

**MUNICIPALITY OF LA LIBERTAD, NEGROS ORIENTAL,
REPRESENTED BY THE MUNICIPAL MAYOR LAWRENCE D.
LIMKAICHONG, JR., PETITIONER, VS. JUDITH C. PENAFLOR,
RESPONDENT.**

G.R. NO. 155477. March 18, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Being assailed in the present Petition for Review on Certiorari is the May 13, 2002 Decision of the Court of Appeals (CA) affirming the Resolution of the Civil Service Commission (CSC) which granted the motion of Judith Penaflor (respondent) praying for the payment by the Municipality of La Libertad, Negros Oriental (petitioner) of backwages from the time of her termination from, up to her reinstatement to her former position as Rural Health Midwife.

Before November 13, 1995, respondent, Rural Health Midwife who had been in the employ of the office of petitioner for about twenty years,[1] filed an application for a 15-day leave of absence effective said date. At that time respondent had an accumulated unused leave credits of more than one year. The application for leave was recommended for approval by her superior.

On November 13, 1995, unaware if her application for leave had been approved, respondent began availing of it.

Subsequently, by Memorandum dated December 1, 1995, the then Municipal Mayor Napoleon N. Camero notified respondent that she had been terminated effective November 13, 1995.

Records of this Office show that you have not been reporting to duty as Rural Health Midwife of this municipality since November 13, 1995 until this date of writing without approved leave of absence.

In view thereof, you are hereby notified that effective November 13, 1995, you have been terminated from service.[2] (*Italics in the original; emphasis and underscoring supplied*)

Respondent appealed for a reconsideration of Mayor Camero's notice of termination but the same was denied.

Respondent thus appealed to the CSC which, by Resolution No. 980207[3] promulgated on February 3, 1998, set aside Mayor Camero's decision to "drop her from the rolls."

In setting aside Mayor Camero's order dropping respondent from the rolls, the CSC found that, contrary to the injunction of paragraph 2.1(b) of CSC Memorandum Circular No. 12, s. 1994 reading:

2.1 Absence without approved leave

a. x x x

b. If the number of unauthorized absences incurred is less than thirty (30) calendar days, written Return-to-Work-Order shall be served on the official or employee at his last known address on record. Failure

on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.[4] (*Italics supplied by the CSC; underscoring supplied*),

no prior Return-to-Work Order was given respondent who had not reported for work for less than 30 days or from November 13, 1995 to December 1, 1995, which prior order is a pre-condition to the validity of an employee's separation from the service under that mode.

Accordingly, by Resolution No. 980207 dated February 3, 1998,[5] the CSC ordered respondent's reinstatement or restoration to her position. Then Mayor Camero filed a motion for reconsideration of the CSC Resolution which was, however, denied.

On appeal by then Mayor Camero and herein petitioner, the CA, by Decision of February 23, 2000,[6] affirmed the CSC Resolution.[7]

The CA decision became final and executory.

On May 15, 2000, respondent was reinstated to her former position as Rural Health Midwife by Mayor Lawrence D. Limkaichong, Jr. who had in the meantime been elected in the recently concluded local elections.

As despite repeated pleas for the payment of her back salaries due her at the time she was dismissed up to the time of her reinstatement, the same remained unacted, respondent petitioned the CSC to direct petitioner to pay her back salaries.

By Resolution of 002737 dated December 8, 2000,[8] the CSC directed petitioner to pay respondent back salaries and other monetary benefits from the time she was illegally dismissed up to her actual reinstatement. Petitioner filed a Motion for Reconsideration of this Resolution but it was denied by the CSC by Resolution No. 01080[9] dated April 20, 2001. Petitioner thereupon elevated these CSC Resolutions to the CA.

In its Petition[10] before the CA, petitioner proffered that the CSC erred in ordering it to pay the back salaries and other monetary benefits of respondent. It argued that former Mayor Camero alone should be held liable since he acted beyond the scope of his legal duty and authority, he having acted arbitrarily and without any legal justification in terminating the services of respondent, for he dropped her from the rolls out of personal spite.

In support of its thesis, petitioner cited *Salcedo v. Rama*, 81 SCRA 408 (1978) which held:

The municipal mayor alone may be held liable for back salaries of, or damages to a dismissed municipal employees, to the exclusion of the municipality, if the mayor not only arbitrarily dismissed the employee but also refused to reinstate him in defiance of the order of the Civil Service Commission, or if the mayor dismissed the employee without justifiable cause and without any administrative investigation. (*Underscoring supplied*)

Petitioner also cited *Correa v. CFI of Bulacan*, 92 SCRA 312 (1979) which held:

A public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his duty, is not protected by his office and is personally liable therefor like any private individual (*Palma vs. Graciano*, 99 Phil. 72). This principle of personal liability has been applied to cases where a public officer removes another officer or discharges an employee wrongfully, the reported cases saying that by reason of non-compliance with the requirements of law in respect to removal from office, the officials were acting outside their official authority. (*Emphasis supplied by petitioner; underscoring supplied*)

Petitioner further proffered that to hold the municipality liable for respondent's back salaries and other benefits would subject the poor municipality that it is to economic hardship and grave injustice to its citizenry.

By the assailed Decision of May 13, 2002,[11] the CA, while acknowledging that a public official may be liable

in his personal capacity for whatever damage may have been caused by his act if done with malice or in bad faith or beyond the scope of his authority or jurisdiction, held that absent any proof thereof as in the case at bar where petitioner merely proffered allegations, petitioner is liable to pay respondent's back salaries.

That the CSC reversed then Mayor Camero's decision to drop respondent from the rolls as well as ordered her reinstatement does not, the CA further held, prove that he acted arbitrarily or in bad faith.

In fine, since the CA found that petitioner failed to discharge the onus of proving by substantial evidence its allegation that then Mayor Camero acted in bad faith or with malice, it had no reason to disturb the CSC Resolution.

The Motion for Reconsideration of the CA decision having been denied, the present Petition for Review was filed, petitioner insisting that it should be former Mayor Camero who should be liable to pay the backwages of respondent, it reiterating that he acted arbitrarily and without any legal justification, compounded by the fact that he refused to reinstate her.

Petitioner, positing that "there is no law allowing a mayor to violate the [CSC] law," his functions being defined by law and, therefore, his act of illegally dismissing respondent is beyond his power and authority, cites what to it are pertinent powers of the Municipal Mayor under Section 444 of the Local Government Code, to wit:

Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensations. - (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services and activities of the municipal government, and in this connection, shall:

x x x

(vi) Upon authorization by the Sangguniang Bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

x x x

(viii) Determine, according to law or ordinance, the time, manner and place of payment of salaries or wages of the officials and employees of the municipality

x x x

(x) Ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and this Code, and cause to be instituted administrative or judicial proceedings against any official or employee of the municipality who may have committed an offense in the performance of his official duties.[12] (Emphasis, underscoring and italics supplied by petitioner)

Petitioner goes on to proffer that the records of the case show that Mayor Camero acted "without the authority from the Sangguniang Bayan" in terminating respondent from the service.

Further, petitioner quotes, among other things, then Mayor Camero's following comment on respondent's appeal/or a reconsideration of his notice terminating her services:

Upon through evaluation of the case of Mrs. Peñaflor, the undersigned regrets to deny her appeal for reinstatement for the following reasons:

1. The Civil Service Law provides that “An application for vacation leave for one full day or more should be filed five (5) days in advance, whenever possible, of the effective date of leave. Since vacation leave is contingent upon the needs of the service, its grant is discretionary on the part of the agency head or authority concerned. Thus, mere filing of such leave application does not entitle an officer or employee to go on leave outright. Prior to taking the vacation leave, he should see to it that his application for leave was approved by the proper authorities” and Mrs. Peñaflor grossly violated the above provisions not taking cognizance the importance of her duties and responsibilities to the public. Nevertheless, Mrs. Peñaflor went to Manila for a three months training for employment abroad and not “due to an urgent family problem” as she claims.

2. Her attitude of frequent absenteeism from the office was not only experienced by the Local Government Unit of La Libertad but also in the Municipality of Mabinay where she was once assigned as affirmed by Dr. Felimon Flores, PHO of Negros Oriental, and Dr. Fernando E. Barrios, Chief of Hospitals.

3. The exigency of the service warrants, her position had been filled up considering the length of time that she was dropped from the payroll.[13] (Underscoring supplied)

as showing that the decision to drop respondent from the rolls was solely made by him, and that he did not follow the procedure prescribed under Section 78 of the Local Government Code reading:

Sec. 78. Civil Service Law, Rules, and Regulations, and other related issuances. All matters pertinent to human resources and development in local government units shall be governed by the civil service law and such rules and regulations and other issuances promulgated pursuant thereto, unless otherwise specified by this code.[14] (Emphasis, underscoring and italics supplied by petitioner),

hence, his act was ultra vires.

The petition fails.

In the absence of evidence to the contrary, the presumption that public officials discharged their official duties in good faith remains.[15]

In the petition at bar, indeed, petitioner failed to prove malice – the doing of a wrongful act intentionally without just cause or excuse, or a state of mind which prompts a conscious violation of the law to the prejudice of another.[16]

From the above-quoted comment of the former mayor on respondent’s appeal for reinstatement before the CSC, no malice is inferred; in fact, it negates malice.

As for petitioner’s argument that the former mayor acted without the authority of the Sangguniang Bayan, the same does not lie. Under R.A. No. 7160 (Local Government Code), a head of department or office in the municipal government shall be appointed by the mayor with the concurrence of the majority of all sangguniang bayan members.[17]

Generally the power to appoint includes the power to remove except in instances where it does not include the power to remove, e.g.

- The Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman who are appointed by the President may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.
- The Judges of lower court are subject to discipline by the Supreme Court en banc which can order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Since it is not claimed that respondent was a head of department or office in the office of petitioner, then following Sec. 444(5) of the Local Government Code, under which a mayor is empowered to “[a]ppoint all officials whose salaries and wages are wholly or mainly paid out of municipal funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint,” former Mayor Camero did not have to secure the concurrence of the Sangguniang Bayan to terminate respondent’s services.

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

- [1] Vide page 1 of CSC Resolution No. 980207, Rollo at 28.
- [2] Ibid.
- [3] Id. at 28-30.
- [4] Id. at 29-30.
- [5] Vide note 3.
- [6] Vide CSC December 8, 2000 Resolution No. 002737, Rollo at 48-50.
- [7] Id. at 51.
- [8] Id. at 31-33.
- [9] Rollo at 55-57.
- [10] CA Rollo at 3-16.
- [11] Id. at 50-54.
- [12] Rollo at 14.
- [13] Id. at 16-17.
- [14] Id. at 18.
- [15] *Blaquera v. Alcala*, 295 SCRA 366 (1998).
- [16] *Bouvier*.
- [17] Sec. 443, Local Government Code.

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