

BATANGAS STATE UNIVERSITY, PETITIONER, VS. NESTOR BONIFACIO, RESPONDENT.*G.R. NO. 167762. December 15, 2005*

Ponente: YNARES-SANTIAGO, J.

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This petition for review assails the April 11, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 49444 which set aside CSC Resolution Nos. 981443[2] and 982540[3] affirming the dismissal from the government service and denying the motion for reconsideration, of respondent Nestor Bonifacio, respectively.

Respondent was one of the faculty members of Batangas State University[4] who held protest rallies near the main campus of the university and at the provincial capitol of Batangas to air their grievances against its president, Dr. Ernesto M. De Chavez. He was also among the faculty members who filed a complaint against De Chavez and other school officials for alleged graft and corruption with the Senate Blue Ribbon Committee, which referred the same to the Presidential Commission Against Graft and Corruption (PCAGC).[5]

On October 10, 1994, Dr. Rolando Lontok, Vice President for Academic Affairs, issued a memorandum reassigning respondent to the office of the president. As the school semester would end on October 13, 1994, respondent requested De Chavez if he could report to his office only after the said date, to which the latter agreed.[6]

Meanwhile, respondent continued to discharge his duties as a teacher as well as coach of the university's basketball team.[7]

On January 10, 1995, De Chavez issued Office Order No. 1, Series of 1995 dropping respondent from the rolls on the ground of absence without official leave (AWOL) for more than 30 days.[8]

Respondent claims that his dismissal from the service for being on AWOL has no basis because he was attending to his job as a teacher and coach of the university's basketball team. His detail to the office of the president and the subsequent dropping from the rolls was malicious and in retaliation to his filing of a complaint against De Chavez and other school officials.[9] In fact, the detail order did not specify the functions he was to discharge and he was always warned that he would be dropped from the rolls soon. To show that he was never absent, respondent presented his Daily Time Records (DTR) from October to December 1994, Logbook of attendance from November 2 to December 1994, and Letters dated October 27, 1994 and November 10, 1994 from Romy A. Emplica, the school's Sports Coordinator. Further, he contends that his DTRs were not accepted by the personnel office because his immediate supervisor in the office of the president unjustifiably refused to sign them.[10]

On the other hand, De Chavez denies the allegations of harassment. He explains that respondent's transfer to his office was upon the request of Roberto Kalalo, his Chief of Staff, as he was the most qualified employee to perform the task. However, despite receipt of the memorandum order, respondent did not report to his office, thus, he was dropped from the rolls after incurring absences without official leave for more than 30 days.[11]

The Civil Service Regional Office (CSRO) No. IV upheld the termination of the respondent from the service.[12]

The Civil Service Commission, in CSC Resolution No. 981443 dated June 11, 1998, dismissed the appeal and affirmed the assailed order. Respondent's motion for reconsideration was also denied in CSC Resolution No. 982540 dated September 29, 1998.[13]

Aggrieved, respondent filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals which reversed CSC Resolution Nos. 981443 and 982540. The dispositive portion of the decision reads:

WHEREFORE, the PETITION FOR REVIEW is GIVEN DUE COURSE.

CSC RESOLUTIONS NOS. 981443 AND 982540 are SET ASIDE.

Petitioner NESTOR BONIFACIO is REINSTATED as a drafting instructor of respondent PABLO BORBON MEMORIAL INSTITUTE OF TECHNOLOGY, now BATANGAS STATE UNIVERSITY, with full back salaries (i.e., the compensation fixed for his position and prevailing at the time of reinstatement, together with the allowances and benefits appurtenant thereto, as well as the standard or automatic general increases in salary decreed thereafter from time to time, inclusive of benefits for sick leave and vacation leave counted from the date of illegal dismissal, and all benefits arising from automatic promotions, if any, and increases in salary during the period of his illegal dismissal) limited to five (5) years.

SO ORDERED.[14]

Hence, this petition for review based on the following ground:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN REINSTATING RESPONDENT BASED ON THE "EQUITIES OF THE SITUATION" AND IN REVERSING THE CIVIL SERVICE COMMISSION RESOLUTIONS FINDING THAT HIS CONTINUOUS ABSENCE AT HIS POST FOR MORE THAN THIRTY WORKING DAYS JUSTIFIED HIS DISMISSAL FROM THE SERVICE.[15]

Petitioner contends that the Court of Appeals erred in disregarding the finding of fact of the Civil Service Commission that respondent did not report to his new assignment, in violation of the rule on finality of factual findings of administrative or quasi-judicial agencies. By relying solely on speculation, it further erred in ruling that De Chavez and other school officials dealt with the respondent in bad faith. Petitioner also argues that the Court of Appeals erred in applying "equity" despite the Omnibus Civil Service Rules and Regulations which warranted the dropping from the rolls of an employee who incurs absences without official leave for more than 30 days.

In fine, the issue to be resolved is whether or not respondent can be considered AWOL for more than 30 days for his alleged failure to report to his new assignment in the office of the president.

Undoubtedly, the above issue is one of fact as it assails the factual finding of the Court of Appeals that respondent had not gone AWOL. Basic is the rule in this jurisdiction that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive,[16] save for the most cogent and compelling reason, like when the factual findings of the Court of Appeals and the trial court are contradictory.[17]

Indeed, in the case at bar, the findings of the Civil Service Commission and its conclusion based on the said findings contradict those of the appellate court. However, upon careful review of the records, we find no grounds to grant the petition. We, thus, affirm the decision of the Court of Appeals.

Section 2(3), Article IX-B of the Constitution provides that "no officer or employee of the civil service shall be

removed or suspended except for cause provided by law." The Administrative Code of 1987 and the Civil Service Law echo this constitutional edict of security of tenure of the employees in the civil service. The guarantee of security of tenure is an important cornerstone of the civil service system because it secures for a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal reprisals.[18]

With this mandate, we held in *Government Service Insurance System v. Court of Appeals*[19] that said constitutional prohibition is a guaranty of both procedural and substantive due process and that the burden of proof is upon the employer to show the validity of the dismissal and not upon the employee to prove otherwise.

We find that petitioner failed to discharge this burden.

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

Sec. 63. Effect of absences without approved leave. - An official or 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.

If the number of unauthorized absences incurred is less than thirty (30) calendar days, a written Return-to-Work Order shall be served to him at his last known address on record. Failure on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.

Clearly then, an employee continuously absent without approved leave for at least 30 calendar days may be dropped from the rolls without prior notice.

In the instant case, respondent was terminated from the service because petitioner's personnel department refused to accept respondent's DTRs as they were not countersigned by his immediate supervisor. His termination from the service was upheld by the Civil Service Commission.

However, respondent contests the finding that he was absent. He claims that he reported for work and faithfully discharged his functions as a teacher and coach of the university basketball team. He regularly punched his DTRs in the Bundy clock for the months of October, November and December, 1994, as well as entered his name in the logbook when the Bundy clock malfunctioned. He also claims that he reported to the office of the president on October 17, 1994 and several times thereafter; however, he was treated by De Chavez with condescension and hostility and was not given any specific task to perform. Respondent maintains that his DTRs were not accepted by the personnel department because his immediate supervisor in the office of the president unjustifiably refused to sign them.

Believing the respondent, the Court of Appeals reversed the assailed resolutions of the Civil Service Commission, to wit:

Our examination of the records tells us that the CSC did not give due consideration to the petitioner's detailed and credible explanations to the effect that he actually reported to Dr. De Chavez upon receiving the memorandum of reassignment from Dr. Lontok but Dr. De Chavez allowed him to report after October 17, 1994 so that he could finish his teaching duties for the term; that he later on reported to Dr. De Chavez but the latter treated him with condescension and hostility, making sure that the petitioner was aware that he would soon be dismissed; and that the petitioner went several more times to the Office of the President to inquire about his DTRs but he was given the run-around. PBMIT did not refute the petitioner's explanations about reporting to Dr. De Chavez and about the latter's harsh and angry attitude towards him on several occasions.

It is unfortunate that the CSC sided with PBMIT only because the DTRs were not signed and approved by the petitioner's immediate superior, who was the chief of staff of the Office of the President. In doing so, the CSC put a higher value to form rather than to substance. That, to us, is unacceptable for it goes against the clear equities of the situation. The CSC thereby committed serious reversible error, particularly since the records undeniably showed that the approval of the DTRs was deliberately withheld due to the hostility of Dr. De Chavez towards the petitioner. Without doubt, PBMIT and its officials, starting with Dr. De Chavez, were guilty of evident bad faith in dealing with the petitioner on the matter of his DTRs.[20]

We agree with the Court of Appeals.

Petitioner's bad faith becomes more apparent when De Chavez ignored respondent's presence in the school, allowed 30 calendar days to lapse and thereafter immediately caused the termination, instead of summoning him to explain his alleged absences. Clearly, the detail of respondent in the office of the president was meant to embarrass him and the subsequent termination of employment was part of the dubious scheme to rid of respondent's presence in the school in direct violation of respondent's right to work and unduly dilutes the constitutional guarantees of security of tenure and due process. As held in *Bentain v. Court of Appeals*: [21]

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service....

Neither are the circumstances obtaining in the case at bar constitute abandonment. It must be emphasized that the detail order was issued on October 10, 1994 when the school semester was not yet over. Upon his detail in the office of the president, respondent did not lose his position [22] as a teacher. Contrary to petitioner's allegation, it was also for the school's interest that respondent continued to conduct classes and coach the basketball team. Thus, it cannot be said that respondent abandoned his position considering that he continued to faithfully discharge his duties. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. [23]

The Court of Appeals correctly ordered respondent's reinstatement. However, the award of backwages and other monetary benefits should not be limited to 5 years and must therefore be modified in line with the recent case of *Civil Service Commission v. Gentallan*. [24] We held in said case that an illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of her illegal dismissal up to her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement.

WHEREFORE, the petition is DENIED. The April 11, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 49444 setting aside CSC Resolution Nos. 981443 and 982540 which upheld the dismissal of respondent from the service is AFFIRMED with the MODIFICATION that respondent is entitled to full backwages and other monetary benefits from the time of his illegal dismissal up to the time of his actual reinstatement.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, J., concur.
Carpio, J., on official leave.

- [1] Rollo, pp. 35-49. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Andres B. Reyes, Jr. and Celia C. Librea-Leagogo.
- [2] Id. at 50-56.
- [3] Id. at 57-59.
- [4] Formerly Pablo Borbon Memorial Institute of Technology (PBMIT).
- [5] Rollo, p. 36.
- [6] Id. at 36-37.
- [7] Id. at 37.
- [8] Id. at 39.
- [9] Id. at 50.
- [10] Id. at 37-38.
- [11] Id. at 51-52.
- [12] Id. at 50.
- [13] Id. at 59.
- [14] Id. at 48.
- [15] Id. at 17.
- [16] *Madrigal v. Court of Appeals*, G.R. No. 142944, April 15, 2005, 456 SCRA 247, 255.
- [17] *Land Bank of the Philippines v. Monet's Export and Manufacturing Corporation*, G.R. No. 161865, March 10, 2005, 453 SCRA 173, 184.
- [18] *Canonigo v. Court of Appeals*, 434 Phil. 38, 50 [2002].
- [19] G.R. No. 86083, September 24, 1991, 201 SCRA 661, 672.
- [20] Rollo, pp. 44-45.
- [21] G.R. No. 89452, June 9, 1992, 209 SCRA 644, 648.
- [22] *Borres v. Hon. Canonoy, etc., et al.*, 195 Phil. 81, 90 [1981].
- [23] *Hodieng Concrete Products v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249, 253.
- [24] G.R. No. 152833, May 9, 2005, 458 SCRA 278, 286.

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