

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND JUAN BAUTISTA FRASCO, RESPONDENTS.

G.R. No. 15506. April 29, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari from the decision of the Court of Industrial Relations dated November 12, 1958, penned by Judge Arsenio J. Martinez, and the resolution en banc of said Court, dated March 11, 1959, with Judge Jose S. Bautista dissenting, denying herein petitioner's motion for reconsideration.

The present case is merely an incident of CIR Case No. 896-V, entitled GSIS Employees Association, petitioner, vs. Government Service Insurance System, respondent. Juan Bautista Frasco, one of the respondents in this case, was employed as clerk by petitioner in March, 1948. Sometime in 1952 an administrative charge for insubordination, violation of office regulations and discourtesy was filed against him by the Registrar of the Policy Division. After due investigation the Board of Trustees of the GSIS found him guilty and required him to seek transfer to another office, otherwise he would be considered resigned from the service as of July 31, 1952. His motion for reconsideration having been denied by the Board, he appealed to the Office of the President, but the latter referred the case to the Office of the Economic Coordinator. After a thorough study of the case the latter found no reason to disturb the decision of the Board, but upon respondent's petition the case was again set for review by said office.

While the case against Frasco was thus pending review, the GSIS Employees Association presented to petitioner a set of demands, one of which was for the immediate reinvestigation by the management of Frasco's case and his reinstatement as of July 1, 1952. Because petitioner refused to consider the Union demands, the employees declared a strike. The labor dispute was immediately certified by the Department of Labor to the Court of Industrial Relations where it was docketed as Case No. 896-V.

During the preliminary conference called by the CIR the parties agreed that the GSIS Employees Association shall call off the strike and that petitioner shall admit the strikers back to work. As a result of this conference the CIR issued an order dated June 17, 1953, which provided, inter alia, "that no dismissal or suspension should be made by management for or without cause without the previous consent of the court". Thereafter hearings on the merits were held, particularly in relation to the demand for the reinvestigation of Frasco's case and his reinstatement, but before the CIR could decide the case, petitioner filed with this Court a proceeding questioning the jurisdiction of the CIR over the demands made by the association (G. R. No. L-7175).

While the issue of jurisdiction was pending in this Court, the Office of the Economic Coordinator completed its review of, and decided Frasco's appeal. Its decision, while concurring with the finding of guilt made by the Board of Trustees of the GSIS, held that the offenses committed did not warrant the penalty imposed on him and recommended instead that Frasco be reinstated to his former position, and that the two months (August to

September, 1952) of his suspension, without pay, be considered as sufficient penalty. Petitioner, following this recommendation, appointed Frasco to his former position and paid him his back salaries. As the answer filed by the CIR in this case states (page 4), the Union demand concerning the reinvestigation of the case against Frasco and his reinstatement became "academic and unnecessary" in so far as the case pending before it was concerned.

About three months after his reinstatement Frasco received a salary increase, and several months later he was promoted to Chief of Sub-section with compensation at the rate of P1,920.00 per annum, effective as of February 15, 1954. Frasco received his written appointment on March 18, 1954 but because he thought that the promotion was not the one promised him by his superiors, he felt insulted and wrote at the foot of the document the following note:

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I received this appointment today. Am returning it also today. I Was made to believe I have to start at P2,280 in an item that carried a compensation of P2,400? What is this insult about? Does the GSIS Council of Personnel Administration believe that I am less capable than its Chairman?"

Four days after the incident mentioned above a meeting of the Council of Personnel Administration was held to consider the note written by Frasco on the face of his appointment, the result of the meeting being a recommendation for the revocation or recall of his appointment. On March 29 of the same year the matter was also taken up at a conference of Department Managers called by the General Manager, Gregorio Licaros, in the course of which Frasco was heard and gave his reasons for returning his appointment and for writing the note already referred to. After this conference the General Manager arrived at the conclusion that there was sufficient cause for taking disciplinary action against Frasco, so the latter was verbally suspended effective that same day and required to submit a written explanation. After the filing of his written explanation the case was referred to the Board of Trustees for decision. After a full consideration of the matter, the Board passed Resolution No. 167 considering Frasco dismissed effective as of the day and hour he was suspended by the General Manager. From this resolution Frasco appealed to the Office of the President. After a review of the case the latter office, on March 14, 1956, concurred with the findings of the Board of Trustees but modified the penalty of dismissal by providing that it be considered as resignation, without prejudice to reinstatement.

A motion for the reconsideration of the decision of the Office of the President was filed by Frasco on March 23, 1956 upon the principal ground that said decision contravened the order of the CIR of June 17, 1953 in Case No. 896-V. Although this motion for reconsideration was and still is pending resolution in the Office of the President, on February 1, 1957 Frasco filed in CIR Case No. 896-V a petition for his reinstatement and to have Gregorio Licaros, former General Manager of the GSIS, declared in contempt. This petition was opposed by the GSIS, but the CIR required the parties to present their respective evidence to determine whether or not Frasco's second dismissal was for cause. After the hearing the Court rendered the decision and resolution subject of this appeal by certiorari.

Frasco, as an employee of the GSIS, was a member of the Civil Service and was covered by Civil Service rules and regulations. From the order of the General Manager of the GSIS dismissing him—second dismissal—from the service and the decision of the Board of Trustees, approving said dismissal, he could have appealed to the Civil Service Board of Appeals (par 7, Civil Service Rule XII), but instead he appealed directly to the Office of the President. Inasmuch as, after all, the President of the Philippines has authority to affirm, reverse or modify the decisions of the Civil Service Board of Appeals (Commonwealth Act No. 598; Civil Service Rule XII [13], this direct appeal to his Office may be considered as proper, firstly, because the GSIS did not question its propriety, and secondly, because even *motu proprio* the President of the Philippines may revise the decisions of said Board of Appeals (Section 97 [c], Administrative Code). In *Negado vs. Ruiz Castro*, 104 Phil., 103, we held:

"In fact, even without appeals, the President could motu proprio review or revise the decision of the Civil Service Board of Appeals by virtue of his constitutional control of the Executive Department. Furthermore, as department head of the said Appeals Board (Sec. 74 Administrative Code) the President has statutory authority to revise its adjudication (Section 97 [C] Administrative Code)"

Since Frasco's appeal to the Office of the President had not yet been resolved—in fact, it is still pending resolution—when he filed his petition for reinstatement and for contempt with the CIR, the filing of said petition must be considered premature and should have been dismissed. As stated by Judge Bautista in his dissenting opinion:

"It is therefore, clear that, should the Office of the President deny Frasco's petition for reconsideration, there would be two conflicting decisions—the decision of the President separating Frasco from the service, and the decision of the trial court ordering Frasco's reinstatement.

"Considering that Frasco, for having appealed to the Office of the President, submitted himself to that authority and, consequently, he is estopped to question the validity of the Presidential action in case of a (Unfavorable decision; and considering further that, although this Court has jurisdiction over the subject matter, yet the decision of the President in the administrative case of Frasco is final and conclusive in the absence of showing that the Presidential action was a capricious exercise of Judgment beyond the limit of the executive authority. I vote, that, in view of the pending appeal before the Office of the President, and to prevent such aforesaid anomalous situation, the petition for reinstatement of Frasco be denied."

Both respondents in this case claim, however, that Frasco's petition was merely to implement the order of June 17, 1953 providing that thereafter no dismissal or suspension should be made by the GSIS without the previous approval of the CIR. Assuming, arguer.do, that said order covered dismissals or suspensions due to misconduct committed after the aforesaid date and not connected in any manner with the Union demands before the CIR—a matter which seems to be doubtful—it is our opinion that the respondent Court no longer had authority to implement the aforesaid order in relation to the Union demand for the reinvestigation of Frasco's case and his immediate reinstatement, and even if it still had such authority, Frasco was already in estoppel to seek the enforcement or implementation of the order aforesaid.

As admitted by the CIR in the answer filed by it in this case (page 4 thereof), with the reinstatement of Frasco by the GSIS pursuant to the recommendation of the Office of the Economic Coordinator, the Union demand aforesaid became "academic and unnecessary in so far as the case at bar is concerned". In other words, after said reinstatement, there was no longer any issue before the CIR as far as Frasco was concerned. Such being the case, it follows that the CIR had no authority to take cognizance of the latter's petition for reinstatement.

Upon the other hand, when Frasco was investigated, suspended and subsequently dismissed for the second time, he failed to invoke in his favor the order of June 17, 1953. Instead he appealed from the adverse decision of the Board of Trustees to the Office of the President, and it was only after the latter's adverse decision of March 14, 1956 that he invoked the aforesaid order. Having freely chosen to appeal to the Office of the President, Frasco cannot now be permitted to question the authority of said Office to review and decide his case. It is not the privilege of a party who, to accomplish his purpose, has affirmed and invoked the jurisdiction of a court or agency over a particular matter to afterwards deny such jurisdiction to escape penalty (*Littleton vs. Burgess*, 16 L.R.A. [N.S.] 49, 91 Pac. 832).

The fact that Frasco invoked the powers of the CIR and sought implementation or application of the order of June 17, 1953 only on February 1, 1957, that is, almost three years from the date of his second dismissal (March 29, 1954) strongly supports the view hereinbefore stated. It is, of course, claimed by both respondents that the reason for Frasco's failure to invoke the authority of the CIR immediately after his second dismissal was the fact that the

question concerning the jurisdiction of said Court over the Union demands subject matter of CIR Case No. 896-V was still pending in this Court, said case having been decided only on April 27, 1956. We find no merit in this contention. The pendency of said case alone or by itself did not deprive the CIR of its jurisdiction over the case nor of its authority to go ahead with the proceedings—particularly to enforce its order of June 17, 1953.

In view of the conclusions heretofore stated, we find it unnecessary to decide other questions raised in the petition for certiorari under consideration as well as all the issues raised in the assignment of errors submitted in the brief of respondent Frasco who did not interpose any appeal from the decision and resolution now before us.

Wherefore, the decision of the, CIR of November 12, 1958 penned by Judge Arsenio J, Martinez, and the resolution passed by a majorityi.of the judges of said court sitting en banc of March 11, 1959 denying petitioner's motion for reconsideration, are hereby set aside, without prejudice to respondent Frasco prosecuting his appeal from the decision of petitioner's Board of Trustees dismissing- him for a second time, still pending in the Office of the President.

Without special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.
Concepcion, J., concurs in the result.

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