ELENITA S. BINAY, IN HER CAPACITY AS MAYOR OF THE CITY OF MAKATI, MARIO RODRIGUEZ AND PRISCILLA FERROLINO, PETITIONERS, VS. EMERITA ODEÑA, RESPONDENT.

G.R. No. 163683. June 08, 2007

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NACHURA, J:

This Petition for Review on Certiorari assails the May 14, 2004 Decision of the Court of Appeals (CA) in CA-G.R. Sp No. 74411[1] affirming

with modification Civil Service Commission (CSC) Resolution No. 010962 dated May 29, 2001[2] and CSC Resolution No. 021491 dated November 18, 2002.[3] The questioned CSC resolutions set aside the Memorandum of petitioner, former Mayor Elenita S. Binay (petitioner Binay), dated June 8, 2000, dropping respondent Emerita Odeña[4] (respondent) from the roll of employees of the City Government of Makati.[5]

The Facts

On January 16, 1980, respondent was employed as a teacher in the Makati Nursery School. She was a contractual employee up to July 30, 1992, and a casual employee from July 1992 until November 1996. Sometime in 1996, respondent held the position of Clerk 1 and was detailed at the Library Department of the Makati High School.

On June 1, 2000, petitioner Priscilla Ferrolino (petitioner Ferrolino), as education consultant, called respondent to her office to explain her (respondent) failure to report for work starting in November 1999. Respondent denied her alleged absence and presented the employee's log book as proof of attendance. However, petitioner Ferrolino disregarded her explanation.[6]

On June 2, 2000, Feliciana A. Rodriguez, Officer-In-Charge (OIC) of the Timekeeper Section wrote petitioner Mario R. Rodriguez, former City Personnel Officer, that respondent had not been reporting for duty since November 10, 1999 with a recommendation that immediate and appropriate action be taken against respondent.[7]

On June 8, 2000, petitioner Binay issued a memorandum informing respondent that, effective at the close of the office hours of May 15, 2000, the latter is considered dropped from the roll of employees in view of her absences without official leave (AWOL) from November 10, 1999. Respondent moved for reconsideration but the same was denied. Aggrieved, respondent appealed to the CSC.

The CSC's Ruling

On May 29, 2001, the CSC, in Resolution No. 010962 held that the dropping of respondent from the rolls is not supported by evidence. The CSC found that respondent actually reported for work from November 1999 to May 2000, noting that while she incurred absences during such period, the same is not equivalent to a continuous absence of at least thirty (30) working days. The CSC further held that the attendance sheet[8] of respondent duly complied with CSC Memorandum Circular No. 21, Series of 1991, since it indicated respondent's name and signature, her time of arrival and departure

and the same was verified by her immediate supervisor, Mrs. Norma Geronimo. The CSC also opined that these factual circumstances only proved that such manner of recording the attendance was allowed in said office, supplementing Civil Service Form No. 48, or the Daily Time Record (DTR). Lastly, the CSC postulated that respondent could not have received her corresponding salary for the said period if she was indeed absent. Thus:

> WHEREFORE, the appeal of Emerita B. Odena is hereby GRANTED. The Memorandum of Mayor Elenita S. Binay dated June 8, 2000 dropping her from the rolls is hereby set aside. Accordingly, Odena is hereby reinstated to her former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, she should be paid her salaries from the time of her separation up to her actual reinstatement. However, this is without prejudice to whatever disciplinary case which may be commenced against her.[9]

Petitioners moved for reconsideration. However, on November 18, 2002, the CSC in, Resolution No. 021491, denied the same and affirmed Resolution No. 010962. The CSC brushed aside petitioners' claim that respondent incurred four hundred (400) unauthorized and unapproved absences[10] from November 1999 to May 2000, since said period of time consists only of about six (6) months.

Petitioners appealed to the CA and the appeal was docketed as CA-G.R. SP No. 74411.[11]

The Ruling of the Court of Appeals

On May 14, 2004, the CA, in its Decision, denied petitioners' appeal for lack of merit and affirmed with modification the assailed CSC resolutions. The CA held:

> However, as regards the CSC's order to pay Emerita Odena's 'salaries from the time of her separation up to her actual reinstatement,' the Court deems it appropriate to modify the same. It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, not full back salaries from her illegal dismissal up to her reinstatement (Marohombsar vs. Court of Appeals, 326 SCRA 62 [2000]). Hence, considering that Emerita Odena was dropped from the rolls effective at the close of office hours of May 15, 2000, her back salaries shall be computed from May 16, 2000 up to the date of reinstatement, but not to exceed five (5) years.[12]

Thus, the CA disposed:

> WHEREFORE, the petition is DISMISSED for lack of merit. CSC Resolution No. 010962 dated May 29, 2001 and CSC Resolution No. 021491 dated November 18, 2002 are affirmed, without prejudice to the filing of whatever appropriate disciplinary case against Emerita Odena, and subject to the modification that payment of her back salaries shall be computed from date of dismissal up to date of reinstatement, but in no case to exceed five (5) years.
>
> SO ORDERED.[13]

Hence, this petition based on the sole ground that

> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE CIVIL SERVICE COMMISSION'S FINDING THAT THE CITY GOVERNMENT OF MAKATI HAS NO BASIS IN DROPPING RESPONDENT EMERITA ODEÑA FROM THE ROLLS.[14]

Petitioners contend that

> 1) the CSC erred in recognizing the self-serving, unofficial, and inadmissible personal attendance sheet of respondent as the official record of the City Government of Makati since it has an official Time Sheet;[15]
>
> 2) the CSC erred in giving credence to the certifications issued by respondent's immediate supervisor, Mrs. Norma Geronimo, because the latter retracted said certifications in her subsequent letter dated July 11,

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> 2000[16] stating that she did not personally know respondent as she was merely referred to her for application; and,
>
> 3) the CSC and CA erred in not considering the uncontroverted fact that respondent was taking up a two-year Advertising course at the Philippine Women's University (PWU) at that time.[17]

Moreover, petitioners submit that the instant petition raises questions of law as it assails the CSC's and CA's acts giving credence to respondent's personal attendance sheet; the undue weight afforded to the same over the official DTR prescribed by the City Government of Makati; and the finding that said personal attendance sheet complied with CSC Memorandum Circular No. 21, Series of 1991; hence, said petition is within this Court's jurisdiction.[18]

On the other hand, respondent contends that

> 1) petitioners failed to prove that respondent had continuously been absent for at least (30) days without approved leave;
>
> 2) respondent could not have received her salaries for the period of November 1999 to May 2000 if she was indeed absent at that time;
>
> 3) petitioners' evidence consisting of the timekeeper's letter dated June 2, 2000 and the personnel officer's certification dated June 18, 2001 were merely concocted to justify respondent's summary dismissal from work on June 8, 2000 since the same were not presented as evidence before the CSC; and
>
> 4) the use of the attendance sheet as a record of employee's attendance had been accepted as a standard operating procedure in the Makati High School and that it is in compliance with CSC Memorandum Circular No. 21, Series of 1991.

Finally, respondent submits that the instant petition seeks to review, alter, and reverse the factual findings of the CSC and the CA which are outside the ambit of Rule 45 of the Rules of Civil Procedure.[19]

In the same vein, the CSC, through the Office of the Solicitor General (OSG),[20] asseverates that the instant petition, in assailing the weight accorded by the CSC to respondent's personal attendance sheet, raises a question of fact inappropriate under Rule 45 of the Rules of Civil Procedure and outside the jurisdiction of this Court. As such, re-evaluation of said evidence would be necessary. The OSG also posits that, in cases of dismissal of an employee, the burden of proof rests upon the employer to show that said dismissal is for a just cause, which the petitioners failed to substantiate in this case. Moreover, the OSG argues that the fact that respondent received her corresponding salary during the contested period strongly militates against petitioners' claim that respondent incurred a continuous absence of at least thirty (30) working days. Thus, the OSG concludes that the respondent's dismissal is without factual and legal basis.[21]

The Court's Ruling
The petition is bereft of merit.

First. It is a well-established doctrine that in petitions for review on certiorari under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. In the case of Erlinda R. Velayo-Fong, vs. Spouses Raymond and Maria Hedy Velayo,[22] this Court defined a question of law as distinguished from a question of fact, to wit:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of

> circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

In this case, petitioners seek this Court's determination of the weight, credence, and probative value of the evidence presented. Moreover, petitioners question the certifications issued by respondent's immediate supervisor, Mrs. Norma Geronimo, by virtue of the latter's letter dated July 11, 2000 that she did not personally know respondent. Petitioners also introduce for the first time in evidence, a letter from the PWU in support of their allegation that respondent was taking up an Advertising course thereat during the contested period. Indubitably, these issues are factual in character. As the issues raised are not purely questions of law and are, therefore, not cognizable by this Court in a petition for review under Rule 45, we are constrained from exercising our jurisdiction in this case. Petitioners ought to remember that this Court is not a trier of facts. It is not for the Court to weigh these pieces of evidence all over again.[23] Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.[24]

Time and again, this Court held that factual findings of quasi-judicial bodies like the CSC, when adopted and confirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.[25] While this Court has recognized several exceptions[26] to this rule, none of these exceptions finds application in this case. Ergo, we find no cogent reason to disturb the findings of the CSC and CA as these are amply supported by the evidence on record.

Second. It is elementary that in cases of dismissal from employment, the burden of proof is upon the employer to show the validity of the dismissal.[27] Petitioners failed to discharge this burden.

Petitioners dropped respondent from the rolls based on Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, as amended, which pertinently provides:

> Sec. 63. Effect of absences without approval 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. 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.

Simply put, an AWOL means that the employee has left or abandoned his post for a continuous period of thirty (30) calendar days or more without any justifiable reason and notice to his employer.[28] In this case, petitioners failed to show that respondent had gone, or even had the intention to go, on AWOL. As found by the CSC and the CA, other than the assailed personal attendance sheet, respondent submitted in evidence copies of Index of Payments based on duly accomplished DTRs. These reflect the official attendance of the employee in the absence of proof that the employee concerned falsified the same.[29] Moreover, respondent's receipt of her salary for the contested period shows that there was nothing irregular in her office attendance.[30] Petitioners' claim that respondent incurred four hundred (400) absences for the contested period of November 1999 to May 2000 is indeed mathematically impossible as judiciously found by the CA. Lastly, petitioners' allegation that respondent's immediate supervisor did not know the respondent, despite the glaring fact that she verified the assailed personal attendance sheets, is contrary to logic and does not in any way prove petitioners' contention that respondent was continuously absent during the contested period.

WHEREFORE, the instant petition is DISMISSED for lack of merit. The assailed CA Decision dated May 14, 2004 is hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr. JJ., concur.
Puno, J., on official leave.
Carpio-Morales, J., on leave.

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[1] Rollo, pp. 36-45.

[2] Id. pp. 24-31.

[3] Id. pp. 32-35.

[4] Also referred to as respondent Emerita Odena before the CSC and CA.

[5] Id. p. 23.

[6] Respondent's Memorandum dated September 5, 2005, rollo. pp. 146-157.

[7] Rollo, p. 59.

[8] Id. at pp. 47-58.

[9] Supra note 2 at p. 31.

[10] Certification dated January 29, 2001 issued by Feliciana A. Rodriguez, OIC-Timekeeper Section, CA rollo, p. 34.

[11] Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure.

[12] Rollo, p. 43.

[13] Id. at p. 44.

[14] Id. at p. 12.

[15] Id. at p. 14.

[16] Id. at p. 46.

[17] A letter dated September 16, 2005 of one Mrs. Lilia D. Robosa, University Registrar of the Philippine Women's University, addressed to Atty. Pio Kenneth I. Dasal, City Legal Officer V of the Makati City, stating that as per record, respondent was enrolled in a Two-Year Advertising Course in the said University for the Second Semester of School Year 1998-1999 up to Second Semester of School Year 1999-2000, rollo, p. 168.

[18] Petitioners' Memorandum dated September 16, 2005, rollo, pp. 158-167.

[19] Respondent's Memorandum, supra note 5.

[20] Pursuant to Supreme Court Resolutions dated July 20, 2004 and September 6, 2005, requiring the OSG to file Comment and Memorandum respectively, rollo, p. 61 and p. 145.

[21] OSG's Memorandum dated October 25, 2005, rollo, pp. 178-190.

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[22] G.R. No. 155488, December 6, 2006 (emphasis supplied).

[23] Basmayor v. Atencio, G.R. No. 160573, October 19, 2005, 473 SCRA 382, 389 citing Omandam v. Court of Appeals, G.R. No. 128750, January 18, 2001, 349 SCRA 483, 488.

[24] Tuazon, Jr. v. Godoy, G.R. No. 146927, December 10, 2002, 393 SCRA 631, 638 citing Pabua-aya v. Court of Appeals, 356 SCRA 651, 657 (2001).

[25] Asiatic Development Corporation v. Brogada, G.R. No. 169136, July 14, 2006, 495 SCRA 166, 168.

[26] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion. Id. p. 169.

[27] Batangas State University v. Bonifacio, G.R. No. 167762, December 15, 2005, 478 SCRA 142, 148 citing Government Service Insurance System v. Court of Appeals, G.R. No. 86083, September 24, 1991, 201 SCRA 661, 672.

[28] Petilla v. Court of Appeals, et al, G.R. No. 150792, March 3, 2004, 424 SCRA 254, 265 citing City Government of Makati v. Civil Service Commission, G.R. No. 131392, February 6, 2002, 376 SCRA 248.

[29] Artuz v. Court of Appeals, et. al., G.R. No. 142444, September 13, 2001, 365 SCRA 269, 278.

[30] Id. p. 276.

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