

**PABLO BORBON MEMORIAL INSTITUTE OF TECHNOLOGY AND
ERNESTO DE CHAVEZ, PETITIONERS, VS. CONCHITA ALBISTOR VDA.
DE BOOL, RESPONDENT.**

G.R. NO. 156057. August 25, 2005

Ponente: PUNO, J.

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PUNO, J.:

This certiorari petition under Rule 45 before us would negate the due process considerations invoked by the Court of Appeals in setting aside the resolution of the Civil Service Commission which upheld the dismissal of a medical officer of a state university.[1] Petitioners claim that the dismissal from the service of the late Dr. Epimaco Bool - even without prior notice and hearing - on the twin grounds of absence without official leave (AWOL) and receipt of two consecutive unsatisfactory performance ratings is simply valid and permissible.

The late Dr. Bool was the college physician of the state university Pablo Borbon Memorial Institute of Technology (PBMIT), now known as the Batangas State University, since 1981. From 1992 to 1994, during the tenure of College President Dr. Ernesto M. De Chavez, problems arose within the school. From February 22 to 24, 1993,[2] students, faculty members and employees held protest rallies near the main campus of the school in the premises of the provincial capitol of Batangas. They protested the alleged inaction of the school officials on their complaints and demanded the resignation of Dr. De Chavez for mismanaging the affairs of the school. On March 30, 1993, some faculty members even went to Channel 9 and expressed their complaints against Dr. De Chavez in the television program Action 9.[3]

On September 30, 1994, twelve faculty members including Dr. Bool filed a joint sworn complaint against Dr. De Chavez and other PBMIT officials before the Senate Blue Ribbon Committee. The complaint was referred on October 13, 1994 to the Presidential Commission Against Graft and Corruption (PCAGC). On November 28, 1994, a mass affidavit was executed and on November 29, 1994, a manifesto was signed by eleven faculty members of the PBMIT alleging several acts of harassment, oppression, threats and illegal dropping of instructors and employees from the rolls of PBMIT.

At around that time too, in a Memorandum dated October 19, 1994, and signed by Professor German L. Lopez, PBMIT Vice-President for Administration and Finance, Dr. Bool was given additional assignments and his schedule was changed. He was directed to report on Mondays and Thursdays to the main campus in Batangas City, Tuesdays and Fridays to the Alangilan campus in Alangilan, Batangas City, and Wednesdays to the Balayan campus in Western Batangas. Then in a subsequent Memorandum dated December 19, 1994, he was detailed to the Balayan Campus for the entire month of January 1995.

On January 2, 1995, Dr. Bool filed an application for leave of absence from January 3 to 14, 1995, to attend to his sister who supposedly suffered a fracture. But his application for leave of absence was not acted upon and later returned to him together with his daily time records, as he was advised to secure the signature of Professor Lopez. His daily time records which apparently reflected his presence at the main campus were not countersigned by his

immediate supervisor since he supposedly failed to comply with his reassignment to the Balayan campus. Likewise, he received two unsatisfactory performance ratings, first for the period January to June 1994, and second for the period July to December 1994, during the period when protest actions against the college president were being conducted.

On May 8, 1995, without any prior hearing, Dr. Bool received Office Order No. 5, Series of 1995, signed by the college president Dr. De Chavez, informing him that he had been dropped from the rolls of PBMIT on the ground that he had been absent from January to March 1995 and that he had been given two (2) consecutive unsatisfactory performance ratings. He appealed to the Civil Service Commission Regional Office No. IV, but his appeal was dismissed. He then appealed to the Civil Service Commission. However, before the Civil Service Commission could resolve his appeal, he died on April 22, 1997. Just the same, on June 9, 1998, in Resolution No. 981424, the Civil Service Commission affirmed the decision of the President of the PBMIT in dropping the late Dr. Bool from its rolls. The widow of the late Dr. Bool, Conchita Albistor Vda. de Bool, filed a motion for reconsideration but on May 28, 1999, the same was denied in Resolution No. 99116.

Aggrieved, the widow of Dr. Bool went to the Court of Appeals. On August 8, 2001, the appellate court set aside the resolutions of the Civil Service Commission and held that "the dismissal without a warning or prior notice is a wanton bad faith on the part of the respondents." [4] It ordered the PBMIT and its President Dr. Ernesto M. De Chavez "jointly and severally liable to pay the back salaries and allowances of the late Dr. Bool from May 8, 1995, the day when he was dropped from the PBMIT rolls until his death on April 22, 1997, and all other benefits to which Dr. Bool would have been entitled to had he not been illegally dropped from the PBMIT rolls." [5] Moral and exemplary damages in the amount of P100,000.00 and P50,000.00, respectively, were likewise awarded to the heirs of the late Dr. Bool "to obviate x x x their spiritual suffering brought by the culpable action of the respondents and by way of example or correction for the public good." [6] On November 12, 2002, the Court of Appeals denied the motion for reconsideration for lack of merit. Hence, the instant petition.

In the main, petitioners, through the Office of the Solicitor General, maintain that an employee may be dismissed without prior notice on the ground of AWOL as expressly provided under Section 63, Rule XVI, Omnibus Civil Service Rules and Regulations, which reads -

Sec. 63. Effect of absences without approved leave. - An official or an employee who is continuously absent without an approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 files of his separation from the service, not later than five (5) days from its effectivity

And since the late Dr. Bool was absent without official leave for more than thirty days, from January to March 1995, petitioners argue, he is automatically dropped from the rolls without need of prior notice and hearing.

Not quite. The records show that Dr. Bool filed an application for leave of absence from January 3 to 14, 1995, which was not acted upon by the school officials and later returned to him. He then filed a one-day sick leave on January 17, 1995. After which, as directed, he reported to the Balayan campus on January 23 and 30, 1995. Thereafter, as shown by the logbook of the security guards, he reported for work at the main campus during the months of February and March 1995, as his detail to the Balayan campus was only for the month of January 1995.

In *Hon. Petilla v. Court of Appeals* [7] this Court ordered the reinstatement of a government nurse on the ground, among others, that he could not have been considered on AWOL as he filed applications for sick and vacation leave [8] -

Petitioner failed to show clearly that respondent [nurse] openly defied the reassignment orders. A careful

review of the records discloses that respondent's absence from work from 1 June to 31 August 1999 was based on his applications for sick and vacation leave. The records also show that it was only on 9 September 1999 that the Provincial Health Office notified respondent of the disapproval of his leave applications. Therefore, it is safe to state that prior to 9 September 1999 respondent did not know that the Provincial Health Office had denied his leave applications. Since respondent was not aware of the denial of his leave applications, respondent cannot automatically be considered to be on absence without leave ("AWOL") for that period.

AWOL means that the employee is leaving or abandoning his post without justifiable reason and without notifying his employer. In this case, petitioner gravely failed to show that respondent had the least intention to go on AWOL. Otherwise, respondent would not even have bothered to file his applications for sick and vacation leave. Moreover, had respondent intended to go on AWOL, respondent would not even have protested his reassignment in the first place, and seek his reinstatement to his former workstation. Respondent's protest of his reassignments clearly contradicts petitioner's claim that respondent was on AWOL.

In fine, we held that the absence of the government nurse could not have been considered AWOL since his "absence was based on his leave applications, albeit denied, and not on his deliberate refusal to heed the assignment orders." [9]

In the instant case, Dr. Bool filed an application for an 11-day leave of absence, a one-day sick leave, worked for two days within that given month, and thereafter regularly reported back to work the following months. In fact, he was at work when all of a sudden he was told by the Chief Security that he was being banned from the school premises effective the following day. All these clearly show that he never abandoned his post nor was there any intention to do so. Hence, he simply could not have gone on AWOL.

Petitioners submit that it is not mandatory to approve applications for leave of absence as stated under Section 52 of the same rule "

Sec. 52. Approval of vacation leave. - Leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency.

But as found by the Court of Appeals in its assailed Decision, the factual findings of which were quoted in toto by petitioners, [10] "

x x x Dr. Bool filed his leave of absence for January 3 - 14, 1995, in order to attend to his sister who met an accident. It was only on January 17, 1995, when he filed a sick leave which according to the Commission was not supported by a medical certificate. It is again widely known that one day of sick leave does not require a medical certificate.

Dr. Bool filed a Leave of Absence for January 3 - 14, 1995. But this was not approved by Mr. Lopez, the PBMIT Vice-President for Administration and Finance. There is nowhere on the record which would show that the school has given any reason why they refused to grant Dr. Bool's leave. They did not even require him to report for an exigency reason either. This is not to discount the fact that for seven (7) days he was present at the main campus as appearing in the Logbook under the custody of a Security Guard of PBMIT. Accordingly, during the hearing, the CSC admitted the logbook as an official record of PBMIT. [11]

Suffice it to say that while Section 52 gives the head of the department or agency the discretion whether to approve or deny a request for vacation leave, the same Section 52 also allows an official or employee to go on leave, even if not contingent upon the needs of the service, provided the requested leave is by reason of illness of the official or employee or of any member of his immediate family. In the instant case, the late Dr. Bool, a physician, asserted that he had to attend to a sister who suffered a fracture in an accident. Petitioners did not give any reason why the requested leave should be refused. [12] Neither do we find any.

Furthermore, as correctly found by the Court of Appeals, "the re-assignment was only for the month of January. There is no basis therefore, for the PBMIT to refuse the DTR's for the months of February and March [during which] the late Dr. Bool reported to the main campus as evidenced by the logbook until only when he was barred from entering the campus by the Security Guard of the school upon orders of De Chavez." [13] Indeed, to declare the late Dr. Bool in AWOL would be the height of injustice.

Petitioners likewise argue that "[t]he law does not require that an employee be first heard before he can be dismissed for unsatisfactory performance" [14] as categorically expressed in Section 3(f), Rule IX, Omnibus Civil Service Rules and Regulations -

Sec. 3. x x x x

(f) The following adjectival ratings shall be adopted x x x

Unsatisfactory - An employee shall be given this rating when his performance is fifty-one to ninety-nine percent (51% - 99%) of the minimum requirements but could stand improvement. It is expected that in the next rating period, the employee, under close supervision, will either improve his performance for which he shall be given at least a satisfactory rating, or if not, he shall get another Unsatisfactory rating. Two (2) successive Unsatisfactory ratings shall be a ground for separation from the service.

And since Dr. Bool did not appeal his unsatisfactory ratings within the period allowed, he is deemed to have waived such right, petitioners submit.

Not so. There is nothing in the rules which states that two successive unsatisfactory ratings shall automatically result in the dismissal or termination of the said employee or official. The rules merely state that "[t]wo (2) successive Unsatisfactory ratings shall be a ground for separation from the service," which in fact does not negate, but actually requires compliance with due process requirements. Thus, respondent must be given prior notice and an opportunity to be heard why he should not be dismissed from the service on the ground of two successive unsatisfactory ratings.

Accordingly, paragraph 2.2. a. of Civil Service Commission MC No. 12, s. 1994, provides -

a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice x x x x Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation (emphases supplied).

In fine, a cursory reading of Section 3(f), Rule IX, Omnibus Civil Service Rules and Regulations, amplified by paragraph 2.2. a., Civil Service Commission MC No. 12, s. 1994, readily shows that obtention of two successive unsatisfactory ratings may be a ground for, but does not automatically result in, the dismissal of an employee or official, and that due process in any case should be observed by giving the said employee or official due notice and enable him to prepare an explanation. The rules are as clear as day.

Petitioners' allegation that since the late Dr. Bool did not appeal his unsatisfactory ratings within the period allowed, he is deemed to have waived such right, is likewise belied by the admitted facts. Petitioners through counsel quoted the factual findings of the Court of Appeals that the late Dr. Bool sought out Professor Lopez, PBMIT Vice-President for Administration and Finance, to inquire why he was given unsatisfactory ratings but was simply told to desist from pursuing his complaints against the college president before the PCAGC. Then, Dr. Rosario C. Chua, Executive Vice-President of the College, assured Dr. Bool that she will talk to the President about the matter. [15] In fine, the subsequent appeals filed by the late Dr. Bool, first to the Civil Service Commission Regional Office No. IV, Batangas City, and thereafter to the Civil Service Commission, simply

gainsay his supposed waiver of his right.

All told, the actuations of petitioners have all the earmarks of vengeance, harassment, oppression and grave abuse of authority. Thus, after the teachers together with some students, employees and the late Dr. Bool struck and lodged a complaint against the college president before the Senate Blue Ribbon Committee, Dr. Bool - after 14 years - was given additional assignments in other campuses and his schedule was changed. Thereafter, he was detailed to a distant campus for an entire month. His applications for leave were not acted upon, if not denied. After which, he was given two consecutive unsatisfactory ratings and later informed that he was already dropped from the rolls. And, when his termination from the service was finalized, he was simply told by the security guard upon orders of the school officials that he could no longer enter the school premises the following day. All these without any prior notice and hearing.

Petitioners' prior resort thus to the April 30, 1998, Resolution of the Office of the President in *Bumanlag v. De Chavez*, O.P. Case No. 98-E-823/PCAGC-ADM-94-0169, which affirmed the Decisions of the Civil Service Commission and the Civil Service Commission Regional Office No. IV dismissing the late Dr. Bool from the service, is premature if not misplaced. For, this Court has now ruled that the dismissal of the late Dr. Bool is clearly violative of the due process requirements and should be set aside.

So too, we affirm the findings of the Court of Appeals that[16] -

It can be gleaned from the attending circumstances that there was a malicious scheme and bad faith on the part of the respondents. The exigency of service was used to serve the respondents' intentional design to dismiss said Dr. Bool from the service.

Verily, this court believing that the late Dr. Bool with his stature in life barred from entering the premises of the school by the security guard without proper notice after having served the school for years before he was illegally dismissed had suffered mental anguish, besmirched reputation, deserves to be awarded moral and exemplary damages x x x x

x x x x Exemplary and moral damages are proper when the dismissal of an employee is attended by bad faith or fraud, or constitutes an act oppressive to labor, or is done in a manner contrary to morals, good customs, or public policy x x x x

Clearly in the case at bench, the dismissal without a warning or prior notice is a wanton bad faith on the part of the respondents x x x x

We stress again that the fundamental and essential right of due process cannot be dispensed with.[17] Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative proceedings but an indispensable ingredient of due process.[18] Thus, in *Marino v. Salud*, [19] we held that the right "to a full and fair hearing should not be compromised." We quoted our ruling in *Abalos v. Civil Service Commission* [20] -

The right to be heard is one of the brightest hallmarks of the free society. We should be proud that in this jurisdiction every person who may be involved in controversy is entitled to present his side, no less than his adversary, at a hearing duly called for that purpose. This right is available to citizen and alien alike, from the humblest to the most exalted, and covers with its protection the offer of arguments and evidence, from the profound to the absurd, in defense of one's life, liberty and property. That is a right we must all cherish.

Again, in *Gonzales v. Civil Service Commission*, [21] where the Civil Service Commission affirmed the dismissal without proper notice of an employee who has been with the Agricultural Training Institute for 36 long years, we said that "[t]he disputed ruling cuts too deeply on petitioner's right to continue his employment in the government and unduly dilutes the protection of due process. To be sure, the cavalier attitude of respondent Commission is

deplorable considering that on the line is the thirty-six (36) long years of faithful and dedicated service to the government of the petitioner. Nothing less than strict compliance with the demands of due process should have been demanded by respondent Commission from the officials of the ATI in light of the equities of the case." [22]

For indeed, in a setting of scarcities, it is bad enough to lose a job; it is worse, if it is taken away by government itself without due process of law. Our Constitution abhors such arbitrariness. [23]

IN VIEW WHEREOF, the questioned Decision of the Court of Appeals in CA-G.R. SP No. 53564 dated August 8, 2001, and its subsequent Resolution of November 12, 2002, is **AFFIRMED** in toto. The instant petition for review on certiorari is **DISMISSED** for lack of merit. Cost against petitioners.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico Nazario, JJ., concur.

[1] The Decision of the Court of Appeals, Eighth Division, in *Vda. de Bool v. Pablo*

Borbon Memorial Institute of Technology, CA-G.R. SP No. 53564, August 8, 2001, was penned by Associate Justice Eloy R. Bello, Jr., and concurred in by Associate Justices Eugenio S. Labitoria, Chairman, and Perlita J. Tria Tirona.

[2] While the assailed Decision of the Court of Appeals dated August 8, 2001, states

that the protest rallies occurred from February 22 to 24, 1993 (Decision, p. 1; Rollo, p. 35), the Resolution of the Office of the President dated April 30, 1998, states that the protest rallies occurred from February 22 to 24, 1994, instead of 1993 (Resolution, p. 1; Rollo, p. 83). The Resolution of the Office of the President further states that "[t]he problem then besetting PBMIT under the administration of respondent started in the year 1992 or even earlier x x x x" (Resolution, p. 2; Rollo, p. 84).

[3] Decision of the Court of Appeals, pp. 1 - 2; Rollo, pp. 35 - 36.

[4] *Id.*, p. 12; *Id.*, p. 46.

[5] *Id.*, p. 13; *Id.*, p. 47.

[6] *Ibid.*

[7] G.R. No. 150792, 3 March 2004, 424 SCRA 254.

[8] *Id.*, pp. 264 - 265.

[9] *Id.*, p. 265.

[10] Petition, pp. 4 -7; Rollo, pp. 11 - 14, citing the Decision of the Court of Appeals, pp. 1 - 4; Rollo, pp. 35 - 38.

[11] Decision of the Court of Appeals, pp. 7 - 8; Rollo, pp. 41 - 42.

[12] *Ibid.*

[13] *Ibid.*

[14] Petition, p. 20; Rollo, p. 27.

[15] Petition, p. 5; Rollo, p. 12, citing the Decision of the Court of Appeals, pp. 2 - 3; Rollo, pp. 36 - 37.

[16] Decision of the Court of Appeals, p. 12; Rollo, p. 46.

[17] *Kanlaon Construction Enterprises v. National Labor Relations Commission*, G.R. No. 126625, 18 September 1997, 279 SCRA 337.

[18] *Uy v. Commission on Audit*, G.R. No. 130685, 21 March 2000, 328 SCRA 607, 616, citing *Napocor v. NLRC*, 272 SCRA 704.

[19] G.R. No. 138141, 15 November 2000, 344 SCRA 797, 803 - 804.

[20] G.R. No. 95861, 19 April 1991, 196 SCRA 81, 85.

[21] G.R. No. 105752, 2 September 1993, 226 SCRA 66.

[22] *Id.*, p. 71.

[23] *Id.*, p. 72.

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