ERNELIZA Z. MAMARIL, PETITIONER, VS. CIVIL SERVICE COMMISSION AND DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, RESPONDENTS.

G.R. NO. 164929. April 10, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present Petition for Review on Certiorari seeks a relaxation of the Rules on verification and certification against forum shopping, petitioner's Petition for Review of a Civil Service Commission Resolution having been dismissed[1] by the appellate court for failure to comply therewith.

On October 10, 1983, Erneliza Mamaril (petitioner) was hired by the Department of Transportation and Communications (DOTC) as Stenographic Reporter on a temporary status. On March 15, 1984, she was promoted to Administrative Assistant II, a permanent position. In 1992, then DOTC Secretary Jesus B. Garcia, Jr. appointed her as Department Legislative Liaison Specialist (DLLS), a coterminous position. Her appointment as DLLS was renewed by the succeeding DOTC Secretaries.[2]

On December 19, 2000, then DOTC Secretary Vicente C. Rivera, Jr. requested the Civil Service Commission (CSC) to attest that at least two of the four DLLS positions in the DOTC be made permanent. The request was granted by the CSC by Resolution No. 01-0233 dated January 23, 2001.[3]

Upon verbal query by DOTC Director Carina S. Valera (Director Valera), then CSC Chairman Corazon Alma de Leon advised the DOTC that the incumbents of the formerly coterminous DLLS positions had no vested right to occupy the already permanent DLLS positions, and that they were not automatically appointed thereto; and the positions which were made permanent could only be filled up by following existing CSC rules and regulations as well as DOTC policies and guidelines on the appointment of personnel.[4]

By letter of January 29, 2001,[5] DOTC Assistant Secretary for Administrative and Legal Affairs Wilfredo Trinidad (Trinidad) sought from the CSC a written confirmation of its Chairman's above-said advice.[6] Pending receipt of a reply from the CSC, Trinidad sent separate letters dated February 22, 2001 to petitioner[7] and Rolando Cruz,[8] the other incumbent of the two DLLS positions, advising each of them as follows:

> The change of the nature of the DLLS position which you held, from coterminous to permanent pursuant to CSC Resolution No. 010233 dated 23 January 2001 did not automatically make you the holder of the now permanent DLLS position. This interpretation was confirmed by Director Carina S. Valera with the then CSC Chairman de Leon.
>
> As your appointment was of cotermin[o]us nature, your services automatically terminated with the non-existence of the cotermin[o]us position and the advent of the new appointing authority.
>
> When the new DLLS permanent positions are authorized to be filled up, you can apply therefor. In the meantime, you may seek appointment to any other vacant position that suits your qualifications. Needless to

> say, selection in any case will follow the usual process in accordance with the DOTC guidelines and the CSC rules and regulations. (Underscoring supplied)

Acting on the above-said query of Trinidad, the CSC, by Resolution No. 01-0502 dated February 22, 2001[9] which was received at his office on March 9, 2001 and by the DOTC Personnel Division on March 12, 2001,[10] ruled that "the two occupants of the two DLLS positions are ipso facto appointed to such positions under permanent status if they meet the minimum requirements of the said positions."
In light of the contrary advice previously given by the former CSC Chairman de Leon, the DOTC, by letter of April 27, 2001, sought clarification on CSC Resolution No. 01-0502.

By Resolution No. 01-1409 issued on August 20, 2001, the CSC modified Resolution No. 01-0502 by declaring that "the previous incumbents of the two Department Legislative Liaison Specialist (DLLS) positions were no longer existing employees as of the date said positions were declared by the Commission as career in CSC Resolution No. 01-0233 dated January 23, 2001," and that "DOTC Secretary Pantaleon D. Alvarez may now appoint who will occupy these newly created DLLS positions . . ."[11]

By petitioner's own information, her services were "effectively terminated" on September 1, 2001 upon which her name was deleted from the payroll.[12]

Petitioner and Cruz filed a Motion for Reconsideration of CSC Resolution No. 01-1409. By Resolution of November 26, 2002, the CSC issued Resolution No. 02-1504 reconsidering and setting aside CSC Resolution No. 01-1409. Petitioner was thus reinstated to her former position on November 26, 2002.[13]

The DOTC filed a Motion for Reconsideration of CSC Resolution No. 02-1504 which was denied, by Resolution No. 03-1019 dated September 26, 2003. In the same Resolution, the CSC declared that petitioner and Cruz are not entitled to back salaries from the time they were separated from the service up to their date of reinstatement.[14]

Petitioner thus filed a Motion for Reconsideration of said Resolution No. 03-1019 only insofar as the CSC held that she was not entitled to backwages. By Resolution No. 04-0279[15] issued on March 18, 2004, the CSC denied petitioner's Motion for Reconsideration.

Petitioner thereupon filed on March 7, 2004 before the Court of Appeals a Petition for Review under Rule 43 assailing CSC Resolution No. 03-1019[16] which the appellate court dismissed, as earlier stated, by Resolution of May 14, 2004,[17] for non-compliance with the Rules, it not having been verified and it containing no sworn certification against forum shopping.

Petitioner filed a Motion for Reconsideration of the appellate court's May 14, 2004 Resolution to which she attached a verified petition with certification against forum shopping, but it was denied by Resolution of August 6, 2004, the appellate court holding that her subsequent compliance with the Rules "[did] not cleanse her Petition of its infirmity."[18]

Hence, the present petition, petitioner arguing that,

> I
>
> THE HONORABLE COURT OF APPEALS DID NOT ONLY COMMIT GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER'S SUBSEQUENT COMPLIANCE WITH THE RULES OF COURT DOES NOT CLEANSE HER PETITION OF ITS INFIRMITY, BUT ALSO DISREGARDED THE JURISPRUDENTIAL DOCTRINE THAT RULES OF PROCEDURE, WHICH ARE MERELY SECONDARY IN IMPORTANCE, OUGHT NOT TO BE APPLIED IN A VERY RIGID AND TECHNICAL SENSE AS THEY ARE USED ONLY TO HELP SECURE NOT OVERRIDE SUBSTANTIAL JUSTICE.

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II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT THE PETITIONER IS ENTITLED TO BACK SALARIES FROM THE TIME OF HER ILLEGAL TERMINATION BY RESPONDENT DOTC UP TO THE TIME OF HER ACTUAL REINSTATEMENT.[19] (Underscoring supplied)

Petitioner pleads that the dismissal of her petition by the appellate court should be without prejudice as its infirmity was cured by her subsequent and substantial compliance[20] with the Rules which should not be rigidly applied to defeat and override the ends of justice.[21]

On the merits of her petition, petitioner asserts that every employee of the civil service is entitled to security of tenure and should not be removed or suspended except for cause provided by law. She concludes that she having been "illegally dismissed," she must not only be reinstated but must be entitled to all the rights and privileges that accrued to her by virtue of the office she held, such as her right to back salaries.[22]

The petition is bereft of merit.

Sections 4 and 5 of Rule 7 of the 1997 Revised Rules of Civil Procedure lay down the rules on verification and certification against forum shopping as follows:

SEC. 4. Verification. - Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information, and belief," or lacks a proper verification, shall be treated as an unsigned pleading. (As amended, A.M. No. 00-2-10 SC, May 1, 2000.)

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions." (Emphasis supplied)

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative.[23] Non-compliance with such requirement does not necessarily render the pleading fatally defective, hence, the court may order its correction if verification is lacking, or act on the pleading although it is not verified if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served.[24]

On the other hand, the rule against forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to orderly judicial procedure. The lack of certification against forum shopping, unlike that of verification, is generally not curable by the submission thereof after the filing of the petition.[25] The submission of a certificate against forum shopping is thus deemed obligatory, albeit not jurisdictional.[26]

The rule on certification against forum shopping may, however, be also relaxed on grounds of "substantial compliance" or "special circumstance or compelling reasons." The Court thus examined the records of the case on hand to determine the existence of any circumstances or compelling reasons which call for the relaxation of the Rules but appreciated none in light of the following discussion.

The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, so shall he earn.[27] Compensation is paid only for service actually or constructively rendered."[28]

Petitioner's services were actually terminated on September 1, 2001, after the CSC issued Resolution No. 01-1409 dated August 20, 2001 declaring that "the previous incumbents of the two Department Legislative Liaison Specialist (DLLS) positions were no longer existing employees as of the date said positions were declared by the Commission as career." She was, however, reinstated on November 26, 2002 after the CSC issued on even date Resolution No. 02-1504 setting aside Resolution No. 01-1409.

Octot v. Ybañez[29] instructs that the good faith or bad faith and grave abuse of discretion in the dismissal or termination of the services of a government employee come into play in the determination of the award of back salaries upon his reinstatement. In said case, the therein petitioner, a security guard in the Regional Health Office No. VII, Cebu City who had been convicted of libel by a trial court, was summarily dismissed pursuant to Presidential Decree No. 6 and LOI Nos. 14 and 14-A issued by then President Marcos directing heads of departments and agencies of the government to weed out undesirable government officials and employees, specifically those who were facing charges or were notoriously undesirable on the ground of dishonesty, incompetence or other kinds of misconduct defined in the Civil Service Law. The therein petitioner was eventually acquitted of the criminal charge. Hence, his request for reinstatement was granted but not his claim for back salaries from the date of his dismissal. This Court, through then Chief Justice Teehankee, held:

> In the absence of proof that respondent Regional Director acted in bad faith and with grave abuse of discretion, petitioner is not entitled to backwages and consequently cannot claim for damages. In the case at bar, the record manifests that respondents officials were not motivated by ill will or personal malice in dismissing petitioner but only by their desire to comply with the mandates of Presidential Decree No. 6. (Emphasis and underscoring supplied)

The denial of the award of back salaries, absent a showing of bad faith and/or grave abuse of discretion in the termination of the services of a government employee who was reinstated, was reiterated in Clemente v. Commission on Audit,[30] Acting Director of Prisons v. Villaluz,[31] and Echeche v. Court of Appeals.[32]

Petitioner, however, invokes the rulings in Tañala v. Legaspi,[33] De Guzman v. Civil Service Commission,[34] Gabriel v. Domingo,[35] Del Castillo v. Civil Service Commission[36] to the effect that when an official or employee was illegally dismissed and his reinstatement is ordered, for all legal purposes he is considered as not having left his office and, therefore, is entitled to all rights and privileges that accrue to him by virtue of the office.

To begin with, petitioner cannot be considered to have been illegally dismissed. Her services were terminated effective September 1, 2001 by the DOTC in light of the CSC August 20, 2001 Resolution.

At any rate, no parity of circumstances in the above-cited cases invoked by petitioner obtains in the case at bar.

In Tañala, payment of back salaries upon reinstatement was ordered upon acquittal in a criminal case of the regular employee of the government who had been suspended as a result of the filing of said case.[37] De Guzman involved a proscribed abolition of office,[38] hence, payment of back salaries was ordered upon reinstatement of the separated employee. In Del Castillo, the therein petitioner was preventively suspended and later dismissed for grave misconduct.[39] He was eventually exonerated. He was thus ordered reinstated. He thereafter filed a "Motion for Clarificatory Relief" praying for an award of backwages. Noting that the CSC did not object to the payment of backwages and the Solicitor General in fact recommended the payment thereof, this Court granted the motion.

In Gabriel, the therein petitioner was holding a permanent position of Motor Vehicle Registrar I at the Motor Vehicles Office, later renamed the Land Transportation Commission. In 1979, the Land Transportation Commission was reorganized, renaming plantilla positions. The therein petitioner's position was changed to Transportation District Supervisor, but since another had been appointed thereto, he filed a protest. During the pendency of his protest, he was extended a casual appointment but his services were "in effect terminated" three days later, drawing him to file a complaint for illegal termination of services which reached the CSC. The CSC eventually found that the issuance to the therein petitioner of a casual appointment which resulted in the termination of his services was illegal and that he was more qualified than the one appointed to his renamed position of Transportation District Supervisor. The CSC accordingly directed his appointment to his former position. He was appointed alright but to a lower position. He later filed a claim for backwages which was denied by the Commission on Audit but which this Court ordered granted.

In all these cases, the suspensions and/or dismissals were held unjustified, the therein petitioners having been either exonerated from the charges-bases of suspension or dismissal or were victims of proscribed abolition of office or issuance of appointment to a different position which soon after resulted in dismissal therefrom.

That the DOTC's termination of petitioner's services in accordance with the August 20, 2001 Resolution of the CSC was not attended with bad faith and/or grave abuse of discretion, it cannot, under the facts and circumstances of the case, be gainsaid.

WHEREFORE, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 18-19.

[2] Id. at 5.

[3] Id. at 28-31.

[4] Id. at 78.

[5] Id. at 68.

[6] Id. at 78. See also rollo, p. 32.

[7] See rollo, p. 34.

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[8] Rollo, p. 78.

[9] Id. at 32-33.

[10] Id. at 79.

[11] Id. at 35.

[12]Paragraph No. 54, Petition for Review on Certiorari, id. at 3-17.

[13] Id. at 7.

[14] Id. at 53.

[15] Id. at 54.

[16] CA rollo, pp. 13-20.

[17] Rollo, p. 18.

[18] Id. at 19.

[19] Id. at 8-9.

[20] Id. at 9.

[21] Id. at 12.

[22] Id. at 13.

[23] Torres v. Specialized Packaging Development Corporation, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463; Robern Development Corp. v. Judge Quitain, 373 Phil. 773, 786; Bank of the Philippine Islands v. Court of Appeals, 450 Phil. 532, 540 (2003).

[24] Uy v. Land Bank of the Philippines, G.R. No. 136100, July 24, 2000, 336 SCRA 419, 427; Shipside Incorporated v. Court of Appeals, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 346; Sy v. Habacon-Garayblas, A.M. No. MTJ-93-860, December 21, 1993 228 SCRA 644, 646; Republic vs. Lee Wai Lam, No. L-22607, July 30, 1969, 28 SCRA 1043, 1047; Robern Development Corp. v. Judge Quitain, supra at 787.

[25] Vide: Torres v. Specialized Packaging Development Corporation, supra at 465; Uy v. Land Bank of the Philippines, G.R. No. 136100, July 24, 2000, 336 SCRA 419, 427; Shipside Incorporated v. Court of Appeals, supra.

[26] Torres v. Specialized Packaging Development Corporation, supra at 465.

[27] Villamor v. Lacson, 120 Phil. 1213, 1219 (1964). See also Gesite v. Court of Appeals, G.R. Nos. 123562-65, November 25, 2004, 444 SCRA 51, 59; Bangalisan v. Court of Appeals, 342 Phil. 586, 599 (1997); Sales v. Mathay, Sr. No. L-39557, May 3, 1984, 129 SCRA 180, 183.

[28] Gentallan, Jocelyn S., CSC Resolution No. 001264 dated May 24, 2000.

[29] No. L-48643, January 18, 1982, 111 SCRA 79, 83.

[30] 213 Phil. 264, 271 (1984).

[31] No. L-48352, January 31, 1987, 147 SCRA 573, 579.

[32] G.R. No. 89865, June 27, 1991, 198 SCRA 577, 583.

[33] 121 Phil. 541 (1965).

[34] G.R. No. 101105, March 11, 1994, 231 SCRA 169.

[35] G.R. No. 87420, September 17, 1990, 189 SCRA 672.

[36] 343 Phil. 734 (1997).

[37] Supra at 551.

[38] Supra at 172.

[39] Supra at 740.

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