

THE SUPERINTENDENT OF CITY SCHOOLS FOR MANILA, ESTHER JUANINO, MA. LUISA QUIÑONES and SECRETARY OF THE DEPARTMENT OF EDUCATION, Petitioners, vs. MA. GRACIA AZARCON, and MELINDA ...

G.R. No. 166435. February 11, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] assails the decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 40848 and its resolution[3] denying reconsideration.

Respondents Ma. Gracia Azarcon and Melinda Anonuevo, public school teachers assigned at General M. Hizon Elementary School (GMHES) in Tondo, Manila, joined the unauthorized mass action of public school teachers held from September 17 to 19, 1990.

On September 20, 1990, then Department of Education, Culture and Sports (DECS)[4] Secretary Isidro Cariño filed various charges[5] against those teachers who participated in the aforementioned mass action. Respondents were among those charged and placed under preventive suspension.[6] They were later found guilty of conduct prejudicial to the best interest of the service and were consequently dismissed.[7]

Aggrieved, respondents appealed their dismissal to the Merit System Protection Board (MSPB) which, however, dismissed their appeal for lack of merit.[8]

Respondents elevated the MSPB decision to the Civil Service Commission (CSC). In its August 3, 1993 resolution,[9] the CSC agreed that respondents acted “without due regard to the adverse consequences of their actions which necessarily resulted in the suspension and stoppage of classes, to the prejudice of the students.”[10] It, however, modified the penalty to six months’ suspension without pay. The CSC took into consideration the period of time respondents were out of work and ordered their automatic reinstatement to their former positions without back salaries.[11]

On the strength of the October 3, 1993 CSC resolution, respondents requested petitioner Dr. Erlinda G. Lolarga, superintendent of city schools for Manila (superintendent), to reinstate them at GMHES.[12]

On November 22, 1993, petitioner superintendent informed her co-petitioner Ma. Luisa Quinoñes, GMHES principal, that respondents “[could] no longer be assigned any teaching loads because all teaching positions in GMHES [had] been filled.”[13] For this reason, respondent Azarcon was assigned to A. Lacson Elementary School (ALES)[14] while respondent Anonuevo was transferred to Plaridel Elementary School (PES).[15] Despite their respective transfers, respondents retained their permanent status and grade/subject assignment.[16]

However, respondents refused to accept their new assignments. They instead moved for the implementation of the August 3, 1993 CSC resolution in the CSC. They also insisted on reporting at GMHES while their motion was

pending.[17] Since respondent Azarcon did not report to her new station, petitioner Esther Juanino, ALES principal, considered her absent without official leave beginning December 16, 1993.[18]

On January 18, 1994, respondents filed a petition for prohibition and mandamus with damages and application for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO)[19] against petitioners in the Regional Trial Court (RTC) of Pasig City, Branch 155.[20] The RTC issued a TRO on January 21, 1994.[21] After hearing, however, it denied respondents' application for a writ of preliminary injunction in an order dated February 15, 1994.[22] Respondents moved for the reconsideration of that order.

On October 20, 1994, the CSC, acting on respondents' motion for implementation, ordered the immediate reinstatement of respondents as teachers at GMHES.[23] It ordered Director Nilo P. Rosas of the DECS National Capital Region, the schools superintendent of Manila and the GMHES principal to reinstate respondents at GMHES without prejudice to any future assignment to other schools should the exigencies of the service so require.[24]

Petitioner superintendent informed the CSC that, although respondents had been reinstated as public school teachers, there was, however, no vacancy in GMHES. Thus, they were assigned to schools that lacked teachers (ALES and PES respectively). In consideration of these facts, the superintendent inquired if the October 20, 1994 CSC resolution had been substantially complied with.[25]

On November 20, 1995, the CSC, through commissioner Thelma Gaminde, responded to the superintendent's query. It opined that because respondents had been receiving their salaries since November 30, 1993, they were deemed reinstated and were presumed to have been discharging their functions as teachers.[26]

Consequently, on February 28, 1996, the RTC denied respondents' motion for reconsideration (of its February 15, 1994 order). According to the trial court, the November 20, 1995 CSC letter rendered respondents' motion moot and academic.[27]

Respondents thereafter filed a petition for certiorari in the CA assailing the February 15, 1994 and February 28, 1996 orders of the RTC.[28]

On June 17, 2004, the appellate court granted respondents' petition. It found that the RTC committed grave abuse of discretion in issuing the assailed orders. The October 20, 1994 CSC resolution unequivocally ordered the reinstatement of respondents at GMHES.[29] Thus, they should first be reinstated at GMHES before they could be transferred to another station.[30] Accordingly, the CA granted respondents' petition. It set aside the February 15, 1994 and February 28, 1996 orders of the RTC and ordered the reinstatement of respondents to their former positions in GMHES "without prejudice to any future reassignment to other schools as may be directed according to the policies and rules of the DECS." [31]

Petitioners moved for reconsideration but their motion was denied. Thus, this petition.

Petitioners assert that they substantially complied with the October 20, 1994 CSC resolution when they reinstated respondents as public school teachers albeit in different stations.[32] The nature of respondents' appointments allowed reassignment to any station within the City of Manila.[33]

We agree with petitioners.

Section 6 of The Magna Carta for Public School Teachers (RA 4670) provides:

Section 6. Consent for Transfer-- Transportation Expenses. Except for cause and as herein otherwise provided, no teacher shall be transferred without his consent from one station to another.

Where the exigencies of service require the transfer of a teacher from one station to another, such transfer may be effected by the school superintendent who shall previously notify the teacher concerned of the transfer and the reason or reasons therefor. If the teacher believes there is no justification for the transfer, he may appeal his case to the Director of Public Schools or the Director of Vocational Education, as the case may be. Pending his appeal and the decision thereon, his transfer shall be held in abeyance; Provided, however, That no transfers whatever shall be made three months before any national or local elections.

Necessary transfer expenses of the teacher and his family shall be paid for by the Government if his transfer is finally approved. (emphasis supplied)

For a transfer or reassignment of a public school teacher to be valid, the following requisites must be satisfied:

- the transfer or reassignment was undertaken pursuant to the exigencies of service;
- the school superintendent previously notified the teacher concerned of his/her transfer or reassignment;
- the teacher concerned was informed of the reason or reasons for his/her transfer and
- that the transfer was not made three months before a national or local election.

With regard to the first requisite, in *Department of Education v. CA*,^[34] we held that the appointment of teachers does not refer to any particular station or school.^[35] They are not entitled to stay permanently in one station^[36] because their assignments are subject to the exigencies of the service.

The exigencies of the service, as mentioned in Section 6 of RA 4670, should be viewed in the light of Section 1, Article XIV of the Constitution which provides:

Section 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

The accessibility of quality education determines the exigencies of the service. Thus, assignments undertaken for purposes of improving the educational system and/or making education more accessible are valid.

In this instance, respondents' six-month suspension meant that their students would have had no teachers for the duration of their suspension. Hence, other teachers had to be assigned to take over.^[37] When respondents requested their reinstatement in the last quarter of 1993 (which was the middle of the school year),^[38] there was in truth no vacancy in GMHES.

Because there was no vacancy in GMHES, respondents were reinstated as public school teachers but were assigned to schools where there were vacancies (particularly ALES and PES). Petitioners therefore not only implemented the October 20, 1994 CSC resolution but also addressed the lack of teachers in ALES and PES. Petitioners' solution was correct, commonsensical, valid and constitutional. Their collective acts were geared towards ensuring the accessibility of quality education to the pupils concerned.

On the second and third requisites, because respondents were able to extensively and exhaustively question the legality of their transfers, they were clearly apprised not only of their respective transfers but also the reasons therefor.

With regard the fourth requisite, respondents were effectively transferred on November 22, 1994.^[39] The nearest national elections to that date were on May 11, 1992 and May 8, 1995 while the most proximate local election was on May 9, 1994. Respondents were clearly not transferred within three months before any national or local election.

All things considered, the RTC did not commit grave abuse of discretion in issuing its February 15, 1994 and

February 28, 1996 orders. The October 20, 1994 CSC resolution qualifiedly ordered respondents' reinstatement at GMHES[40] (i.e., without prejudice to future reassignment as the exigencies of the service may require[41]). Thus, respondents' reinstatement as public school teachers, despite the change of station, substantially complied with the October 20, 1994 CSC resolution.

WHEREFORE, the petition is hereby GRANTED. The June 17, 2004 decision and November 22, 2004 resolution of the Court of Appeals in CA-G.R. SP No. 40848 are REVERSED and SET ASIDE. Accordingly, the February 15, 1994 and February 28, 1996 orders of the Regional Trial Court of Pasig City, Branch 155 are REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Roberto A. Barrios (deceased) and concurred by Associate Justices Delilah Vidallon-Magtolis (retired) and Mariano C. del Castillo of the Special Twelfth Division of the Court of Appeals. Dated June 17, 2004. Rollo, pp. 49-59.

[3] Dated November 22, 2004. Id., pp. 61-63.

[4] Now Department of Education (or Dep-Ed).

[5] Rollo, pp. 17, 64-65. The September 20, 1990 memorandum provided:

This OFFICE has found on the basis of the report of the Principal that a prima facie case exists against you for grave misconduct, neglect of duty, gross violation of Civil Service law[s] and rules or reasonable office regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of service [and] absence without leave committed as follows:

- Joining unauthorized mass actions without filing requisite leave of absence for the period of September 17-19, 1990.
- Ignoring report-to-work directives issued by superior officers.
- Unjustified abandonment of teaching posts without securing prior permission or approval from the proper authorities for the period September 17-19, 1990.
- Non-observance of Civil Service laws and implementing rules and regulations.
- Non-compliance with reasonable office rules and regulations.
- Incurring unauthorized absences without approved leave.
- Other violations similar to the above. (emphasis provided)

[6] Id., p. 65.

[7] Id.

[8] Id., p. 66.

[9] CSC Resolution No. 93-2898 signed by CSC chairperson Patricia Sto. Tomas and commissioners Ramon P.

Ereneta, Jr. and Thelma P. Gaminde. Id., pp. 64-66.

[10] Id., p. 66.

[11] Id.

[12] Letters dated October 19, 1993. The letters were sent to the office of petitioner Ma. Luisa Quinoñes, GMHES principal. Quinoñes forwarded the letter to the superintendent of city schools in Manila. Id., pp. 67-68.

[13] 1[st] indorsement of the division of city schools. Id., p. 70.

[14] Id., p. 72.

[15] Id., p. 71.

[16] Id., pp. 71-72.

[17] Letter dated November 26, 1993. Id., p. 73.

[18] Letter dated December 21, 1993. Id., p. 74.

[19] Docketed as SCA No. 560.

[20] Rollo, p. 22.

[21] Id., p. 23.

[22] Order dated February 15, 1994. Penned by Judge Fernando L. Gerona, Jr. Id., pp. 76-79.

[23] Resolution No. 94-5725 signed by CSC chairperson Patricia Sto. Tomas and Commissioners Ramon P. Ereñeta, Jr. and Thelma P. Gaminde. Id., pp. 84-85.

[24] Id., p. 85.

[25] Id., p. 55.

[26] Id.

[27] Penned by Judge Luis R. Tongco. Dated February 28, 1996. Id., pp. 86-87.

Petitioners' certificate of non-forum shopping made no mention of what happened to the petition for prohibition and mandamus respondents filed in the RTC.

[28] Id., p. 49.

[29] Id., p. 58.

[30] Id.

[31] Id., pp. 58-59.

[32] Id., pp. 29-34.

[33] Id., pp. 34-43.

[34] G.R. No. 81032, 22 March 1990, 183 SCRA 555.

[35] Id., p. 562.

[36] Id.

[37] Supra notes 7 and 8. Note that the original penalty imposed (by the DECS and affirmed by the MSPB) on respondents was dismissal from service. Thus, they were out of service for more than six months.

[38] Note that CSC Resolution No. 93-2898 was issued on August 3, 1993 and that respondents asked petitioners for their reinstatement on October 19, 1993.

[39] Supra note 13.

[40] Id., p. 55.

[41] Id.

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