

RONALD C. JAUCIAN, PETITIONER, VS. GEN. REYNALDO G. WYCOCO, DIRECTOR, NATIONAL BUREAU OF INVESTIGATION AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 164710. September 28, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Decision[1] dated April 23, 2004 and the Resolution[2] dated July 30, 2004 of the Court of Appeals in CA-G.R. SP No. 72648.

Petitioner was appointed as Intelligence Agent I for the National Bureau of Investigation (NBI) on a permanent status. After months in the service, petitioner received a Disposition Form from the Deputy Director for Administrative Services (DDAS). This inter-office memo was followed by at least seven more, all relating to petitioner's persistent failure to strictly comply with Civil Service rules[3] on attendance. Petitioner failed to reply to the last DDAS disposition form; hence, the Acting Chief of the Personnel Division Alicia Ulanday wrote to the Regional Director for the National Capital Region (NCR) where petitioner was assigned, requesting for any information as to the latter's attendance status. Unfortunately, this letter request remained unanswered.

Additionally, petitioner's 201 files with the NBI's Personnel Division contained the following:

- Warned on July 12, 1996 of irregular entries in DTRs from January to May 1996;
- Required to explain on March 12, 1997 for his failure to submit his DTRs from June to December 1996 and January to February 1997;
- Order issued on July 29, 1998 to withhold his salary for his failure to submit his DTRs from January to June 1998;
- Order issued on September 11, 1998 for his exclusion from the payroll for his failure to submit his DTRs for July and August 1998;
- Order issued on December 9, 1998 to withhold his salary/benefits for his failure to submit his DTRs from January to November 1998;
- Order issued [on] October 26, 1999 to withhold his salary for his failure to submit his DTRs from May to July 1999;
- NCR Regional Director informed on February 15, 2000 of his failure to submit his DTRs from August to December 1999;
- Ordered to explain in writing on August 8, 2000 why he should not be declared AWOL for the irregular entries he made in his Biometric Time Card for the period January to August 2000.[4]

Consequently, NBI Director Federico M. Opinion, Jr. issued a Notice/Order of Separation against petitioner in accordance with Civil Service Memorandum Circular No. 12[5] (Series of 1994). The Order, effective September 5, 2000, dropped petitioner from the rolls for having gone on unauthorized leave of absence (AWOL) since May 12, 2000.

After that, petitioner sought reconsideration from the order in a letter[6] dated September 14, 2000. Petitioner vehemently denied having gone AWOL and insisted that he had reported for work. Although he admitted that he did not use the biometric time and attendance system to record his time-in and time-out as required by the rules, he explained that the nature of the cases assigned to him prevented him from doing so. Petitioner submitted a List of Assignments and Accomplishments[7] and a Certification[8] from his superior attesting that he reported regularly for work from May 12, 2000 to August 31, 2000.

On September 27, 2000, Director Opinion granted petitioner's request in a handwritten note on the right-hand margin of petitioner's letter by writing "approved" with his signature and the date underneath. Four days later, Director Opinion signed and issued re-employment papers appointing petitioner to the position of Intelligence Agent I on a coterminous status.[9]

The Acting Chief of the Personnel Division prepared petitioner's reinstatement and special order for assignment at the NCR.[10] He was required to fill up a new personal data sheet for his new coterminous appointment as Intelligence Agent I. However, petitioner refused. Worse, he continuously did not report for work until March 19, 2001. Again, a disposition form[11] dated March 19, 2001 was issued advising the Regional Director for NCR that petitioner had been dropped from the rolls effective September 5, 2000.

Claiming he was being unjustly and illegally terminated from the service, petitioner elevated the matter to the Civil Service Commission (CSC). The CSC ruled that petitioner was illegally dismissed from the service. The dispositive portion of its Resolution[12] reads:

WHEREFORE, the appeal of Ronald C. Jaucian is hereby GRANTED. Accordingly, the approval by then NBI Director Opinion of Jaucian's motion for reconsideration is affirmed. Consequently, the appointment dated October 1, 2000 issued to Jaucian is hereby recalled for having been issued without lawful basis. The NBI is hereby directed to immediately cause the reinstatement of Jaucian to his position as Intelligence Agent I with payment of back salaries.[13]

A motion for reconsideration was filed. Although the CSC deleted the award of backwages, said motion was denied.

Aggrieved, the NBI sought relief from the Court of Appeals. The appellate court reversed the ruling of the CSC and ruled in favor of the NBI. The dispositive portion of the decision reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench is hereby GRANTED. Resolution No. 02-1019 dated August 5, 2002 and Resolution No. 01-1875 dated December 7, 2001 of the Civil Service Commission are hereby REVERSED and SET ASIDE. The October 1, 2000 appointment issued by then Director Federico M. Opinion in favor of private respondent is UPHeld and declared VALID.

Without costs in this instance.

SO ORDERED.[14]

Petitioner moved for reconsideration but the same was denied. Hence, this petition raising the following issues for our resolution:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INTERPRETING THAT THE STAMP OF APPROVAL BY THEN NBI DIRECTOR OPINION IN THE LETTER RECONSIDERATION OF PETITIONER MEANS REHIRING OF PETITIONER IN A [COTERMINOUS] POSITION WHICH IS NULL AND VOID FOR VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS AND SECURITY OF TENURE;

II.

THE CIVIL SERVICE COMMISSION DID NOT INTERFERE WITH THE DISCRETION OF THE APPOINTING AUTHORITY BECAUSE THE ALLEGED APPOINTMENT OF THE THEN NBI DIRECTOR FEDERICO M. OPINION CHANGING THE NATURE OF APPOINTMENT OF PETITIONER FROM PERMANENT TO [COTERMINOUS] IS NOT YET COMPLETED FOR LACK OF THE CONSENT OF THE PETITIONER TO THE ALLEGED [COTERMINOUS] APPOINTMENT; AND

III.

THE HONORABLE COURT CAN ENTERTAIN PETITIONER'S CLAIM FOR BACKWAGES BECAUSE BACKWAGES IS A NECESSARY CONSEQUENCE OF ILLEGAL DISMISSAL OR UNLAWFUL WITHHOLDING OF SALARIES.[15]

In the main, the issues are: Did the Court of Appeals err in ruling that petitioner's appointment was coterminous? Was petitioner illegally dismissed and thus entitled to backwages?

Petitioner posits that when Director Opinion approved his letter of reconsideration, the same was made without any qualification and had the effect of automatically reinstating him to his former position. He further avers that Director Opinion's subsequent order re-employing him merely on a coterminous status was made without due process of law and, hence, was illegal since he was occupying a permanent position as Intelligence Agent I and that the change in appointment to coterminous status requires his consent. Lastly, petitioner prays for backwages claiming that the withholding of his salary and benefits was made contrary to law since he continued to perform his duties as an intelligence agent.

For its part, the NBI avers that pursuant to Civil Service Memorandum Circular No. 12 (Series of 1994), petitioner's dropping from the rolls was automatic. The NBI maintains that petitioner's employment with the NBI was severed by operation of law; and since petitioner was no longer employed at the time he filed his letter of reconsideration, there was a need for Director Opinion to issue new appointment papers for the purpose of re-hiring petitioner. Further, the NBI argues that when Director Opinion approved petitioner's letter of reconsideration, he exercised his discretion and extended merely a coterminous appointment to petitioner. Lastly, NBI counters that petitioner's excuse for not using the biometric time and attendance system because he was allegedly assigned to the field is unavailing, since other agents and special investigators whose jobs also required them to be out in the field complied with attendance requirements, and submitted their daily time records.

Anent the first issue, we rule that the appellate court did not err in ruling that petitioner's appointment was coterminous. Civil Service Memorandum Circular No. 12 (Series of 1994) provides that an employee who goes on AWOL for at least thirty (30) calendar days shall be dropped from the rolls without prior notice. At the time petitioner's letter of reconsideration was favorably acted upon by Director Opinion, petitioner had been dropped from the rolls and was no longer an employee of the NBI. Director Opinion reconsidered his letter, knowing he had been dropped from the rolls. New re-employment papers were necessary.

As to the second issue, petitioner cannot claim that he was illegally dismissed and thus entitled to backwages, since his employment with the NBI was severed by operation of law. He was automatically separated from the service solely for his stubborn refusal to comply with the rules and regulations on attendance.

The power of appointment involves considerations of wisdom which only the appointing authority can decide.[16] The CSC is not authorized to curtail or diminish the exercise of discretion of the appointing power on the nature or kind of appointment to be extended.[17] The CSC, by ignoring or annulling, or supplanting with its own, Director Opinion's appointment of petitioner on a coterminous basis, has acted beyond its authority. This being the case, petitioner cannot claim that he has been illegally dismissed and his employment status downgraded. He was no longer employed at the time the coterminous appointment was handed to him.

Lastly, petitioner is not entitled to any backwages since he was not illegally dismissed and he failed to appeal the decision of the CSC denying him the backwages.

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision dated April 23, 2004 and the Resolution dated July 30, 2004 of the Court of Appeals in CA-G.R. SP No. 72648 are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 25-35. Penned by Associate Justice Renato C. Dacudao, with Presiding Justice Cancio C. Garcia (now a member of this Court) and Associate Justice Jose C. Mendoza concurring.

[2] Id. at 37.

[3] RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS (RESOLUTION NO. 91-1631).

RULE XVII

GOVERNMENT OFFICE HOURS

x x x x

Sec. 2. Each head of department or agency shall require a daily record of attendance of all the officers and employees under him including those serving in the field or on the water, to be kept on the proper form and, whenever possible, registered on the bundy clock.

Service "in the field" shall refer to service rendered outside the office proper and service "on the water" shall refer to service rendered on board a vessel which is the usual place of work.

x x x x

Sec. 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

[4] Rollo, p. 26.

[5] AMENDMENT NO. 1 TO THE OMNIBUS GUIDELINES ON APPOINTMENTS AND OTHER PERSONAL ACTIONS, CSC MEMORANDUM CIRCULAR NO. 38, SERIES OF 1993 (DROPPED FROM THE ROLLS).

x x x x

2. Dropped from the Rolls

2.1 Absence without Approved Leave

- An officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice. He shall however be informed of his separation from the service not later than five (5) days from its effectivity which shall be sent to the address appearing on his 201 files; and (Emphasis supplied.)

x x x x

[6] Rollo, p. 88.

[7] CA rollo, pp. 146-147.

[8] Rollo, p. 87.

[9] Id. at 89.

[10] Id. at 90.

[11] Id. at 82.

[12] Id. at 40-47.

[13] Id. at 47.

[14] Id. at 34-35.

[15] Id. at 114.

[16] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507, 517-518, citing *Luego v. Civil Service Commission*, No. L-69137, August 5, 1986, 143 SCRA 327, 332.

[17] Rollo, p. 34.

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