

**MAGDALENA HIDALGO, EDITHA GONZALES, EUNICE P. MALIMBAN,
CHRISTINE VIDAL, CHRISTIAN CALLEJO, CONSOLACION P.
MORENO, SHERINA F. DOREZA, LUZ T. SUCGANG, PRISCILLA F.
ESTOYE, REYNOS...**

G.R. No. 179793. July 05, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Which quasi-judicial agency has jurisdiction to hear and decide complaints for illegal dismissal against an adjunct government agency engaged in proprietary function? Should the complaint be lodged before the National Labor Relations Commission (NLRC) or to the Civil Service Commission (CSC)? This is the focal issue that needs to be resolved in this petition for review on certiorari assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 84801 nullifying the Labor Arbiter's and the NLRC's rulings.

Republic of the Philippines has represented respondent Armed Forces of the Philippines Commissary and Exchange Services (AFPCES) in this recourse. AFPCES is a unit/facility of the Armed Forces of the Philippines (AFP) organized pursuant to Letter of Instruction (LOI) No. 31, which was issued on November 20, 1972 by then President Ferdinand Marcos. Under LOI No. 31-A, which amended LOI No. 31, an amount of P5 million was set aside from the Philippine Veterans' Claims Settlement Fund as seed capital for the AFPCES to be utilized and administered for the operations and management of all commissary facilities in the military establishments all over the country. AFPCES was intended to benefit the veterans, their widows and orphans, and the members of the AFP and their dependents. In December 1972, the AFP General Headquarters (AFP GHQ) issued Staff Memorandum No. 5 formally organizing the AFPCES.[3]

In order to socialize the services of AFPCES, General Order No. 920 was issued by the AFP GHQ on July 13, 1976 reorganizing the AFPCES as an AFP-Wide Service Support Unit. General Order No. 920 also provided that all installation Commissary Exchange Service including their equipment, records and assets shall be assigned and absorbed by the AFPCES.[4] This, in effect, centralized the management of the commissary exchange services to the AFPCES. On February 26, 1987, General Order No. 138 was issued activating the AFPCES as a regular unit under the direct control of the AFP Chief of Staff.[5]

Petitioners, on the other hand, numbering 65 in all,[6] were hired as regular employees of AFPCES. Some worked as food handlers in AFPCES' catering business and served during social functions held within its premises. Others occupied positions as computer technicians, auditors, record clerks, cashiers, canvassers, bookkeepers, and warehousemen.[7] Several of them had worked with AFPCES for a number of years, ranging from 4 to 31 years. Since the start of their employment, petitioners were enrolled in the Social Security System (SSS), with respondent AFPCES paying its corresponding employer's share in their monthly SSS contribution.[8]

Between 1999 and 2001, however, AFPCES advised petitioners to undergo an indefinite leave of absence without pay, allegedly upon a conditional promise that they would be allowed to return to work as soon as AFPCES' tax

subsidy is released and upon resumption of its store operations.[9]

When AFPCES failed to recall petitioners to their work as allegedly promised, petitioners filed a complaint for illegal (constructive) dismissal with damages against AFPCES before the NLRC.[10] On July 4, 2002, after efforts to forge an amicable settlement had failed, Labor Arbiter Salimathar V. Nambi rendered a decision[11] in favor of petitioners by ordering AFPCES to pay a total of P16,007,996.00 as back wages, 13[th] month pay and separation pay to petitioners.

AFPCES filed an appeal[12] praying, among others, that it be exempted from posting the required appeal bond. The NLRC, however, denied the plea and gave AFPCES ten (10) days to post an appeal bond. The NLRC likewise denied AFPCES' motion for reconsideration. Meanwhile, petitioners sought the immediate execution of the Labor Arbiter's decision.

AFPCES filed a petition before the appellate court docketed as CA-G.R. SP. No. 84801, and prayed among others, for the issuance of a temporary restraining order to enjoin the NLRC from dismissing the appeal and granting execution of the Labor Arbiter's decision.

On October 22, 2004, the Court of Appeals issued a Resolution denying AFPCES' prayer for the issuance of a temporary restraining order for lack of merit.[13]

Subsequently, on October 29, 2004, the NLRC dismissed AFPCES' appeal following its failure to post the required appeal bond.[14] On December 7, 2004, petitioners moved for the execution of the Labor Arbiter's decision.

On March 17, 2005, the enforcing sheriffs of the NLRC issued a Progress Report[15] indicating that writs of execution and garnishment have been issued against AFPCES' funds deposited with the Land Bank of the Philippines to satisfy the Labor Arbiter's award. The said report noted that AFPCES has reinstated petitioners to their former positions although Capt. Preciliano M. Ruiz, AFPCES' commander and general manager, gave no assurance regarding the payment of petitioners' salaries.[16]

On April 7, 2005, the Court of Appeals granted AFPCES' motion to lift the writ of garnishment and to stay the execution of the Labor Arbiter's monetary award. Undaunted, petitioners were able to secure an alias writ of execution after due hearing before the Labor Arbiter. The issue was again brought before the Court of Appeals.

On August 31, 2006, the appellate court promulgated the assailed Decision in CA-G.R. SP No. 84801 granting AFPCES' petition. The Court of Appeals, after applying the Supreme Court's pronouncement in *Duty Free Philippines v. Mojica*, [17] explained that since AFPCES is a governmental agency that has no personality separate and distinct from the AFP, petitioners are considered civil service employees, and that complaints for illegal dismissal should therefore be lodged not with the Labor Arbiter but with the CSC.[18]

Aggrieved, petitioners moved for a reconsideration of the said decision, but the appellate court denied the same for lack of merit.[19]

Hence, this petition.

Pivotal to the resolution of this petition is a determination of the classification of petitioners' employment status with respondent AFPCES. AFPCES asserts that since petitioners are government employees, jurisdiction over their complaints lies not with the NLRC, but with the CSC. Petitioners, on the other hand, contend that since they do not belong to the approved plantilla of government personnel, their complaints for illegal dismissal was properly made before the NLRC.

Let us clarify the matter.

Presidential Decree (PD) No. 807 or the Civil Service Decree of the Philippines[20] declares 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.[21] PD No. 807 categorically described the scope of the civil service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporations whether performing governmental or proprietary function;[22] and 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.[23]

Subsequently, Executive Order (EO) No. 180[24] 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.[25] It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.[26]

In *Philippine Refining Company v. Court of Appeals*,[27] we declared that AFPCES is a government agency that is not immune from suit since it is engaged in proprietary activities. We find no compelling reason to deviate from such pronouncement. The historical background of its creation and establishment indicates that AFPCES is an agency under the direct control and supervision of the AFP as it was established to take charge of the operations and management of all commissary facilities in military establishments all over the country. By clear implication of law, all AFPCES personnel should therefore be classified as government employees and any appointment, promotion, discipline and termination of its civilian staff should be governed by appropriate civil service laws and procedures.

Interestingly, in the course of the proceedings, petitioners did not question or refute such classification of the AFPCES. They, in fact, averred that AFPCES is not created by a special law to classify it as a government-owned or controlled corporation with original charter, but a mere entity of the AFP. They also admit that AFPCES is without any corporate features as it is merely an agency performing proprietary functions not only for the benefit of veterans, their widows and orphans, and the members of the AFP, but for the public in general.[28]

Petitioners, however, assert that the pronouncement in *Duty Free Philippines* should not be applied in the instant case since the factual milieu of the said case is different from the case at bar.

We partly agree with petitioners.

Like AFPCES, *Duty Free Philippines* is also a government agency engaged in proprietary activities without separate corporate existence. Unlike *Duty Free Philippines*, however, AFPCES committed acts which created an impression upon petitioners that they fall within the coverage of pertinent labor laws and not the civil service law. First, since the start of their employment and until their unceremonious indefinite suspension from work, AFPCES have enrolled petitioners to the SSS, the primary governmental agency engaged in providing social security benefits to employees of the private sector, instead of the Government Service Insurance System (GSIS) as mandated by Commonwealth Act No. 186.[29] AFPCES even remitted its corresponding employer's share to petitioners' SSS contributions. Such practice has been continuously observed by the AFPCES in the span of more than three (3) decades.

Second, the hiring, appointment and discipline of AFPCES employees never went through the proper procedure as required by pertinent civil service laws and regulations. In a formal request made by Feliciano M. Gacis, Jr., Officer-in-Charge of the Office of the Assistant Secretary for Personnel of the Department of National Defense, inquiring from the CSC whether petitioners are indeed government employees covered by the Civil Service Law and CSC regulations, the said Commission issued a Resolution containing the following findings:

It is explicit that the aforequoted LOI merely set aside a fund in the amount of five (5) [m]illion [p]esos for the operation of a commissary in all military establishments in the country for the benefit of veterans, their widows and orphans, and the members of the Armed Forces of the Philippines. And the fund and commissary shall be managed by an entity called AFPCES. It can, thus, be said that the AFPCES is a mere entity in the Armed Forces of the Philippines that is tasked to manage a commissary in different military establishments for the benefit of those mentioned in the said LOI. Hence, it does not necessarily follow that all its civilian employees are considered government employees covered by and subject to the Civil Service Law and rules.

Section 2 (1), Article IX B of the 1987 Constitution defines the scope of the civil service, as follows:

"Sec. 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."

From the aforequoted constitutional provision, it is clear that only government-owned or controlled corporations with original charters are embraced by the civil service. Hence, the question now that needs to be answered is: Can LOI 31-A be considered as the charter of the AFPCES such that it can be considered a government-owned or controlled corporation embraced by the Civil Service Law and rules?

After a careful evaluation and scrutiny of LOI 31-A, the Commission is of the opinion and so holds that the said LOI could hardly be considered as the charter of AFPCES. It should be noted that the said LOI does not specify the composition of AFPCES, its specific functions, its governing board, its powers and the limitation of the exercise thereof. In short, the said LOI does not provide the AFPCES corporate features. This being the case, the AFPCES cannot be considered a government-owned or controlled corporation with original charter. In fact, the AFPCES does not exercise corporate powers. Accordingly, its civilian employees cannot be considered as government employees covered by the Civil Service Law and rules.

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Further, there is neither a showing that the positions of civilian employees of the AFPCES are included in the plantilla of personnel duly approved by the Department of Budget and Management (DBM) nor said employees were issued appointments attested by the Commission.

WHEREFORE, the Commission hereby rules that all civilian employees of the Armed Forces of the Philippines Commissary and Exchange Service are not government employees covered and embraced by the Civil Service Law and rules.[30]

Indeed, petitioners' employment to the AFPCES should have been made in conformity with pertinent civil service regulations since AFPCES is a government agency under the direct control and supervision of the AFP. However, since this did not happen, petitioners were placed under an anomalous situation with AFPCES insisting that they are government employees under the jurisdiction of the CSC, but with the CSC itself disavowing any jurisdiction over them.

This notwithstanding, since it cannot be denied that petitioners are government employees, the proper body that has jurisdiction to hear the case is the CSC. Such fact cannot be negated by the failure of respondents to follow appropriate civil service rules in the hiring, appointment, discipline and dismissal of petitioners. Neither can it be denied by the fact that respondents chose to enroll petitioners in the SSS instead of the GSIS. Such considerations cannot be used against the CSC to deprive it of its jurisdiction. It is not the absence or presence of the required appointment from the CSC, or the membership of an employee in the SSS or in the GSIS that determine the status of the position of an employee. We agree with the opinion of the AFP Judge Advocate General that it is the regulation or the law creating the Service that determines the position of the employee.[31]

Petitioners are government personnel since they are employed by an agency attached to the AFP. Consequently, as correctly observed by the Court of Appeals, the Labor Arbiter's decision on their complaint for illegal dismissal cannot be made to stand since the same was issued without jurisdiction. Any decision issued without jurisdiction is a total nullity, and may be struck down at any time.[32]

However, given petitioners' peculiar situation, the Court is constrained not to deny the petition entirely, but instead to refer it to the CSC pro hac vice. The Court notes that this case has been pending for nearly a decade, but deciding it on the merits at this juncture, while ideal and more expeditious, is not possible. The records of the case fail to adequately spell out the validity of the complaint for illegal dismissal as well as the actual amount of the claim. In fact, the records even fail to disclose the amount of salary received by petitioners while they were engaged to work in AFPCES' facilities. But rather than directing petitioners to re-file and relitigate their claim before the CSC - a step which will only duplicate much of the proceedings already accomplished - the Court deems it best, pro hac vice, to order the NLRC to forward the entire records of the case directly to the CSC which is directed to take cognizance of the case. The CSC is directed to promptly resolve whether petitioners were illegally dismissed from the service, and whether they are entitled to their monetary claims. Further, taking into consideration AFPCES' failure to observe the proper procedure required by pertinent civil service rules and regulations regarding the hiring, appointment and placement of petitioners, we likewise caution the CSC not to use the AFPCES' inefficiency to prejudice the status of petitioners' employment or to deny whatever right they may have under pertinent civil service laws. To hold otherwise would only be giving premium to AFPCES' delinquent attitude towards petitioners in particular, and to the civil service in general. The AFPCES cannot be made to have its cake and eat it, too.

WHEREFORE, the petition is PARTLY GRANTED. The Court of Appeals Decision dated August 31, 2006 in CA-G.R. SP No. 84801 and its Resolution dated September 18, 2007 are hereby SET ASIDE.

The National Labor Relations Commission (NLRC) is DIRECTED to forward the records of the case (NLRC-NCR Case No. 03-01533-2001-NLRC NCR Case No. 032920-02) to the Civil Service Commission (CSC), which is ordered to promptly proceed with the resolution of the case on the merits with deliberate dispatch.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ. concur.

[*] Additional member per Special Order No. 843.

[1] Rollo, pp. 11-23. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok concurring.

[2]Id. at 24-26.

[3] Id. at 101-102.

[4] Id. at 102.

[5] Id. at 13.

[6] Id. at 11-12. Magdalena Hidalgo, Eunice Malimban, Christian Callejo, Rosalinda R. Salud, Baby Linda N. Nohay, Wilma D. Barcena, Leonora Granado, Romeo O. Maicon, Marianila Sito, Nemia E. Piano, Editha Gonzales, Christine Vidal, Consolacion P. Moreno, Evangeline D. Evangelista, Belinda D. Cardona, Anabelle P.

Mojadas, Ricardo R. Barangco, Danilo B. Enrico, Merlina A. Cataan, Soledad P. Ramos, Dante L. Pesigan, Mercedes R. Nafarrete, Luz Samson, Teresita G. Gonzaga, Virginia S. Montemayor, Henry C. Amortizado, Nelia G. Camoro, Gertrudes Falales, Petra M. Iringan, Ricky Echivera, John Caranan, Sherina F. Doreza, Priscilia F. Estoye, Rosita L. Senedrin, Juliet F. Palafox, Rebecca C. Bugua, Helen Manresa, Ma. Juana A. Golfo, Eda A. Junio, Marilyn S. Gono, Ernesto C. Desear, Teresita E. Eustaquio, Cristina Abanto, Frankie Valera, Joysie Labrador, Ophelia G. Musamarin, Francisco G. Capiz, Jr., Ma. Elgin O. Abais, Romeo Laguna, Luz T. Sucgang, Reynoso V. Gallano, Julita P. De Castro, Erlindo V. Galano, Jr., Nelson Ferrer, Consorcia Fajanel, Rubylyn D. Dumandal, Florecerfina S. Bandolin, Gloria J. Domingo, Mary Ann Claudio, Dorotea Martinez, Florencio A. Quilaton, Jr., May Macugay, Elvira Kalalo, Ligaya Paneda and Renato Aguilar.

[7]Id. at 32.

[8] Id. at 32-33.

[9] Id. at 14.

[10] Docketed as NLRC-NCR Case No. 00-03-01533-2001 (NLRC-NCR CA No. 032920-02).

[11] CA rollo, pp. 35-41.

[12] Id. at 42-54.

[13] Id. at 69-70.

[14] Id. at 121-123.

[15] Id. at 159.

[16] Id. at 159-160.

[17] G.R. No. 166365, September 30, 2005, 471 SCRA 776.

[18] Rollo, p. 19.

[19] Id. at 24-26.

[20] Took effect on October 6, 1975 and superceded Republic Act No. 2260, or the Civil Service Act of 1959.

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

[22] Section 4, Art. IV, Id.

[23] Section 3, Art. III, Id.

[24] PROVIDING GUIDELINES FOR THE EXERCISE OF THE RIGHT TO ORGANIZE OF GOVERNMENT EMPLOYEES, CREATING A PUBLIC SECTOR LABOR-MANAGEMENT COUNCIL, AND FOR OTHER PURPOSES. It took effect on June 1, 1987.

[25] Section 1, EO No. 180.

[26] Section 16, Id.

[27] G.R. No. 118794, May 8, 1996, 256 SCRA 667, 675.

[28] Rollo, p. 40.

[29] AN ACT TO CREATE AND ESTABLISH A "GOVERNMENT SERVICE INSURANCE SYSTEM," TO

PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR, otherwise known as the "Government Service Insurance Act." The Act took effect on November 14, 1936.

[30] Rollo, pp. 104-106. Civil Service Commission Resolution No. 010051 dated January 5, 2001.

[31] CA rollo, p. 46.

[32] Solid Homes, Inc. v. Payawal, G.R. No. 84811, August 29, 1989, 177 SCRA 72, 80.

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