

GRACE A. BASMAYOR, PETITIONER, VS. LOIDA B. ATENCIO, RESPONDENT.

G.R. NO. 160573. October 19, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Civil Procedure assailing the Court of Appeals' Resolution[1] dated May 8, 2003 in CA-G.R. SP No. 76549 which dismissed the petition for review with prayer for issuance of temporary restraining order for failure to comply with the requirements under Rule 43 of the Revised Rules of Court. Also assailed is the appellate court's Resolution[2] dated September 12, 2003, denying petitioner's motion for reconsideration.

The relevant facts, as gleaned from the records, are as follows:

In a Memorandum[3] dated September 19, 2000, the Technical Education and Skills Development Authority (TESDA) Regional Office No. XI, through its director, Juanito C. Cueva, informed petitioner Grace A. Basmayor, a computer operator, that she had accumulated a total of thirty-one and a half days of absence without official leave in violation of Civil Service Commission (CSC) Memorandum Circular No. 41 s. 1998.[4] Accordingly, Regional Director Cueva advised Basmayor to personally appear before or explain in writing to the TESDA Regional Office on or before October 2, 2000, the reason for her absence, with a warning that failure to take the proper action within the period would mean her implied resignation, and consequently she would be dropped from the rolls.

A few days later, Basmayor received another memorandum[5] dated October 18, 2000, from the TESDA Regional Office informing her that her service in the government shall be considered terminated effective October 3, 2000. Then she received another memorandum[6] dated November 3, 2000, formally informing her that effective October 3, 2000, she was dropped from the rolls.

On November 13, 2000, Basmayor sent a letter-complaint[7] to the Civil Service Commission Regional Office No. XI (CSCRO-XI), Davao City, charging respondent Loida B. Atencio, Administrative Officer V of TESDA Regional Office No. XI in Davao City, for falsification of official document, gross neglect of duty, inefficiency and incompetence in the performance of official duties, and dishonesty. According to Basmayor, when she went to the TESDA Regional Office on October 2, 2000 as instructed, Director Cueva was not there. Basmayor claimed that she called the TESDA Regional Office several times, but Atencio always informed her that Director Cueva was not around. When Basmayor called again on October 23, 2000, she was informed that the director was in Australia. Basmayor now alleges that Atencio has forged the signature of the TESDA Regional Director in the memorandum dated November 3, 2000, to make it appear that Director Cueva, who was at that time in Australia, issued the aforementioned memorandum.

Atencio denied the allegations and explained that Director Cueva instructed her to issue the memorandum through a facsimile machine. Atencio submitted a certification by the director that the latter indeed instructed the former to

issue the aforementioned memorandum.

Basmayor's complaint was dismissed by the CSC Regional Office for failure to include a certification of non-forum shopping. Petitioner filed an amended complaint but was again dismissed for the same inadvertence. Hence, Basmayor filed an Appeal Memorandum with the CSC Chairman, CSC Central Office.

In a Resolution No. 010625[8] dated March 15, 2001, the CSC Chairman granted the appeal and ordered the CSCRO No. XI to take the appropriate action. The CSCRO No. XI conducted an investigation and thereafter issued an Order[9] dated July 10, 2001. It found no prima facie case and dismissed the complaint for falsification of official document, gross neglect of duty, inefficiency and incompetence in the performance of official duties, and dishonesty against Atencio.[10]

On July 18, 2001, Basmayor filed a separate petition before the CSCRO No. XI seeking her reinstatement, which was dismissed in an Order dated August 2, 2001, for lack of primary jurisdiction. Based on an earlier resolution by the Civil Service Commission,[11] the CSCRO No. XI held that the proper forum for her reinstatement was the grievance committee of the TESDA.[12]

Subsequently, on July 23, 2001, Basmayor appealed the Order dated July 10, 2001, to the CSC Central Office, which dismissed her complaint against Atencio, and in the Order dated August 2, 2001, it dismissed her petition for reinstatement. The CSC Central Office remanded the case to the CSCRO No. XI in its Resolution No. 020125[13] dated January 24, 2002. The CSC Central Office held that the CSCRO No. XI should take cognizance of the petition for reinstatement because it was related to the administrative complaint against Atencio.

Feeling aggrieved, Basmayor filed a motion for reconsideration. She requested the CSC to set aside Resolution No. 020125 and instead resolve her administrative complaint against Atencio for falsification of official document.[14] On December 11, 2002, the CSC Central Office issued Resolution No. 021559 which denied Basmayor's motion for reconsideration, affirmed the Order of the CSCRO No. XI, and dismissed the petition for reinstatement.[15]

On April 15, 2003, Basmayor filed an appeal before the Court of Appeals with prayer for temporary restraining order, assailing the CSC Resolution No. 021559. The Court of Appeals dismissed the petition outright. The decretal portion reads:

After a careful perusal of the Petition, the following defects were noted, in violation of Sec 6, Rule 43 of the 1997 Rules of Civil Procedure, to wit:

1. Civil Service Commission Resolution No. 021559 was a mere photocopy; and
2. The Petition did not contain a concise statement of facts and issues involved and the grounds relied upon for review.

No cogent or compelling reasons were likewise presented to warrant the issuance of a restraining order.

Moreover, the Civil Service Commission should have been impleaded as a respondent in this case.

WHEREFORE, the Petition for Review is hereby DISMISSED for lack of merit and the prayer for the issuance of a TRO is hereby DENIED.

SO ORDERED.[16]

A motion for reconsideration[17] was timely filed, but it was denied by the Court of Appeals in the Resolution[18] dated September 12, 2003.

Petitioner now raises before this Court, the following issues for our resolution:

(A) PEOPLE VS. CARAGAO (30 SCRA 993) STATES: "THE QUESTION OF WHETHER OR NOT A DOCUMENT IS FORGED IS MAINLY A PHYSICAL FACT WHICH DOES NOT DEPEND UPON THE CORROBORATING TESTIMONIAL EVIDENCE".

THE CERTIFICATION ISSUED BY DIRECTOR CUEVA IS A WRITTEN CORROBORATING TESTIMONIAL EVIDENCE. THEREFORE, IT IS AN INCOMPETENT EVIDENCE, THUS, IPSO JURE INADMISSIBLE. DIRECTOR CUEVA IS AN INCOMPETENT WITNESS, THEREFORE, HIS TESTIMONY IS WITHOUT ANY PROBATIVE VALUE.

BASED ON THE PREMISE RELIED UPON, WHETHER OR NOT THE AFOREQUOTED PROVISION (30 SCRA 993) IS APPLICABLE TO THE CASE AT BAR;

(B) PAREDES VS. ANTILLON (3 SCRA 662) DEFINES "EFFECTIVE" ABSENCE. WHETHER OR NOT THE DOCTRINE LAID DOWN IN PAREDES VS. ANTILLON (3 SCRA 662) PERTINENT TO "EFFECTIVE" ABSENCE STILL HOLDS TO THE PRESENT AND [IS] APPLICABLE TO THE CASE AT BAR.

(C) WHETHER OR NOT THE CIVIL SERVICE COMMISSION SHOULD BE IMPEADED AS A RESPONDENT IN THIS CASE.[19]

Plainly, the issues presented here are: (1) Was TESDA Regional Director Cueva effectively absent so that the memorandum issued during his effective absence was without effect? (2) Is the certification that the Director ordered the issuance of the memorandum, a written testimony, not admissible in this case? and (3) Should the CSC be impleaded as respondent?

At the outset, we note that the Court of Appeals dismissed the petition outright for being procedurally defective. Further, we note that the instant petition did not raise as issues any error committed by the Court of Appeals.

In petitions for review or appeal under Rule 45 of the Rules of Court, the appellate tribunal is limited to the determination of whether the lower court committed reversible errors.[20] The "errors" which are reviewable by this Court in a petition for review on certiorari from a decision of the Court of Appeals are only those allegedly committed by said court.[21] It is the burden of the party seeking review of a decision of the Court of Appeals or other lower tribunals to distinctly set forth in her petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that she seeks. If these are not shown prima facie in her petition, this Court will be justified in summarily spurning the petition as lacking in merit.[22]

Here, the petitioner ignores the dismissal of her petition by the Court of Appeals on technical grounds and raises instead issues unrelated to reasons for the dismissal of her appeal by the Court of Appeals. Petitioner had not alleged any error in the Court of Appeals' resolution that she seeks to correct, except for the ruling that the Civil Service Commission should be impleaded as respondent. Hence, these deficiencies are sufficient grounds to deny this petition outright.

Besides, the enumerated issues raised by the petitioner are not only factual but also mixed questions of fact and of law. The determination of whether Cueva was effectively absent is a mixed question because it involves the factual determination of whether or not Cueva indeed issued the memorandum, and then Atencio forged Cueva's signature. As the issues raised are not purely questions of law and they are not cognizable by this Court in a petition for review under Rule 45,[23] we are constrained from exercising our jurisdiction in this case.

Petitioner also seeks this Court's determination of the probative value of the certification made by Director Cueva.

But petitioner ought to remember that this Court is not a trier of facts. It is not for the Court to weigh evidence all over again.[24]

Equally noteworthy, the CSC dismissed the charges of falsification of public document against Atencio for lack of prima facie evidence; the CSCRO No. XI found the signature of the director was not forged; that Atencio issued the memorandum upon instructions of the director; that based on records, petitioner violated the Civil Service Rules on the number of allowable absences; and that petitioner was properly informed of her offense and her dismissal. These were affirmed by Director Cueva in the memorandum issued on November 3, 2000. Such findings made by an administrative body, which is supported by the records, is accorded not only respect but even finality.[25] Hence, after a careful scrutiny of the records, we find no cause to disturb the CSC's findings.

Anent the question of whether or not the Civil Service Commission should be impleaded as respondent in this case, the correct procedure, as mandated by Rule 43 of the Rules of Court, is not to implead the lower court or agency which rendered the assailed decision.[26] Hence, we agree with the petitioner that it is not necessary to implead the Civil Service Commission as respondent in her petition.

Lastly, it should be stressed that review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor.[27] As already discussed, petitioner has not shown substantially that the Court of Appeals has committed reversible errors. While procedurally petitioner is correct in not impleading the Civil Service Commission as respondent in this case, we deny due course to the instant petition for obvious lack of merit of petitioner's stance on the substantive issue of whether the appellate court had committed reversible errors of law.

WHEREFORE, as contended by petitioner, we rule that the Civil Service Commission need not be impleaded as respondent pursuant to Rule 43 of the Rules of Court. In any event, there being no other reversible error committed by the appellate court, the instant petition is **PARTIALLY DENIED** for lack of merit.

SO ORDERED.

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

[1]CA Rollo, pp. 155-156. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Bernardo P. Abesamis, and Noel G. Tijam concurring.

[2]Rollo, p. 32.

[3] Id. at 42.

[4] Civil Service Commission Memorandum Circular No. 41, s. 1998.

SEC. 63. Effect of absences without approved leave.-An official or an employee who is continuously absent without 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....

[5] Rollo, p. 44.

[6] CA Rollo, p. 122.

[7] Id. at 42-44.

[8] Id. at 52-54.

[9] Id. at 55-59.

[10] Id. at 58.

[11] CSC Resolution No. 010113, dated January 10, 2001.

[12] CA Rollo, p. 78.

[13] Id. at 77-80.

[14] Id. at 82.

[15] Id. at 168-175.

[16] Id. at 155-156.

[17] Id. at 143-153.

[18] Rollo, p. 32.

[19] Id. at 12.

[20] Remman Enterprises, Inc. v. Court of Appeals, G.R. No. 107671, 26 February 1977, 268 SCRA 688, 702.

[21] Tañedo v. Court of Appeals, G.R. No. 104482, 22 January 1996, 252 SCRA 80, 86 cited in Moomba Mining Exploration Company v. Court of Appeals, G.R. No. 108846, 26 October 1999, 317 SCRA 388, 397.

[22] Sps. Pengson v. Ocampo, Jr., G.R. No. 131968, 29 June 2001, 412 Phil. 860, 866.

[23] SECTION 1. Filing of petition with Supreme Court -... The petition shall raise only questions of law which must be distinctly set forth.

[24] Omandam v. Court of Appeals, G.R. No. 128750, 18 January 2001, 349 SCRA 483, 488.

[25] Advincula v. Dican, G.R. No. 162403, 16 May 2005, p. 15.

[26] Gutierrez v. Cabrera, G.R. No. 154064, 28 February 2005, 452 SCRA 521, 528-529.

[27] 1997 Rules of Civil Procedure, Rule 45, Sec. 6.

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