

RAUL A. DAZA, in his capacity as Governor of Northern Samar, Petitioner, vs. CORONA, RONAN P. LUGO, Respondent.

G.R. No. 168999. April 30, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari[1] of the Decision of the Court of Appeals promulgated on December 20, 2004, reversing and setting aside Resolution No. 030006 of the Civil Service Commission (CSC) dated January 7, 2003 and reinstating the Order[2] dated January 8, 2002 of the CSC Regional Officer.

The facts are as follows:

Records show that former Governor Madeleine P. Mendoza-Ong of Northern Samar issued an appointment dated March 7, 2001 in favor of respondent Ronan P. Lugo as Sanitation Inspector I under permanent status. The appointment was approved on March 20, 2001 by the CSC Provincial Field Office of Catarman, Northern Samar.

On August 10, 2001, petitioner Raul A. Daza, the newly elected Governor of Northern Samar, issued Memorandum No. 352-01 directing the Department Heads to evaluate the performance of probationary employees (including respondent) under their respective supervisions to determine whether they were qualified to acquire permanent status. The Memorandum reads:

PGO MEMORANDUM NO. 352-01

TO : All Concerned Office/Department Heads/OICs

SUBJECT : Evaluation of concerned staff under probationary status

Please be reminded that there are a number of employees under your immediate supervision who are under probationary status.

The probationary status of these employees will end on different dates in September/October 2001, per attached list.

CSC rule provides that "all such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.

In this connection, as immediate supervisor, you are directed to evaluate those concerned employees using our performance evaluation rating system and to submit a report to the undersigned on or before the end of August 2001. Attached with the report is/are the Performance Evaluation Report/s, stating among others, whether or not these employees are qualified to acquire permanent status.[3]

On September 5, 2001, petitioner issued a Memorandum informing respondent that his probationary service was terminated due to his unsatisfactory conduct. The Memorandum reads:

Pursuant to my authority under Rule VII, Section 2, CSC Omnibus Rules Implementing Book V of Executive Order No. 292 (the Administrative Code of 1987), I hereby terminate your probationary service for unsatisfactory conduct effective at the close of office hours on September 6, 2001.[4]

Respondent appealed petitioner's termination order to the CSC, Regional Office VIII (CSCRO VIII).

In an Order dated January 8, 2002, the CSC Regional Officer found that the termination of respondent was not in order and pronounced, thus:

WHEREFORE, foregoing premises considered, the Termination Order (Memorandum dated September 5, 2001) issued by Governor Raul Daza to Ronan Lugo is hereby declared NOT IN ORDER, for being in violation of CSC Memorandum Circular No. 2, series of 1987 and CSC Memorandum Circular No. 42, series of 1989. Accordingly, Ronan Lugo is hereby ordered to be reinstated immediately to his previous post as Sanitary Inspector I of Gamay Rural Health Unit, Gamay, Northern Samar, with payment of back salaries and other monetary benefits.[5]

Petitioner's motion for reconsideration was denied for lack of merit. Thereafter, petitioner appealed to the CSC.

In Resolution No. 030006 dated January 7, 2003, the CSC ruled in favor of petitioner, thus:

WHEREFORE, the appeal of Governor Raul A. Daza is hereby granted. Accordingly, CSCRO VIII Order Nos. 010136 dated January 8, 2002 and 010160 dated March 4, 2002, respectively, are hereby reversed. Thus, the termination of services of Ronan P. Lugo for unsatisfactory conduct is found to be in order.[6]

Respondent filed a petition for review before the Court of Appeals (CA).

In the Decision promulgated on December 20, 2004, the CA reinstated the Order of the CSC Regional Officer. The dispositive portion of the Decision reads:

WHEREFORE, the assailed Resolution No. 030006, dated January 7, 2003, issued by the public respondent Civil Service Commission (CSC) is hereby REVERSED AND SET ASIDE and the Order No. 010130, dated January 8, 2002, issued by the CSC Regional Officer is hereby REINSTATED.[7]

The CA found that respondent was removed without just cause as his termination for unsatisfactory conduct was without basis. The CA stated that respondent was terminated due to his failure to submit a Performance Evaluation Report to his immediate head or to the personnel department in compliance with petitioner's Memorandum No. 352-01. It pointed out that the Memorandum was not addressed personally to respondent, but to all concerned "Office/Department Heads/OICs," and, therefore, it was respondent's immediate supervisor who failed to evaluate and submit respondent's Personal Evaluation Report. The CA held:

. . . [I]t is therefore evident that the finding of unsatisfactory conduct against petitioner (Lugo) is without basis. Aside from the fact there was no PER submitted by petitioner's immediate head to private respondent that would support such finding, there were also no other documents that would show that petitioner's performance as Sanitary Inspector I was inefficient or unsatisfactory. Thus it necessarily follows that the notice of termination, dated September 5, 2002, served upon petitioner deprived him of due process. Petitioner was never apprised of any poor or unsatisfactory performance but was instantaneously dismissed, and worse, without any basis.

Petitioner's motion for reconsideration was denied by the CA in its Resolution promulgated on July 18, 2005.

Hence, this petition.

The main issue in this case is whether or not respondent's services were terminated without just cause.

Petitioner alleges that the CA erred in ruling that respondent was denied due process in the termination of his

services and in applying *Miranda v. Carreon*[8] to this case.

Petitioner contends that the CA erred in stating that it was respondent's immediate supervisor who failed to evaluate and submit respondent's Performance Evaluation Report. Petitioner asserts that based on former Governor Madeleine P. Mendoza-Ong's office order on the Revised Performance Evaluation System of the provincial government, it is required that each employee prepare the prescribed Performance Evaluation Form (PEF-1) and set his/her performance standards together with his/her targets, and that at the end of the evaluation, the supervisor and the employee meet to discuss the latter's accomplishments and they both give their ratings in the prescribed form and settle/discuss differences, if there are any.

Petitioner argues that the prescribed form (PEF-1) shows that the employee, apart from his supervisor, also rates himself; hence, respondent should have known that he was required to submit his Performance Evaluation Report through his immediate supervisor, which he failed to do. Petitioner added that his memorandum to respondent's supervisor was a reminder that he did not even have to, and respondent frustrated the performance rating process by not submitting his Performance Evaluation Report, which was vital to the determination of the latter's worthiness to continue in the service.

The Court is not persuaded by petitioner's arguments.

The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." [9] Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:

All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period; Provided, That such action is appealable to the Commission.

Thus, the services of respondent as a probationary employee may only be terminated for a just cause, that is, unsatisfactory conduct or want of capacity.

In this case, petitioner's Memorandum No. 352-01 directed to "[a]ll Concerned Office/Department Heads/OICs" on the subject of "evaluation of concerned staff under probationary status" clearly states: ". . . [A]s immediate supervisor, you are directed to evaluate those concerned [probationary] employees using our performance evaluation rating system and to submit a report to the undersigned on or before the end of August 2001."

Hence, the CA correctly stated:

[It is] crystal clear that the above-quoted memorandum [No. 352-01] did not in any manner direct all employees under probationary status, including petitioner, to submit their own Performance Evaluation Report. It would also be absurd for these employees to evaluate their own selves. Thus, if these employees, including petitioner, failed to submit a Performance Evaluation Report to their immediate supervisors, the same cannot be taken against them. Evidently, it was [Lugo's] immediate supervisor who failed to evaluate and submit [Lugo's] Performance Evaluation Report as required by the subject memorandum. On this point is the CSC Regional Officer's findings and conclusion, which We take leave to quote with approval, to wit --
"If indeed the manifestations of xxx Gov. Daza that the immediate supervisor of xxx Lugo failed to submit the required Performance Evaluation Report, is true, the statement therefore, that Lugo had committed 'unsatisfactory conduct' is without basis. For how can one claim unsatisfactory conduct when there was no submitted report detailing the same, which would serve as basis for such finding." [10]

Even if respondent is allowed to rate himself in the Performance Evaluation Form, it is the supervisor's rating that

is controlling because, indeed, it would be absurd for a probationary employee to rate himself. The duty to evaluate the performance of such employee belongs to the concerned department head who has supervision over him. Thus, petitioner issued Memorandum No. 352-01 for department heads to evaluate their respective probationary employees "using our performance evaluation rating system and to submit a report to the undersigned on or before the end of August 2001." Petitioner, therefore, erred in insisting that it was respondent's duty to submit respondent's Performance Evaluation Report and that respondent frustrated the performance rating process by not submitting the said Report, because it was only proper that the Performance Evaluation Report be submitted by respondent's supervisor to petitioner as required by petitioner's Memorandum.

Further, the CA found that there were no other documents presented to show that respondent's termination based on unsatisfactory conduct was justified. It stated thus:

. . . Civil Service Rules on probationary period for permanent appointment require "a notice of termination of service within ten (10) days immediately after it was proven that they have demonstrated unsatisfactory conduct or want of capacity during the probationary period. Such notice shall state, among others, the reasons for such termination and shall be supported by at least two of the following:

a)

Performance Evaluation Report

b)

Report of immediate supervisor (rater) on work related critical and unusual incidents on unsatisfactory conduct, or

c)

Other valid documents to support the notice.

The notice of termination sent by private respondent governor, however, is bereft of even a substantial compliance of the aforecited Civil Service Rules. Thus Annex "B" (Notice of Termination) issued was not supported by any document and obviously lack the proof of unsatisfactory conduct before the Board or Committee (Performance Evaluation and Review Committee) created for the purpose.[11]

It is evident, therefore, that there was no basis for the termination of respondent's services on the ground of unsatisfactory conduct since the Performance Evaluation Report on respondent was not submitted by respondent's supervisor to petitioner, and there were no other documents presented to show that respondent was guilty of unsatisfactory conduct.

Petitioner also contends that the CA erred in applying *Miranda v. Carreon*.

Miranda v. Carreon involves the termination of services of probationary employees, respondents therein, after a probationary period of only three months of service instead of six months. The CSC ordered the reinstatement of the said employees to their former positions with payment of backwages since it was improbable that the office head could finally determine their performance after a probationary period of only three months. The decision of the CSC was affirmed by the CA, and upheld by this Court.

Although *Miranda v. Carreon* is not on all fours with the present case, it does not affect the finding that respondent's services were terminated without just cause. The reinstatement of respondent to his former position with payment of backwages and other monetary benefits is thus warranted.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 76028 is

AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago[*], Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[*] On Official Leave.

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

[2] Order No. 010130.

[3] Rollo, p. 69.

[4] CA decision, rollo, p. 25.

[5] Id. at 26.

[6] Id. at 26.

[7] Id. at 31.

[8] G.R. No. 143540, April 11, 2003, 301 SCRA 303.

[9] Constitution, Art. IX-B, Sec. 2, paragraph 3.

[10] Rollo, p. 28.

[11] Id. at 38.

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