

## COMMISSIONER ON HIGHER EDUCATION, PETITIONER, VS. ROSA F. MERCADO, RESPONDENT.

*G.R. NO. 157877. March 10, 2006*

Ponente: TINGA, J.

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### TINGA, J.

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the January 13, 2003 Decision[1] of the Court of Appeals in CA-G.R. SP No. 72864 which dismissed the petition for review filed by the Commission on Higher Education (CHED) on the ground of prematurity and its April 2, 2003 Resolution denying the CHED's motion for reconsideration of said Decision.

The following factual antecedents are matters of record.

Through a letter-complaint dated November 13, 1998, Ma. Luisa F. Dimayuga (Dimayuga), Dean of the College of Criminology, Republican College, accused respondent Rosa F. Mercado of arrogance, abuse of power and authority, ignorance of the appropriate provisions of the Manual of Regulations for Private Schools and incompetence before the CHED.[2] Respondent Mercado is the Senior Education Specialist of the Office of Programs and Standards of the CHED.

The complaint stemmed from the Republican College's application for the recognition of its Master in Criminology Program with the CHED. As part of the standard procedure, respondent Mercado would evaluate Republican College's compliance with the prescribed requirements. Respondent

Mercado allegedly acted with arrogance when she manifested that the fate of Republican College's application rested on her to the extent of maligning the person of Dimayuga during the inspection conducted at the Republican College.

On January 22, 1999, the Office of Programs and Standards Director issued a Memorandum directing respondent Mercado to explain in writing why no administrative charges should be filed against her. Respondent Mercado complied, denying the allegations against her. Dimayuga submitted a reply.[3]

On September 27, 1999, the CHED sitting en banc rendered a decision finding respondent Mercado guilty of discourtesy in the course of official duties. Respondent Mercado was reprimanded and warned that a similar violation in the future will warrant a more severe punishment.[4]

On October 27, 1999, respondent Mercado moved for the reconsideration of the September 27, 1999 CHED decision. Attached to the motion was a resolution supposedly issued and signed by former CHED Chairman Angel C. Alcala (Alcala Resolution), dismissing the charges against respondent Mercado on the strength of an affidavit of desistance purportedly executed by Dimayuga.[5]

The CHED, however, deferred the resolution of respondent Mercado's motion for reconsideration when it discovered that no record of the "Alcala Resolution" was on file and that there was a marked discrepancy in the

signature appearing in the affidavit of desistance of Dimayuga and the sample signature she submitted.[6]

On December 24, 1999, the CHED en banc passed Resolution No. R-439-99 adopting the recommendation of its Legal Affairs Service to investigate and place respondent Mercado under preventive suspension for a period of sixty (60) days without pay. A hearing and investigation committee was also created for this purpose. On the basis of a Formal Charge and Order of Preventive Suspension charging her with dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official documents, respondent Mercado was placed under preventive suspension for sixty (60) days without pay.[7]

Respondent Mercado failed to appear before the hearing committee despite the issuance of at least three (3) subpoenas. At the hearing on March 17, 2000, only Dimayuga appeared and testified under oath that she never signed any affidavit of desistance and denied that it was her signature appearing on the affidavit of desistance presented by respondent Mercado. Before the scheduled hearing on April 13, 2000, respondent Mercado moved for its postponement asking for additional time to confer with her counsel. Notwithstanding the absence of respondent Mercado, the hearing committee received on May 21, 2000 the testimonies of the CHED Records Officers, Maximina Sister and Revelyn Brina, to the effect that the "Alcala Resolution" does not exist in the records.[8]

On June 19, 2000, the CHED en banc issued a resolution denying respondent Mercado's motion for reconsideration and finding her guilty of the subsequent charges, which include falsification, among others. The dispositive portion reads:

WHEREFORE, the respondent's motion for reconsideration dated October 26, 1999 is hereby DENIED for lack of merit. Consequently, the Decision dated September 27, 1999 is hereby AFFIRMED. With reference to the subsequent charges of falsification of official documents, dishonesty, grave misconduct and conduct prejudicial to the best interest of the service as contained in the Formal Charge and Order of Preventive Suspension dated 03 January 2000 and upon recommendation of the Hearing and Investigation Committee constituted pursuant to CHED Resolution No. R-438-99 dated 24 December 1999, this Commission finds substantial basis to hold respondent liable to the foregoing charges, thus, respondent is hereby meted the penalty of DISMISSAL FROM THE SERVICE with forfeiture of leave credits and retirement benefits, without prejudice to the filing of appropriate charges in the proper forum, pursuant to SEC. 9, Rule XIV of the Omnibus Rules.[9]

Respondent Mercado appealed the June 19, 2000 Resolution to the Civil Service Commission (CSC). On October 18, 2000, the CSC issued CSC Resolution No. 00-2406, denying Mercado's appeal.[10] Respondent Mercado moved for its reconsideration. The motion was granted on August 21, 2002 with the issuance of CSC Resolution No. 02-1106,[11] the dispositive portion of which reads:

WHEREFORE, the motion for reconsideration of Rosa F. Mercado is hereby GRANTED. CSC Resolution No. 00-2406 dated October 18, 2000 affirming the CHED decision dated June 19, 2000 is thus modified accordingly. Moreover, Mercado is ordered reinstated to the service with payment of backwages from the time she was dismissed therefrom until her actual reinstatement.[12]

The CHED filed a Manifestation with Motion for Clarification dated September 9, 2002 asking, among others, whether CSC Resolution No. 02-1106 was final and executory and whether the CHED could still file a motion for reconsideration in view of the one motion for reconsideration rule in CSC proceedings.[13] For her part, respondent Mercado filed a motion for the issuance of a writ of execution of CSC Resolution No. 02-1106.[14]

Pending resolution of its Manifestation with Motion for Clarification and before the expiration of the period to appeal, the CHED filed with the Court of Appeals a motion for additional time within which to file a petition for review of CSC Resolution No. 02-1106.[14] Within the extended period allowed by the Court of Appeals, on

October 3, 2002, the CHED filed a petition for review, docketed as CA-G.R. SP No. 72864, assailing CSC Resolution No. 02-1106.[16] Without delving into the merits, the Court of Appeals dismissed the petition on January 13, 2003 on the ground of prematurity.[17]

Meanwhile, with the CHED's petition with the Court of Appeals filed and even decided already, on January 20, 2003 the CSC acted on the motion and manifestation filed by respondent Mercado and the CHED, respectively, through CSC Resolution No. 030054.[18] In the resolution, the CSC granted respondent Mercado's motion for execution and answered, belatedly though, the queries raised in the CHED's Manifestation with Motion for Clarification.[19]

The CHED moved for the reconsideration of the January 13, 2003 Decision of the Court of Appeals but the appellate court denied the motion in its April 2, 2003 Resolution.[20] Its efforts set at naught, the CHED filed the instant petition questioning the dismissal of CA-G.R. SP No. 72864.

On behalf of the CHED, the Solicitor General argues that the appeal in CA-G.R. SP No. 72864 was not prematurely filed because the Manifestation with Motion for Clarification filed by the CHED with the CSC did not seek the reconsideration of CSC Resolution No. 02-1106; thus, the reglementary period for review by the Court of Appeals of the CSC Resolution No. 02-1106 would have lapsed if no appeal was taken.

Thus, the central issue is whether the appeal before the Court of Appeals suffers from prematurity.

The Court grants the petition.

The Manifestation with Motion for Clarification filed by the CHED does not partake of the nature of a motion for reconsideration. A reading thereof reveals that the manifestation merely inquired into the ramifications of CSC Resolution No. 02-1106, that is, whether the resolution was already final and executory and whether the reinstatement of respondent Mercado was possible considering that the position had already been filled up. The CHED's Manifestation with Motion for Clarification neither assailed CSC Resolution No. 02-1106 nor sought its reversal. The manifestation merely asked about the propriety of filing another motion for reconsideration in view of the one motion for reconsideration rule in proceedings before the CSC.[21]

Thus, acting upon the CHED's Manifestation with Motion for Clarification, the CSC issued CSC Resolution No. 030054,[22] where it acknowledged that available to the CHED as a recourse is the filing of a motion for reconsideration of CSC Resolution No. 02-1106. This indicates that the CSC did not treat the Manifestation with Motion for Clarification filed by the CHED as a motion for reconsideration but rather as a simple request for clarification.

The Manifestation with Motion for Clarification being nothing more than an unadulterated query, the appeal cannot be barred by *litis pendentia*. As a ground for dismissal, *litis pendentia* presupposes the filing of two separate actions. Definitely, that is not the situation in the case at bar. From another standpoint, the CHED can hardly be faulted for filing its petition with the Court of Appeals before the expiration of the period to appeal since the CSC had failed to resolve its query in time. Indeed, the CHED could have assumed that the CSC's inaction was tantamount to a negative response to its query.

The ground of *litis pendentia* not being in point, it follows that the Court of Appeals erred in dismissing the CHED's petition on the ground of prematurity. The appellate court's conclusion is not in accord with this Court's ruling in *Jimenez v. Patricia, Inc.*,[23] thus:

The Petition for Review filed by respondent with the Court of Appeals was not prematurely filed. It should be borne in mind that a Motion for Clarificatory Judgment not being in the character of a motion for reconsideration does not toll the reglementary period for filing a petition for review with the Court of Appeals.

Its filing will not bar the judgment from attaining finality, nor will its resolution amend the decision to be reviewed. Thus, when respondent filed a Petition for Review before the Court of Appeals, there was already a final judgment that could properly be the subject of a petition for review.[24]

There is nothing in the Uniform Rules on Administrative Cases in the CSC that bars the filing of a motion for clarification. However, the filing of the Manifestation with Motion for Clarification did not toll the reglementary period for appeal of CSC Resolution No. 02-1106. The records do not show that the CHED did file subsequently a motion for reconsideration of the CSC resolution. Instead, the CHED elevated said resolution for review by the Court of Appeals via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. The filing of the petition for review prevented the resolution from becoming final and executory. As correctly pointed out by the Solicitor General, had it failed to file the petition for review within the reglementary period, the CHED would have lost its right to appeal the resolution.

As the CHED did not file a motion for reconsideration of CSC Resolution No. 02-1106, it is relevant to ask: is the filing of a motion for reconsideration a condition precedent to the filing of a petition for review? It is not. Under Rule 43, Section 4, which governs appeals from quasi-judicial agencies to the Court of Appeals, "[t]he appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo." The use of the disjunctive preposition "or" in the rule suggests that a petitioner has the option to file the petition for review after notice of the assailed judgment or resolution directly, without need of a prior motion for reconsideration, or after the denial of a motion for new trial or reconsideration, provided such motion is duly filed in accordance with the rule of procedure of the court or agency below. Thus, for instance, if the rule of procedure of the court or agency a quo requires the filing of a motion for reconsideration of the judgment or resolution before appeal may be taken, then failure to comply with the requisite is a ground to dismiss the appeal on the basis of prematurity. In the case at bar, under Section 50, [25] Rule III of the Uniform Rules on Administrative Cases in the CSC, a party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court, without the benefit of a prior motion for reconsideration.

Curiously, respondent Mercado has opted not to meet the arguments of the Solicitor General in behalf of the CHED. Instead, all that she claims is that when the CHED filed its petition for review with the Court of Appeals the prescribed period therefor had already expired. [26] The claim is totally baseless. The CHED filed its petition within the extension it sought and which the appellate court granted. [27]

WHEREFORE, the instant Petition for Review on Certiorari is GRANTED. The January 13, 2003 Decision and the April 2, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 72864 are REVERSED and SET ASIDE. The Petition for Review dated September 30, 2002 in the said case is REINSTATED and the Court of Appeals DIRECTED to decide the petition on its merits with deliberate dispatch. No pronouncement as to costs.

### **SO ORDERED.**

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Guitierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, concurred in by Associate Justices Ruben T. Reyes and Edgardo F. Sundiam. Rollo, p. 30.

[2] Id. at 93.

[3] CA decision, p. 2; rollo, p. 31.

[4] Rollo, p. 32.

[5]Id.

[6]Id.

[7]Id.

[8]Id. at 33.

[9] Id. at 92.

[10] Id. at 75.

[11] Id. at 68.

[12]Id. at 74.

[13] Id. at 359.

[14] Id. at 357.

[14] Annex "E," rollo, p. 250.

[16] Annex "B," rollo, p. 39.

[17] Annex "A," rollo, p. 30.

[18] Rollo, pp. 482-483.

[19]Id. at 247-249.

[20] Annex "C," rollo, p. 240.

[21] Uniform Rules on Administrative Cases in the Civil Service Commission (Resolution No. 991936), Rule III, Section 41. Limitation.—Only one motion for reconsideration shall be entertained.

[22] Rollo, p. 247.

[23]394 Phil. 877 (2000).

[24]Id. at 888.

[25] Section 50. Petition for Review with the Court of Appeals. — A party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court.

[26] Rollo, pp. 470-471.

[27] Id. at 482-483.

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