

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) AND WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER OF THE GSIS, PETITIONERS, VS. DINNAH VILLAVIZA, ELIZABETH DUQU...

G.R. No. 180291. July 27, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the August 31, 2007 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 98952, dismissing the petition for certiorari of Government Service Insurance System (GSIS) assailing the Civil Service Commission's Resolution No. 062177.

THE FACTS:

Petitioner Winston Garcia (PGM Garcia), as President and General Manager of the GSIS, filed separate formal charges against respondents Dinnah Villaviza, Elizabeth Duque, Adronico A. Echavez, Rodel Rubio, Rowena Therese B. Gracia, Pilar Layco, and Antonio Jose Legarda for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service pursuant to the Rules of Procedure in Administrative Investigation (RPAI) of GSIS Employees and Officials, III, D, (1, c, f) in relation to Section 52A (3), (20), Rule IV, of the Uniform Rules on Administrative Cases in the Civil Service (URACCS), in accordance with Book V of the Administrative Code of 1987, committed as follows:

That on 27 May 2005, respondent, wearing red shirt together with some employees, marched to or appeared simultaneously at or just outside the office of the Investigation Unit in a mass demonstration/rally of protest and support for Messrs. Mario Molina and Albert Velasco, the latter having surreptitiously entered the GSIS premises;

x x x x x x x x

That some of these employees badmouthed the security guards and the GSIS management and defiantly raised clenched fists led by Atty. Velasco who was barred by Hearing Officer Marvin R. Gatpayat in an Order dated 24 May 2005 from appearing as counsel for Atty. Molina pursuant to Section 7 (b) (2) of R.A. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees;

That respondent, together with other employees in utter contempt of CSC Resolution No. 021316, dated 11 October 2002, otherwise known as Omnibus Rules on Prohibited Concerted Mass Actions in the Public Sector caused alarm and heightened some employees and disrupted the work at the Investigation Unit during office hours.[2]

This episode was earlier reported to PGM Garcia, through an office memorandum dated May 31, 2005, by the Manager of the GSIS Security Department (GSIS-SD), Dennis Nagtalon. On the same day, the Manager of the

GSIS Investigation Unit (GSIS-IU), Atty. Lutgardo Barbo, issued a memorandum to each of the seven (7) respondents requiring them to explain in writing and under oath within three (3) days why they should not be administratively dealt with.[3]

Respondents Duque, Echavez, Rubio, Gracia, Layco, and Legarda, together with two others, submitted a letter-explanation to Atty. Barbo dated June 6, 2005. Denying that there was a planned mass action, the respondents explained that their act of going to the office of the GSIS-IU was a spontaneous reaction after learning that their former union president was there. Aside from some of them wanting to show their support, they were interested in that hearing as it might also affect them. For her part, respondent Villaviza submitted a separate letter explaining that she had a scheduled pre-hearing at the GSIS-IU that day and that she had informed her immediate supervisor about it, attaching a copy of the order of pre-hearing. These letters were not under oath.[4]

PGM Garcia then filed the above-mentioned formal charges for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service against each of the respondents, all dated June 4, 2005. Respondents were again directed to submit their written answers under oath within three (3) days from receipt thereof.[5] None was filed.

On June 29, 2005, PGM Garcia issued separate but similarly worded decisions finding all seven (7) respondents guilty of the charges and meting out the penalty of one (1) year suspension plus the accessory penalties appurtenant thereto.

On appeal, the Civil Service Commission (CSC) found the respondents guilty of the lesser offense of Violation of Reasonable Office Rules and Regulations and reduced the penalty to reprimand. The CSC ruled that respondents were not denied their right to due process but there was no substantial evidence to hold them guilty of Conduct Prejudicial to the Best Interest of the Service. Instead,

x x x. The actuation of the appellants in going to the IU, wearing red shirts, to witness a public hearing cannot be considered as constitutive of such offense. Appellants' (respondents herein) assembly at the said office to express support to Velasco, their Union President, who pledged to defend them against any oppression by the GSIS management, can be considered as an exercise of their freedom of expression, a constitutionally guaranteed right.[6] x x x

PGM Garcia sought reconsideration but was denied. Thus, PGM Garcia went to the Court of Appeals via a Petition for Review under Rule 43 of the Rules on Civil Procedure.[7] The CA upheld the CSC in this wise:

The Civil Service Commission is correct when it found that the act sought to be punished hardly falls within the definition of a prohibited concerted activity or mass action. The petitioners failed to prove that the supposed concerted activity of the respondents resulted in work stoppage and caused prejudice to the public service. Only about twenty (20) out of more than a hundred employees at the main office, joined the activity sought to be punished. These employees, now respondents in this case, were assigned at different offices of the petitioner GSIS. Hence, despite the belated claim of the petitioners that the act complained of had created substantial disturbance inside the petitioner GSIS' premises during office hours, there is nothing in the record that could support the claim that the operational capacity of petitioner GSIS was affected or reduced to substantial percentage when respondents gathered at the Investigation Unit. Despite the hazy claim of the petitioners that the gathering was intended to force the Investigation Unit and petitioner GSIS to be lenient in the handling of Atty. Molina's case and allow Atty. Velasco to represent Atty. Molina in his administrative case before petitioner GSIS, there is likewise no concrete and convincing evidence to prove that the gathering was made to demand or force concessions, economic or otherwise from the GSIS management or from the government. In fact, in the separate formal charges filed against the respondents, petitioners clearly alleged that respondents "marched to or appeared simultaneously at or just outside the office of the Investigation Unit in a mass demonstration/rally of protest and support for Mssrs. Mario Molina and Albert Velasco, the latter surreptitiously entered the GSIS premises." Thus, petitioners are aware at the outset that the only apparent

intention of the respondents in going to the IU was to show support to Atty. Mario Molina and Albert Velasco, their union officers. The belated assertion that the intention of the respondents in going to the IU was to disrupt the operation and pressure the GSIS administration to be lenient with Atty. Mario Molina and Albert Velasco, is only an afterthought.[8]

Not in conformity, PGM Garcia is now before us via this Petition for Review presenting the following:

STATEMENT OF THE ISSUES

I

WHETHER AN ADMINISTRATIVE TRIBUNAL MAY APPLY SUPPLETORILY THE PROVISIONS OF THE RULES OF COURT ON THE EFFECT OF FAILURE TO DENY THE ALLEGATIONS IN THE COMPLAINT AND FAILURE TO FILE ANSWER, WHERE THE RESPONDENTS IN THE ADMINISTRATIVE PROCEEDINGS DID NOT FILE ANY RESPONSIVE PLEADING TO THE FORMAL CHARGES AGAINST THEM.II

WHETHER THE RULE THAT ADMINISTRATIVE DUE PROCESS CANNOT BE EQUATED WITH DUE PROCESS IN JUDICIAL SENSE AUTHORIZES AN ADMINISTRATIVE TRIBUNAL TO CONSIDER IN EVIDENCE AND GIVE FULL PROBATIVE VALUE TO UNNOTARIZED LETTERS THAT DID NOT FORM PART OF THE CASE RECORD.III

WHETHER A DECISION THAT MAKES CONCLUSIONS OF FACTS BASED ON EVIDENCE ON RECORD BUT MAKES A CONCLUSION OF LAW BASED ON THE ALLEGATIONS OF A DOCUMENT THAT NEVER FORMED PART OF THE CASE RECORDS IS VALID.IV

WHETHER FURTHER PROOF OF SUSBTANTIAL REDUCTION OF THE OPERATIONAL CAPACITY OF AN AGENCY, DUE TO UNRULY MASS GATHERING OF GOVERNMENT EMPLOYEES INSIDE OFFICE PREMISES AND WITHIN OFFICE HOURS, IS REQUIRED TO HOLD THE SAID EMPLOYEES LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE PURSUANT TO CSC RESOLUTION NO. 021316.V

WHETHER AN UNRULY MASS GATHERING OF TWENTY EMPLOYEES, LASTING FOR MORE THAN AN HOUR DURING OFFICE HOURS, INSIDE OFFICE PREMISES AND WITHIN A UNIT TASKED TO HEAR AN ADMINISTRATIVE CASE, TO PROTEST THE PROHIBITION AGAINST THE APPEARANCE OF THEIR LEADER AS COUNSEL IN THE SAID ADMINISTRATIVE CASE, FALLS WITHIN THE PURVIEW OF THE CONSTITUTIONAL GUARANTEE TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY.VI

WHETHER THE CONCERTED ABANDONMENT OF EMPLOYEES OF THEIR POSTS FOR MORE THAN AN HOUR TO HOLD AN UNRULY PROTEST INSIDE OFFICE PREMISES ONLY CONSTITUTES THE ADMINISTRATIVE OFFENSE OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.[9]

The Court finds no merit in the petition.

Petitioners primarily question the probative value accorded to respondents' letters of explanation in response to the memorandum of the GSIS-IU Manager. The respondents never filed their answers to the formal charges. The petitioners argue that there being no answers, the allegations in the formal charges that they filed should have been deemed admitted pursuant to Section 11, Rule 8 of the Rules of Court which provides:

SECTION 11. Allegations not specifically denied deemed admitted.-- Material averment in the complaint, other than those as to the amount of liquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied specifically and under oath.

According to the petitioners, this rule is applicable to the case at bench pursuant to Rule 1, Section 4 of the Rules of Court which reads:

SECTION 4. In what cases not applicable. - These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient. (underscoring supplied)

The Court does not subscribe to the argument of the petitioners. Petitioners' own rules, Rule XI, Section 4 of the GSIS' Amended Policy and Procedural Guidelines No. 178-04, specifically provides:

If the respondent fails to file his Answer within five (5) working days from receipt of the Formal Charge for the supporting evidence, when requested, he shall be considered to have waived his right to file an answer and the PGM or the Board of Trustees, in proper cases, shall render judgment, as may be warranted by the facts and evidence submitted by the prosecution.

A perusal of said section readily discloses that the failure of a respondent to file an answer merely translates to a waiver of "his right to file an answer." There is nothing in the rule that says that the charges are deemed admitted. It has not done away with the burden of the complainant to prove the charges with clear and convincing evidence.

It is true that Section 4 of the Rules of Court provides that the rules can be applied in a "suppletory character." Suppletory is defined as "supplying deficiencies."^[10] It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule. There is, however, no such deficiency as the rules of the GSIS are explicit in case of failure to file the required answer. What is clearly stated there is that GSIS may "render judgment as may be warranted by the facts and evidence submitted by the prosecution."

Even granting that Rule 8, Section 11 of the Rules of Court finds application in this case, petitioners must remember that there remain averments that are not deemed admitted by the failure to deny the same. Among them are immaterial allegations and incorrect conclusions drawn from facts set out in the complaint.^[11] Thus, even if respondents failed to file their answer, it does not mean that all averments found in the complaint will be considered as true and correct in their entirety, and that the forthcoming decision will be rendered in favor of the petitioners. We must not forget that even in administrative proceedings, it is still the complainant, or in this case the petitioners, who have the burden of proving, with substantial evidence, the allegations in the complaint or in the formal charges.^[12]

A perusal of the decisions of the CA and of the CSC will reveal that the case was resolved against petitioners based, not on the absence of respondents' evidence, but on the weakness of that of the petitioners. Thus, the CA wrote:

Petitioners correctly submitted the administrative cases for resolution without the respondents' respective answer to the separate formal charges in accordance with Section 4, Rule XI of the RPAI. Being in full control of the administrative proceeding and having effectively prevented respondents from further submitting their responsive answer and evidence for the defense, petitioners were in the most advantageous position to prove the merit of their allegations in the formal charges. When petitioner Winston Garcia issued those similarly worded decisions in the administrative cases against the respondents, it is presumed that all evidence in their favor were duly submitted and justly considered independent of the weakness of respondent's evidence in view of the principle that "the burden of proof belongs to the one who alleges and not the one who denies."^[13]

On the merits, what needs to be resolved in the case at bench is the question of whether or not there was a violation of Section 5 of CSC Resolution No. 02-1316. Stated differently, whether or not respondents' actions on May 27, 2005 amounted to a "prohibited concerted activity or mass action." Pertinently, the said provision states:

Section 5. As used in this Omnibus Rules, the phrase "prohibited concerted activity or mass action" shall be understood to refer to any collective activity undertaken by government employees, by themselves or through their employees organizations, with intent of effecting work stoppage or service disruption in order to realize

their demands of force concession, economic or otherwise, from their respective agencies or the government. It shall include mass leaves, walkouts, pickets and acts of similar nature. (underscoring supplied)

In this case, CSC found that the acts of respondents in going to the GSIS-IU office wearing red shirts to witness a public hearing do not amount to a concerted activity or mass action proscribed above. CSC even added that their actuations can be deemed an exercise of their constitutional right to freedom of expression. The CA found no cogent reason to deviate therefrom.

As defined in Section 5 of CSC Resolution No. 02-1316 which serves to regulate the political rights of those in the government service, the concerted activity or mass action proscribed must be coupled with the "intent of effecting work stoppage or service disruption in order to realize their demands of force concession." Wearing similarly colored shirts, attending a public hearing at the GSIS-IU office, bringing with them recording gadgets, clenching their fists, some even badmouthing the guards and PGM Garcia, are acts not constitutive of an (i) intent to effect work stoppage or service disruption and (ii) for the purpose of realizing their demands of force concession.

Precisely, the limitations or qualifications found in Section 5 of CSC Resolution No. 02-1316 are there to temper and focus the application of such prohibition. Not all collective activity or mass undertaking of government employees is prohibited. Otherwise, we would be totally depriving our brothers and sisters in the government service of their constitutional right to freedom of expression.

Government workers, whatever their ranks, have as much right as any person in the land to voice out their protests against what they believe to be a violation of their rights and interests. Civil Service does not deprive them of their freedom of expression. It would be unfair to hold that by joining the government service, the members thereof have renounced or waived this basic liberty. This freedom can be reasonably regulated only but can never be taken away.

A review of PGM Garcia's formal charges against the respondents reveals that he himself was not even certain whether the respondents and the rest of the twenty or so GSIS employees who were at the GSIS-IU office that fateful day marched there or just simply appeared there simultaneously.[14] Thus, the petitioners were not even sure if the spontaneous act of each of the twenty or so GSIS employees on May 27, 2005 was a concerted one. The report of Manager Nagtalon of the GSIS-SD which was the basis for PGM Garcia's formal charges reflected such uncertainty. Thus,

Of these red shirt protesters, only Mr. Molina has official business at the Investigation Unit during this time. The rest abandoned their post and duties for the duration of this incident which lasted until 10:55 A.M. It was also observed that the protesters, some of whom raised their clenched left fists, carefully planned this illegal action as evident in their behavior of arrogance, defiance and provocation, the presence of various recording gadgets such as VCRs, voice recorders and digital cameras, the bad mouthing of the security guards and the PGM, the uniformity in their attire and the collusion regarding the anomalous entry of Mr. Albert Velasco to the premises as reported earlier.[15]

The said report of Nagtalon contained only bare facts. It did not show respondents' unified intent to effect disruption or stoppage in their work. It also failed to show that their purpose was to demand a force concession.

In the recent case of *GSIS v. Kapisanan ng mga Manggagawa sa GSIS*,^[16] the Court upheld the position of petitioner GSIS because its employees, numbering between 300 and 800 each day, staged a walkout and participated in a mass protest or demonstration outside the GSIS for four straight days. We cannot say the same for the 20 or so employees in this case. To equate their wearing of red shirts and going to the GSIS-IU office for just over an hour with that four-day mass action in *Kapisanan ng mga Manggagawa sa GSIS* case and to punish

them in the same manner would most certainly be unfair and unjust.

Recent analogous decisions in the United States, while recognizing the government's right as an employer to lay down certain standards of conduct, tend to lean towards a broad definition of "public concern speech" which is protected by their First Amendment. One such case is that of *Scott v. Meters*.^[17] In said case, the New York Transit Authority (NYTA), responsible for operation of New York City's mass transit service, issued a rule prohibiting employees from wearing badges or buttons on their uniforms. A number of union members wore union buttons promoting their opposition to a collective bargaining agreement. Consequently, the NYTA tried to enforce its rule and threatened to subject these union members to discipline. The court, though recognizing the government's right to impose reasonable restrictions, held that the NYTA's rule was "unconstitutionally overboard."

In another case, *Communication Workers of America v. Ector County Hospital District*,^[18] it was held that,

A county hospital employee's wearing of a "Union Yes" lapel pin during a union organization drive constituted speech on a matter of public concern, and the county's proffered interest in enforcing the anti-adornment provision of its dress code was outweighed by the employee's interest in exercising his First Amendment speech and associational rights by wearing a pro-union lapel button.^[19]

Thus, respondents' freedom of speech and of expression remains intact, and CSC's Resolution No. 02-1316 defining what a prohibited concerted activity or mass action has only tempered or regulated these rights. Measured against that definition, respondents' actuations did not amount to a prohibited concerted activity or mass action. The CSC and the CA were both correct in arriving at said conclusion.

WHEREFORE, the assailed August 31, 2007 Decision of the Court of Appeals as well as its October 16, 2007 Resolution in CA G.R. SP No. 98952 are hereby AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and Perez, JJ., concur.

[1] Rollo, pp. 295-312. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Rosalinda Asuncion-Vicente and Associate Justice Enrico A. Lanzanas.

[2] *Id.* at 296-297.

[3] *Id.*

[4] *Id.* at 297-299.

[5] *Id.*, Annexes "J" to "P," at 107-120.

[6] *Id.* at 191-192.

[7] *Id.* at 300-302.

[8] *Id.* at 309-310.

[9] *Id.*, GSIS/PGM Garcia's Memorandum, at 496-471.

[10] Merriam Webster's Collegiate Dictionary, 10th Edition, p. 1184.

[11] Herrera, Remedial Law, Vol. I, p. 548 (2000 ed.).

[12] First United Construction Corporation v. Valdez, G.R. No. 154108, December 10, 2008, 573 SCRA 391, 399.

[13] Rollo, pp. 307-308.

[14] Id. at 107.

[15] Id. at 99.

[16] GSIS v. Kapisanan ng mga Manggagawa sa GSIS, G.R. No. 170132, December 6, 2006, 510 SCRA 622.

[17] Scott v. Meyers, 191 F.3d 82 (2d Cir. 1999).

[18] Communication Workers of America v. Ector County Hospital District, 392 F.3d 733, 176 L.R.R.M. (BNA) 2155, 60 Fed. R. Serv. 3d 107 (5th Cir. 2004).

[19] Id.

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