

DUTY FREE PHILIPPINES, PETITIONER, VS. ROSSANO J. MOJICA, RESPONDENT.

G.R. No. 166365. September 30, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] under Rule 45 of the Rules of Court seeks to annul and set aside the August 31, 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 76995, and its December 13, 2004 Resolution[3] denying the motion for reconsideration.

The antecedent facts show that on November 28, 1997, the Discipline Committee of Duty Free Philippines (DFP) rendered a decision[4] in DISCOM Case No. 97-027 finding Stock Clerk Rossano A. Mojica guilty of Neglect of Duty by causing considerable damage to or loss of materials, assets and property of DFP. Thus, Mojica was considered forcibly resigned from the service with forfeiture of all benefits except his salary and the monetary value of the accrued leave credits.[5]

Mojica was formally informed of his forced resignation on January 14, 1998. Thereupon, he filed a complaint for illegal dismissal with prayer for reinstatement, payment of full back wages, damages, and attorney's fees, against DFP before the National Labor Relations Commission (NLRC).

On February 2, 2000, Labor Arbiter Facundo L. Leda rendered a Decision finding that Mojica was illegally dismissed. The dispositive portion of the Decision reads:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Rossano J. Mojica to be illegal such that respondent Duty Free Philippines is directed to reinstate him to his former or substantially equivalent position without loss of seniority rights and other privileges and to pay him the amount of TWO HUNDRED FIFTY NINE THOUSAND SEVENTEEN PESOS & 08/100 (P259,017.08) representing his backwages and attorney's fees, both awards being subject to further computation until actual reinstatement.

SO ORDERED.[6]

The NLRC reversed the ruling of the arbiter. It found that the dismissal was valid and with just cause.

Mojica's motion for reconsideration was denied,[7] hence he filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals, docketed as CA-G.R. SP No. 76995.

The appellate court agreed with the arbiter that Mojica was not guilty of gross or habitual negligence that would warrant his dismissal. It found that there was no convincing evidence to prove that Mojica connived with other personnel in pilfering the stocks of DFP.

Hence, this petition.

Respondent Mojica is a civil service employee; therefore, jurisdiction is lodged not with the NLRC, but with the Civil Service Commission.

DFP was created under Executive Order (EO) No. 46[8] on September 4, 1986 primarily to augment the service facilities for tourists and to generate foreign exchange and revenue for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation was vested in the Ministry, now Department of Tourism (DOT), through its implementing arm, the Philippine Tourism Authority (PTA).[9] All the net profits from the merchandising operations of the shops accrued to the DOT.

As provided under Presidential Decree (PD) No. 564,[10] PTA is a corporate body attached to the DOT. As an attached agency, the recruitment, transfer, promotion and dismissal of all its personnel was governed by a merit system established in accordance with the civil service rules.[11] In fact, all PTA officials and employees are subject to the Civil Service rules and regulations.[12]

Accordingly, since DFP is under the exclusive authority of the PTA, it follows that its officials and employees are likewise subject to the Civil Service rules and regulations. Clearly then, Mojica's recourse to the Labor Arbiter was not proper. He should have followed the procedure laid down in DFP's merit system and the Civil Service rules and regulations.

PD No. 807 or The Civil Service Decree of the Philippines[13] declared that the Civil Service Commission shall be the central personnel agency to set standards and to enforce the laws governing the discipline of civil servants.[14] It categorically described the scope of Civil Service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation whether performing governmental or proprietary function.[15] It construed an agency to mean any bureau, office, commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city or municipal government, except as otherwise provided.[16]

Subsequently, EO No. 180[17] defined "government employees" as all employees of all branches, subdivisions, instrumentalities, and agencies, of the Government, including government-owned or controlled corporations with original charters.[18] It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.[19]

EO No. 292 or The Administrative Code of 1987 empowered the Civil Service Commission to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it.[20]

Thus, we held in *Zamboanga City Water District v. Buat*[21] that:

There is no dispute that petitioner, a water district with an original charter, is a government-owned and controlled corporation. The established rule is that the hiring and firing of employees of government-owned and controlled corporations are governed by provisions of the Civil Service Law and Civil Service Rules and Regulations. Jurisdiction over the strike and the dismissal of private respondents is therefore lodged not with the NLRC but with the Civil Service Commission. (Citations omitted)

In *Philippine Amusement and Gaming Corp. v. Court of Appeals*[22] we also held that:

It is now settled that, conformably to Article IX-B, Section 2(1), [of the 1987 Constitution] government-owned or controlled corporations shall be considered part of the Civil Service only if they have original charters, as distinguished from those created under general law.

PAGCOR belongs to the Civil Service because it was created directly by PD 1869 on July 11, 1983. Consequently, controversies concerning the relations of the employee with the management of PAGCOR

should come under the jurisdiction of the Merit System Protection Board and the Civil Service Commission, conformably to the Administrative Code of 1987.

Section 16(2) of the said Code vest in the Merit System Protection Board the power inter alia to:

a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission.

Applying this rule, we have upheld the jurisdiction of Civil Service Authorities, as against that of the labor authorities, in controversies involving the terms of employment, and other related issues, of the Civil Service official and employees...

EO No. 292 provided that civil service employees have the right to present their complaints or grievances to management and have them adjudicated as expeditiously as possible in the best interest of the agency, the government as a whole, and the employee concerned. Such complaint or grievances shall be resolved at the lowest possible level in the department or agency, as the case may be, and the employee shall have the right to appeal such decision to higher authorities. In case any dispute remains unresolved after exhausting all the available remedies under existing laws and procedure, the parties may jointly refer the dispute in the Public Sector Labor Management Council for appropriate action.[23]

In sum, the labor arbiter and the NLRC erred in taking cognizance of the complaint as jurisdiction over the complaint for illegal dismissal is lodged with the Civil Service Commission. The Court of Appeals likewise erred in sustaining the labor arbiter.

WHEREFORE, the August 31, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 76995; and its December 13, 2004 Resolution, are ANNULLED and SET ASIDE. The complaint for illegal dismissal with prayer for reinstatement, payment of backwages and attorney's fees, is DISMISSED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur

[1] Rollo, pp. 12-45.

[2] Id. at 50-61. Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Eliezer R. De Los Santos and Arturo D. Brion.

[3] Id. at 63.

[4] Id. at 117-128.

[5] CA Rollo, p. 87.

[6] Rollo, pp. 76-77.

[7] Id. at 92.

[8] GRANTING THE MINISTRY OF TOURISM, THROUGH THE PHILIPPINE TOURISM AUTHORITY (PTA), AUTHORITY TO ESTABLISH AND OPERATE A DUTY AND TAX FREE MERCHANDISING SYSTEM IN THE PHILIPPINES.

[9] Section 1, EO No. 46.

[10] REVISING THE CHARTER OF THE PHILIPPINE TOURISM AUTHORITY CREATED UNDER PRESIDENTIAL DECREE NO. 189, DATED MAY 11, 1973.

[11] Section 28, PD No. 564.

[12] Section 29, *id.*

[13] Took effect on October 6, 1975. Superseded Republic Act No. 2260 or The Civil Service Act of 1959.

[14] Section 2, Art. II, PD No. 807.

[15] Section 4, Art. IV, *id.*

[16] Section 3, Art. III, *id.*

[17] PROVIDING GUIDELINES FOR THE EXERCISE OF THE RIGHT TO ORGANIZE OF GOVERNMENT EMPLOYEES, CREATING A PUBLIC SECTION LABOR-MANAGEMENT COUNCIL, AND FOR OTHER PURPOSES. Took effect June 1, 1987.

[18] Section 1, EO No. 180.

[19] Section 16, *id.*

[20] Section 12(11), Chapter 3, Book V, EO No. 292.

[21] G.R. No. 104389, May 27, 1994, 232 SCRA 587, 591.

[22] G.R. No. 93396, September 30, 1991, 202 SCRA 191, 194.

[23] Section 27, Chapter 5, Book V, EO No. 292.

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