailing.

As *Dadubo v. Civil Service Commission* teaches:

The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.[10]

It is clear that petitioner was sufficiently informed of the basis of the charge against him, which was his act of improperly touching one of his students. Thus informed, he defended himself from such charge. The failure to designate the offense specifically and with precision is of no moment in this administrative case.

The formal charge, while not specifically mentioning RA 7877, The Anti-Sexual Harassment Act of 1995, imputes on the petitioner acts covered and penalized by said law. Contrary to the argument of petitioner, the demand of a sexual favor need not be explicit or stated. In *Domingo v. Rayala*,^[11] it was held, "It is true that this provision calls for a 'demand, request or requirement of a sexual favor.' But it is not necessary that the demand, request, or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender." The CSC found, as did the CA, that even without an explicit demand from petitioner his act of massaging the breast of AAA was sufficient to constitute sexual harassment. Moreover, under Section 3 (b) (4) of RA 7877, sexual harassment in an education or training environment is committed "(w)hen the sexual advances result in an intimidating, hostile or offensive environment

for the student, trainee or apprentice." AAA even testified that she felt fear at the time petitioner touched her.[12] It cannot then be said that the CSC lacked basis for its ruling, when it had both the facts and the law. The CSC found the evidence presented by the complainant sufficient to support a finding of grave misconduct. It is basic that factual findings of administrative agencies, when supported by substantial evidence, are binding upon the Court.

Leaving aside the discrepancy of the designation of the offense in the formal charge, it must be discussed whether or not petitioner is indeed guilty, as found by the CA and CSC, of "Grave Misconduct," as distinguished from "Simple Misconduct." From the findings of fact of the CSC, it is clear that there is misconduct on the part of petitioner. The term "misconduct" denotes intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.[13]

We agree with the rulings of the CSC and the CA.

In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.[14] The act of petitioner of fondling one of his students is against a law, RA 7877, and is doubtless inexcusable. The particular act of petitioner cannot in any way be construed as a case of simple misconduct. Sexually molesting a child is, by any norm, a revolting act that it cannot but be categorized as a grave offense. Parents entrust the care and molding of their children to teachers, and expect them to be their guardians while in school. Petitioner has violated that trust. The charge of grave misconduct proven against petitioner demonstrates his unfitness to remain as a teacher and continue to discharge the functions of his office.

Petitioner's second argument need not be discussed further, as he was rightly found guilty of grave misconduct. Under Rule IV, Section 52 of the CSC Uniform Rules on Administrative Cases, "Grave Misconduct" carries with it the penalty of dismissal for the first offense. Thus, the penalty imposed on petitioner is in accordance with the Rules.

Petitioner was not denied due process of law, contrary to his claims. 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 or an opportunity to seek for a reconsideration of the action or ruling complained of.[15] These elements are present in this case, where petitioner was properly informed of the charge and had a chance to refute it, but failed.

A teacher who perverts his position by sexually harassing a student should not be allowed, under any circumstance, to practice this noble profession. So it must be here.

WHEREFORE, in view of the foregoing, this petition is hereby DISMISSED, and the decision of the CA in CA-G.R. SP No. 51900 is hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Presiding Justice Salome A. Montoya (retired) and Associate Justice Romeo J. Callejo, Sr. (now retired member of the Court).

[2] Rollo, p. 86.

[3] Id. at 89-90.

[4] Id. at 87.

[5] Id. at 46.

[6] Id. at 70.

[7] Id. at 87.

[8] Id. at 92.

[9] Id. at 29-30.

[10] G.R. No. 106498, June 28, 1993, 223 SCRA 747, 754.

[11] G.R. No. 155831, February 18, 2008.

[12] Rollo, p. 90.

[13] Civil Service Commission v. Manzano, G.R. No. 160195, October 30, 2006, 506 SCRA 113, 127.

[14] Baylon v. Fact-finding Intelligence Bureau, G.R. No. 150870, December 11, 2002, 394 SCRA 21, 34-35.

[15] Zacarias v. National Police Commission, G.R. No. 119847, October 24, 2003, 414 SCRA 387, 393.

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