WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER OF GSIS, PETITIONER, VS. MARIO I. MOLINA AND ALBERT M. VELASCO, RESPONDENTS.

G.R. No. 157383. August 18, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court are two consolidated petitions filed by Winston F. Garcia (petitioner) in his capacity as President and General Manager of the Government Service Insurance System, or GSIS, against respondents Mario I. Molina (Molina) and Albert M. Velasco (Velasco). In G.R. No. 157383, petitioner assails the Court of Appeals (CA) Decision[1] dated January 2, 2003 and Resolution[2] dated March 5, 2003 in CA-G.R. SP No. 73170. In G.R. No. 174137, petitioner assails the CA Decision[3] dated December 7, 2005 and Resolution[4] dated August 10, 2006 in CA-G.R. SP No. 75973.

The factual and procedural antecedents of the case are as follows:

Respondents Molina and Velasco, both Attorney V of the GSIS, received two separate Memoranda[5] dated May 23, 2002 from petitioner charging them with grave misconduct. Specifically, Molina was charged for allegedly committing the following acts: 1) directly and continuously helping some alleged disgruntled employees to conduct concerted protest actions and/or illegal assemblies against the management and the GSIS President and General Manager; 2) leading the concerted protest activities held in the morning of May 22, 2002 during office hours within the GSIS compound; and 3) continuously performing said activities despite warning from his immediate superiors. [6] In addition to the charge for grave misconduct for performing the same acts as Molina, Velasco was accused of performing acts in violation of the Rules on Office Decorum for leaving his office without informing his supervisor of his whereabouts; and gross insubordination for persistently disregarding petitioner's instructions that Velasco should report to the petitioner's office.[7] These acts, according to petitioner, were committed in open betrayal of the confidential nature of their positions and in outright defiance of the Rules and Regulations on Public Sector Unionism. In the same Memoranda, petitioner required respondents to submit their verified answer within seventy two (72) hours. Considering the gravity of the charges against them, petitioner ordered the preventive suspension of respondents for ninety (90) days without pay, effective immediately.[8] The following day, a committee was constituted to investigate the charges against respondents.

In their Answer[9] dated May 27, 2002, respondents denied the charges against them. Instead, they averred that petitioner was motivated by vindictiveness and bad faith in charging them falsely. They likewise opposed their preventive suspension for lack of factual and legal basis. They strongly expressed their opposition to petitioner acting as complainant, prosecutor and judge.

On May 28, 2002, respondents filed with the Civil Service Commission (CSC) an Urgent Petition to Lift Preventive Suspension Order.[10] They contended that the acts they allegedly committed were arbitrarily characterized as grave misconduct. Consistent with their stand that petitioner could not act as the complainant,

prosecutor and judge at the same time, respondents filed with the CSC a Petition to Transfer Investigation to This Commission.[11]

Meanwhile, the GSIS hearing officer directed petitioners to submit to the jurisdiction of the investigating committee and required them to appear at the scheduled hearing.[12]

Despite their urgent motions, the CSC failed to resolve respondents' motions to lift preventive suspension order and to transfer the case from the GSIS to the CSC.

On October 10, 2002, respondents filed with the CA a special civil action for certiotari and prohibition with prayer for Temporary Restraining Order (TRO).[13] The case was docketed as CA-G.R. SP No. 73170. Respondents sought the annulment and setting aside of petitioner's order directing the former to submit to the jurisdiction of the committee created to hear and investigate the administrative case filed against them. They likewise prayed that petitioner (and the committee) be prohibited from conducting the scheduled hearing and from taking any action on the aforesaid administrative case against respondents.

On January 2, 2003, the CA rendered a decision[14] in favor of respondents, the dispositive portion of which reads:

> ACCORDINGLY, the petition is hereby GRANTED. Public respondents are hereby PERPETUALLY RESTRAINED from hearing and investigating the administrative case against petitioners, without prejudice to pursuing the same with the Civil Service Commission or any other agency of government as may be allowed for (sic) by law.
>
> SO ORDERED.[15]

The CA treated the petition as one raising an issue of gnawing fear, and thus agreed with respondents that the investigation be made not by the GSIS but by the CSC to ensure that the hearing is conducted before an impartial and disinterested tribunal.

Aggrieved, petitioner comes before the Court in this petition for review on certiorari under Rule 45 of the Rules of Court, raising the following issues:

> I.
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> WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE PETITIONERS ABUSED THEIR AUTHORITY AND HAVE BEEN PARTIAL IN REGARD TO THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS; AND IN PERPETUALLY RESTRAINING THE PETITIONERS FROM HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES FILED AGAINST THE RESPONDENTS - SOLELY ON THE BASIS OF THE TOTALLY UNFOUNDED ALLEGATIONS OF THE RESPONDENTS THAT THE PETITIONERS ARE PARTIAL AGAINST THEM.
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> II.
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> WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPRECIATE AND APPLY THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND THE RULE ON NON FORUM SHOPPING IN PERPETUALLY RESTRAINING THE PETITIONERS FROM HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS.
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> III.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RENDERING

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> A DECISION WHICH IS CONTRARY TO AND COMPLETELY DISREGARDS APPLICABLE JURISPRUDENCE AND WHICH, IN VIOLATION OF THE RULES OF COURT, DOES NOT CLEARLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.[16]

In the meantime, on February 27, 2003, the CSC resolved respondents' Petition to Lift Order of Preventive Suspension and Petition to Transfer Investigation to the Commission through Resolution No. 03-0278,[17] the dispositive portion of which reads:

> WHEREFORE, the Commission hereby rules that:
>
> - The Urgent Petition to Lift the Order of Preventive Suspension is hereby DENIED for having become moot and academic.
>
> - The Petition to Transfer Investigation to the Commission is likewise DENIED for lack of merit. Accordingly, GSIS President and General Manager Winston F. Garcia is directed to continue the conduct of the formal investigation of the charges against respondents-petitioners Albert Velasco and Mario I. Molina.[18]

As to the lifting of the order of preventive suspension, the CSC considered the issue moot and academic considering that the period had lapsed and respondents had been allowed to resume their specific functions. This notwithstanding, the CSC opted to discuss the matter by way of obiter dictum. Without making a definitive conclusion as to the effect thereof in the case against respondents, the CSC declared that a preliminary investigation is a pre-requisite condition to the issuance of a formal charge.[19]

On the requested transfer of the investigation from the GSIS to the CSC, the latter denied the same for lack of merit. The Commission concluded that the fact that the GSIS acted as the complainant and prosecutor and eventually the judge does not mean that impartiality in the resolution of the case will no longer be served.[20]

Aggrieved, respondents appealed to the CA through a Petition for Review under Rule 43 of the Rules of Court.[21] The case was docketed as CA-G.R. SP NO. 75973.

On December 7, 2005, the CA rendered a Decision[22] in favor of respondents, the dispositive portion of which reads:

> PREMISES CONSIDERED, the petition is hereby GRANTED. The formal charges filed by the President and General Manager of the GSIS against petitioners, and necessarily, the order of preventive suspension emanating therefrom, are declared NULL AND VOID. The GSIS is hereby directed to pay petitioners' back salaries pertaining to the period during which they were unlawfully suspended. No pronouncement as to costs.
>
> SO ORDERED.[23]

The CA declared null and void respondents' formal charges for lack of the requisite preliminary investigation. In view thereof, the CA disagreed with the CSC that the question on the propriety of the preventive suspension order had become moot and academic. Rather, it concluded that the same is likewise void having emanated from the void formal charges. Consequently, the CA found that respondents were entitled to back salaries during the time of their illegal preventive suspension.

Hence, the present petition raising the following issues:

> I.
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> WHETHER THE RESPONDENTS WERE FULLY ACCORDED THE REQUISITE OPPORTUNITY TO BE HEARD, WERE IN FACT HEARD AND BEING HEARD, AND WHETHER THE CONDUCT OF PRELIMINARY INVESTIGATION IN ADMINISTRATIVE PROCEEDINGS IS AN ESSENTIAL REQUISITE TO THE CONDUCT OF ADJUDICATION.

II.

WHETHER THE RESPONDENTS WAIVED THEIR RIGHT TO PRELIMINARY INVESTIGATION.

III.

WHETHER PRELIMINARY INVESTIGATION IS REQUIRED IN INDICTMENTS IN FLAGRANTI, AS HERE.

IV.
WHETHER THE HONORABLE COURT OF APPEALS LACKED JURISDICTION, AS THE ALLEGED LACK OF PRELIMNARY INVESTIGATION SHOULD HAVE BEEN RAISED BEFORE THE GSIS AND, THEREAFTER, BEFORE THE CIVIL SERVICE COMMISSION, UNDER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE GSIS HAVING ACQUIRED JURISDICTION OVER THE PERSONS OF THE RESPONDENTS, TO THE EXCLUSION OF ALL OTHERS.

V.

WHETHER THE ALLEGED LACK OF PRELIMINARY INVESTIGATION IS A NON-ISSUE.

VI.

WHETHER THE PREVENTIVE SUSPENSION ORDERS ISSUED AGAINST RESPONDENTS MOLINA AND VELASCO ARE VALID, WELL-FOUNDED AND DULY RECOGNIZED BY LAW.

VII.

WHETHER PREVENTIVE SUSPENSION IS A PENALTY AND, THUS, MAY NOT BE IMPOSED WITHOUT BEING PRECEDED BY A HEARING.

VIII.

WHETHER THE RESPONDENTS ARE ENTITLED TO PAYMENT OF BACK SALARIES PERTAINING TO THE PERIOD OF THEIR PREVENTIVE SUSPENSION.

IX.

WHETHER THE INSTITUTION OF THE RESPONDENTS' PETITION BEFORE THE CIVIL SERVICE COMMISSION WAS ENTIRELY PREMATURE.

X.

WHETHER THE MISAPPREHENSIONS OF THE RESPONDENTS AS REGARDS THE PARTIALITY OF THE GSIS COMMITTEE INVESTIGATING THE CHARGES AGAINST THEM IS BLATANTLY WITHOUT FACTUAL BASIS.

XI.
WHETHER RESPONDENTS' OBVIOUS ACT OF FORUM SHOPPING SHOULD BE COUNTENANCED BY THIS HONORABLE COURT.[24]

The petitions are without merit.

The civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS, or those created by special law. As such, the employees are part of the civil service system and are subject to the law and to the circulars, rules and regulations issued by the CSC on discipline, attendance and general terms and conditions of employment.[25] The CSC has jurisdiction to hear and decide disciplinary cases against erring employees. In addition, Section 37 (b) of

Presidential Decree No. 807 or the Civil Service Decree of the Philippines also gives the heads of departments, agencies and instrumentalities, provinces, cities and municipalities the authority to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. As for the GSIS, Section 45, Republic Act (R.A.) 8291 otherwise known as the GSIS Act of 1997, specifies its disciplining authority, viz:

> SECTION 45. Powers and Duties of the President and General Manager. The President and General Manager of the GSIS shall among others, execute and administer the policies and resolutions approved by the Board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

By this legal provision, petitioner, as President and General Manager of GSIS, is vested the authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause.[26]

However, despite the authority conferred on him by law, such power is not without limitations for it must be exercised in accordance with Civil Service rules. The Uniform Rules on Administrative Cases in the Civil Service lays down the procedure to be observed in issuing a formal charge against an erring employee, to wit:

> First, the complaint. A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.[27] Except when otherwise provided for by law, an administrative complaint may be filed at anytime with the Commission, proper heads of departments, agencies, provinces, cities, municipalities and other instrumentalities.[28]
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> Second, the Counter-Affidavit/Comment. Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit Counter-Affidavit/Comment under oath within three days from receipt.[29]
>
> Third, Preliminary Investigation. A Preliminary investigation involves the ex parte examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be considered as a waiver thereof.[30]
>
> Fourth, Investigation Report. Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the investigation report and the complete records of the case to the disciplining authority.[31]
>
> Fifth, Formal Charge. If a prima facie case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow. In the absence of a prima facie case, the complaint shall be dismissed.[32]

It is undisputed that the Memoranda separately issued to respondents were the formal charges against them. These formal charges contained brief statements of material or relevant facts, a directive to answer the charges within seventy two (72) hours from receipt thereof, an advice that they had the right to a formal investigation and a notice that they are entitled to be assisted by a counsel of their choice.[33]

It is likewise undisputed that the formal charges were issued without preliminary or fact-finding investigation. Petitioner explained that no such investigation was conducted because the CSC rules did not specifically provide that it is a pre-requisite to the issuance of a formal charge. He likewise claimed that preliminary investigation was not required in indictments in flagranti as in this case.

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We disagree.

Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three days from receipt. The use of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment in flagranti as claimed by petitioner.

This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a prima facie case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a prima facie case against respondents.

To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law. Not even the fact that the charges against them are serious and evidence of their guilt is - in the opinion of their superior - strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case.[34] The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment violated the latter's right to due process. Hence, the formal charges are void ab initio and may be assailed directly or indirectly at anytime.[35]

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.[36]

Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.[37] In particular, due process in administrative proceedings has been recognized to include the following: (1) the right to actual or constructive notice to the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[38]

Petitioner contends that respondents waived their right to preliminary investigation as they failed to raise it before the GSIS.

Again, we do not agree.

It is well-settled that a decision rendered without due process is void ab initio and may be attacked at anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked.[39] Moreover, while respondents failed to raise before the GSIS the lack of preliminary investigation, records show that in their Urgent Motion to Resolve (their Motion to Lift Preventive Suspension Order) filed with the CSC, respondents questioned the validity of their preventive suspension and the formal charges against them for lack of preliminary investigation.[40] There is, thus, no waiver to speak of.

In the procedure adopted by petitioner, respondents were preventively suspended in the same formal charges issued by the former without the latter knowing that there were pending administrative cases against them. It is true that prior notice and hearing are not required in the issuance of a preventive suspension order.[41] However, considering that respondents were preventively suspended in the same formal charges that we now declare null and void, then their preventive suspension is likewise null and void.

Lastly, the CA committed no reversible error in ordering the payment of back salaries during the period of respondents' preventive suspension. As the administrative proceedings involved in this case are void, no delinquency or misconduct may be imputed to respondents and the preventive suspension meted them is baseless. Consequently, respondents should be awarded their salaries during the period of their unjustified suspension.[42] In granting their back salaries, we are simply repairing the damage that was unduly caused respondents, and unless we can turn back the hands of time, we can do so only by restoring to them that which is physically feasible to do under the circumstances.[43] The principle of "no work, no pay" does not apply where the employee himself was unlawfully forced out of job.[44]

In view of the foregoing disquisition, we find no necessity to discuss the other issues raised by petitioner.

WHEREFORE, premises considered, the petition in G.R. No. 157383 is DENIED while the petition in G.R. No. 174137 is DISMISSED, for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.
Velasco, Jr., J., on official leave.

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[1] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Candido V. Rivera and Amelita G. Tolentino, concurring; rollo (G.R. No. 157383), pp. 37-40.

[2] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Marina L. Buzon and Amelita G. Tolentino, concurring; id. at 41.

[3] Penned by Associate Justice Danilo B. Pine, with Associate Justices Marina L. Buzon and Vicente S.E. Veloso, concurring; rollo (G.R. No. 174137), pp. 69-78.

[4] Penned by Associate Justice Marina L. Buzon, with Associate Justices Renato C. Dacudao and Vicente S.E. Veloso, concurring; id. at 80-83.

[5] Id. at 85-89.

[6] Id. at 85-86.

[7] Id. at 87-88.

[8] Id. at 86 and 89.

[9] Id. at 90-101.

[10] Id. at 102-114.

[11] Id. at 119-122.

[12] Embodied in two Orders dated July 30, 2002 and September 24, 2002; id. at 145 and 161.

[13] Id. at 127-144.

[14] Supra note 1.

[15] Rollo (G.R. No. 157383), p. 40.

[16] Id. at 127-128.

[17] Id. at 42-51.

[18] Id. at 51.

[19] Id. at 48-50.

[20] Id. at 50.

[21] Rollo (G.R. No. 174137) pp. 232-248.

[22] Supra Note 3.

[23] Rollo (G.R. No. 174137) pp. 77-78.

[24] Id. at 509-512.

[25] Government Service Insurance System (GSIS) v. Kapisanan ng mga Manggagawa sa GSIS, G.R. No. 170132, December 6, 2006, 510 SCRA 622, 629-630.

[26] Id. at 637.

[27] Section 8, Uniform Rules on Administrative Cases in the Civil Service.

[28] Section 9, Uniform Rules on Administrative Cases in the Civil Service.

[29] Section 11, Uniform Rules on Administrative Cases in the Civil Service.

[30] Section 12, Uniform Rules on Administrative Cases in the Civil Service.

[31] Section 14, Uniform Rules on Administrative Cases in the Civil Service.

[32] Section 15, Uniform Rules on Administrative Cases in the Civil Service.

[33] Section 16, Uniform Rules on Administrative Cases in the Civil Service.

[34] Pat. Go v. NPC, 338 Phil 162, 171 (1997).

[35] Engr. Rubio, Jr. v. Hon. Paras, 495 Phil 629, 643 (2005).

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[36] Montoya v. Varilla, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

[37] Id. at 841; Civil Service Commission v. Lucas, 361 Phil 486, 491 (1999).

[38] Montoya v. Varilla, supra ar 841-842; Fabella v. CA, 346 Phil 940, 952-953 (1997).

[39] Engr. Rubio, Jr. v. Hon. Paras, supra at 643.

[40] Rollo (G.R. No. 174137), p. 117.

[41] Carabeo v. Court of Appeals, G.R. Nos. 178000 and 178003, December 4, 2009, 607 SCRA 394.

[42] Fabella v. CA, supra at 958.

[43] Neeland v. Villanueva, Jr., 416 Phil 580, 594.

[44] Id. at 596.

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