

HONORIO J. HERNANDO, PLAINTIFF AND APPELLANT, VS. J. FRANCISCO, COMMODORE, PN, FLAG OFFICER IN COMMAND PHILIPPINE NAVY, HON. ALEJO SANTOS, SECRETARY OF NATIONAL DEFENSE, AND HON...

G.R. No. 18138. May 19, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from an order of the Court of First Instance of Ilocos Norte dismissing a petition for reinstatement.

Before the lower court, the parties have submitted the following stipulation of facts:

"1, That petitioner Honorio J. Hernando has been in the Government service since January 17, 1938, receiving appointments to the following: Boatman, Cape Bojeador Light Station, January 17, 1938; Lightkeeper (apprentice), Bureau of Customs, January 28, 1939; Lightkeeper, Bureau of Customs, December 9, 1940; Acting Lighthousekeeper, Bureau of Customs, November 21, 1945.

"The appointments received by the petitioner to the above-mentioned positions are herewith enclosed as Annexes 'A', 'A-', 'A-2' and 'A-3'.

"That petitioner is a Civil Service Eligible in the position of lightkeeper having passed the examination taken on December 31, 1940 with an average of 82%, as shown in the attached certificate dated July 23, 1941 of the Bureau of Civil Service which is attached herewith as Annex 'A-4'.

"That the administrative charges were filed against the petitioner by Mr. Ignacio Guinto of Barrio Buraan, Burgos, and Mr. Marcelo Vea, an employee of the lighthouse service at Cape Bojeador. Counsel for respondent reserved the right to present a certified true copy of the charges of Mr. Ignacio Quinto and Marcelo Vea.

"Petitioner was asked to answer within 72 hours said charges as per letter dated June 23, 1954 of Provincial Auditor J. Manalo of Ilocos Norte. The petitioner requested for an extension of time to answer the charges of Mr. Guinto in his letter dated July 12, 1954 and on July 12, 1954 he also asked an extension of time to answer the charges of Mr. Marcelo Vea. On July 16, 1954, petitioner filed answer to the charges against him dated July 14, 1954 (charges preferred by Mr. Marcelo Vea).* * *.

"3. That the Provincial Auditor conducted an investigation of the administrative charges and rendered a report of the same embodied in his 2nd Indorsement dated August 25, 1954. All the documents and papers in support of said indorsement report and as enumerated therein, are attached herewith. This report was forwarded to the Flag Officer in Command of the Philippine Navy, who upon receipt of said report wrote a letter to petitioner dated November 29, 1954 suspending him. * * *."

"4. That after the expiration of the two months period of suspension of petitioner, said petitioner thru counsel filed a petition dated May 27, 1955 for reinstatement with the Philippine Navy. A similar petition for

reinstatement was filed in the Bureau of Civil Service. These two petitions, however, were denied by the Flag Officer in Command of the Philippine Navy and the Bureau of Civil Service, respectively. Upon receipt of said denial, petitioner filed a petition for reconsideration. The petitions for reinstatement the orders of denial and the papers in support thereof, and the petition for reconsideration are herewith attached to this stipulation of facts as * * *.

"5. That while his administrative case was pending the Flag Officer in Command of the Philippine Navy likewise referred the matter to the Provincial Fiscal of Ilocos Norte for the institution of criminal charges against petitioner if any, and a preliminary investigation was conducted by the Provincial Fiscal who, however, dismissed the same as shown by a 2nd Indorsement dated September 12, 1955, made by Provincial Fiscal Ulpiano C. Dumaul of Ilocos Norte, copy of which is herewith attached as Annex "E" together with the envelop addressed to Atty. Harold Hernando which is post stamped on September 27, 1955 and marked as Annex 'E-I'.

"6. That based on said dismissal Annex 'E', the petitioner filed in the Bureau of Civil Service a petition dated May 27, 1958,, attaching thereto copy of Annex 'E' hereof. Copy of said petition dated May 27, 1958 is herewith attached as Annex 'F'.

7. That on August 18_ 1958, the petitioner received a decision of the Bureau of Civil Service in Administrative Case No. R-11545 dated May 29, 1958 thru a letter of transmittal dated August 6, 1958 from the Administrative Officer of the Headquarters of the Philippine Navy. Said letter of transmittal and decision dated May 29, 1958 are herewith enclosed as Annex 'G' and 'G-I', respectively.

"The counsel for respondents reserved the right to file with this Honorable Court the sworn statement of petitioner dated May 5, 1956 as mentioned in page 2 of the Decision of the Bureau of Civil Service, Annex 'G-1' hereof.

"8. That on August 26t 1958, the petitioner filed by registry, a petition for reconsideration with the Bureau of Civil Service. As petitioner has not received any action of the petition for reconsideration, he filed a memorandum dated September 30, 1958,, enclosing therewith Annexes 'A', ' B', ' C' and 'D'. * * *.

"9. That on August 10, 1959 petitioner filed his complaint in the above-entitled- case against respondents who filed their answer to said complaint on September 12, 1959..

"10. That under date of September 22, 1959, the Administrative Officer wrote a letter to the petitioner enclosing therewith the resolution of the Bureau of Civil Service denying the petition for review of petitioner. * * *.

"11. That as of May 27, 1959, the position of Lightkeeper at Cape Bojeador which was the position formerly occupied by petitioner Honorio Hernando was still vacant as per certification dated May 27, 1959 by Mr. Felipe Roque. Chief Lighthouse Service, Philippine Navy, copy of said certification is herewith enclosed as Annex 'J' Counsel for respondents, however, reserved the right to file a certification with this Honorable Court as to the present status of said position.

"12. That parties in the above-entitled case agree that all the annexes herewith shall form integral parts of this stipulation of facts.

"13. That counsel for respondents request a period of fifteen (15) days from today within which to file certified true copies of the documents which they have reserved to present above."

The main issues raised by the appellant before the lower court are: (1) that there was a denial of due process of law; (2) that the Provincial Auditor did not have the authority or power to investigate a civil service employee; and (3) that there was no waiver of formal investigation in his alleged sworn statement dated May 5, 1956.

The lower court, after examining all the documents attached to the record and pertinent to the case found that the investigation conducted by the Provincial Auditor was tainted with serious irregularities and conducted ex-parte and appellant was not notified of the dates of the investigation and did not have the opportunity to cross-examine the witnesses against him and present evidence in his behalf. But the said court prevented itself from delving deeper into the alleged irregularity of the investigation because according to it there was a waiver on the part of the appellant and he is estopped from questioning it as shown in a sworn statement executed by him on May 25, 1956, the pertinent portion of which states:

"SWORN STATEMENT

"I, Honorio Hernando, of legal age, married and resident of Laoag, Ilocos Norte, after having been duly sworn to in accordance with law, do hereby give the following answers to the questions propounded to me by Mr. J. Manalo, Provincial Auditor for Ilocos Norte (in the presence of his defense counsel, Atty. Harold Hernando), as. follows:

"QUESTION 1.—Mr. Hernando, I am presenting- to you this petition for reinvestigation of the complaints preferred against you by Mr. Ignacio Guinto and Mr. Marcelo Vea marked Exhibit 'K'. This request for reinvestigation of the case was dated February 14, 1956, and signed by your defense counsel, Atty. Harold M, Hernando. In paragraph 2 of this request, it states as follows: '2. That the respondent is no longer interested of being reinstated to his position but solely for the fact that he wants to be cleared out of his name and reputation against any criminal or administrative complaints so that he is free as well as being fully qualified for any other position if ever he applies for a job or any position, both in the government and in private offices.' Is this petition yours?

"Answer 1.—Yes, sir.

"Q. 2.—Pursuant to what you have stated in the above-quoted paragraph of your request for reinvestigation are you willing to be separated from the service of the government?

"A. 2.—Yes, sir, provided that the criminal aspect of the charges should no longer be pursued, and for the further fact that I want my case to be cleared cut from any and all complaints against me in connection with this case, so I want to maintain my good name and reputation to the public provided that the criminal aspect of the case be quashed and that the administrative charge against me be terminated or dismissed as I am willing to be separated from the government service. I would respectfully pray to this Honorable office also that if there is say administrative penalty that may be imposed upon me on the administrative aspect of the case, that the same be a light one and/or without penalty considering the length of time now that I am suspended from office and the moral suffering of my family because of my said indeterminate suspension up to the present time so that I will be free and qualified again to enter and/or be employed with the government or to any private office. Being a civil service eligible, with more than sixteen years of continued and efficient service in the government and in the light of justice and equity may I suggest and pray that this is sufficient to merit the non-imposition of any penalty whatsoever in the administrative aspect of my case and praying further for such other remedies as may be most equitable in the premises, and that the criminal aspect of the case be quashed.

"Q. 3.—In view of your statement above, are you willing that your request for reinvestigation of said cases be discontinued provided I recommend that only the administrative aspect of the complaint be taken into consideration and that the criminal aspect be quashed?

"A. 3.—Yes, sir.

"Q. 4.—I remind you that I have only the power of recommendation, but suppose my recommendation to quash the criminal aspect is not approved, what do you say?

"A. 4.—I respectfully pray that my petition for reinvestigation be totally discontinued and provided that the

criminal aspect of the case be quashed.

"Q. 5.—Do you have something more to say in connection with the case?

"A. 5.—May I humbly pray to this Honorable Office of the Provincial Auditor to recommend through the office of the Civil Service, that my petition for reinvestigation be discontinued and the criminal aspect of the case be quashed. That my indeterminate suspension up to the present time is sufficient penalty for me because the nature of the complaints against me involve very little amount and that I am a civil service eligible. That I be allowed and/or will be qualified to enter any government or private office again."

The lower court in inhibiting itself from ascertaining the alleged irregularity of the investigation because of the above-cited sworn statement, dismissed the complaint on June 1, 1960 on the ground that appellant's "inaction and by sleeping on his rights he may in law be considered as having abandoned the office to which he is entitled to be reinstated" and "that a Court of First Instance has no jurisdiction to take cognizance of and to decide cases involving the removal, separation and suspension of subordinate officers and employees as this matter is within the exclusive jurisdiction of the Commissioner of Civil Service (Sec. 695, Revised Administrative Code)."

Motion for reconsideration of the order of dismissal having been denied, appellant has interposed this appeal on questions of law, namely, (1) whether or not the Commissioner of Civil Service has the exclusive charge or jurisdiction to conduct all formal administrative investigations; and (2) whether or not the chief or head of the office can delegate to the Provincial Auditor the power to investigate the appellant.

Appellant insists that all formal administrative investigations conducted against civil service employees are covered by Section 695 of the Revised Administrative Code which, in part, provides that—

"The Commissioner of the Civil Service shall have the exclusive jurisdiction over the removal, separation, and suspension of subordinate officers and employees in the Civil Service and over all other matters relating to the conduct, discipline, and efficiency of such subordinate officers and employees, and shall have exclusive charge of all formal administrative investigations against them. * * *"

and therefore the Commissioner of Civil Service has the exclusive charge or jurisdiction to conduct formal administrative investigation on the charges against him.

While it is true that the abovequoted provision grants exclusive jurisdiction to the Civil Service Commissioner over the removal, separation and suspension of subordinate officers and employees in the civil service, it is also true that "Executive Order No. 370, dated September 29, 1941 provides that administrative proceedings may be commenced against a government officer or employee by the head or chief of a bureau or Office concerned. It is only after the investigation that the record of the case, with comment and recommendation of the investigator is forwarded to the Commissioner of Civil Service." (Castillo, etc., et al. vs. Hon. Froilan Bayona, etc., et al., 106 Phil, 1121.) And in the case of Pastoriza vs. Superintendent of Schools, 106 Phil., 216, wherein it was argued that only the Commissioner of Civil Service or his subordinates could validly conduct such investigation in view of Section 695 of the Revised Administrative Code, this Tribunal stated:

"Pursuant to Executive Order No. 370 a complaint against an officer or employee of the government is to be filed with the head or chief of the bureau or office where he is working- and the officer or employee concerned shall be required to answer the complaint within 72 hours after receipt thereof. If the officer or employee elects to be heard on the charges, a hearing will be held by the chief or head of office who shall, after said hearing, forward to the Commissioner of Civil Service the records of the case with his comment and recommendation. In other words, the Commissioner of Civil Service has absolutely nothing to do with or has no participation whatever in the investigation from the time the charges are filed until termination. The Commissioner takes cognizance of the case only after the investigation is finished when he receives the records. In effect, said

executive order completely divests the Commissioner of his 'exclusive power of investigation.'

Besides, Republic Act No. 2260, which took effect on June 30, 1959, has changed the Civil Service' jurisdiction from "exclusive" to "final", and the procedure under Executive Order No. 370 substantially conforms in its general outline to new legislation. It would be useless to object to the application of the new law on the ground of initiation of proceedings before its approval, because it contains no saving clause as to matters previously arising, and it being procedural in nature, no vested rights may be invoked. (*Pastoriza vs. Supt. of Schools*, supra)

As regards to the contention of appellant that the provincial auditor is not the proper head or chief of the bureau or office and therefore without power to investigate, we have Executive Order No. 370, series of 1941, Section 1 of which states:

"Administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio* or upon complaint of any person which shall be subscribed under oath by the complainant: Provided, That if a complaint is not or cannot be sworn to by the complainant, the head or chief of the bureau or office concerned may, in his discretion, take action thereon if the public interest or the special circumstances of the case so warrant."

It is believed that the proceedings was properly commenced when the Superintendent of the Lighthouse Service (admittedly to be the proper head or chief of the appellant) wired the provincial auditor to investigate the case. The Civil Service Board of Appeals itself has laid down a ruling to the effect that authority to investigate can be delegated and not contrary to due process (*Administrative Case No. R-14493*, February 26, 1957.) This delegation of the authority to investigate has recently been upheld by this Court in the case of *Armando Esperanza vs. Castillo*, G. R. No. L-21810, April 30, 1966.

Furthermore, Section 25 (c), Rule XVII of the Civil Service Rules concerning procedure in administrative proceedings clearly states that administrative investigation "shall be conducted by the head of Department or agency concerned or his authorized representative, unless the Commissioner, upon request and for justifiable reasons, designates a special investigator or investigators pursuant to Section 13 of Republic Act 2260. (Italics supplied)

It is clear, therefore, that when the Superintendent of the Lighthouse Service wired the Provincial Auditor of Ilocos Norte to conduct the investigation, the latter became the authorized representative of the former. And when the appellant submitted himself to investigation without objection on this ground, he is considered to have waived any formal imperfections in said investigations. Indeed, due process in the strict judicial sense is not indispensable in administrative proceedings. (*Cornejo vs. Gabriel*, 41 Phil. 188)

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Order affirmed.

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