

AMANDA V. CABIGAO, PETITIONER AND APPELLEE, VS. AMADO DEL ROSARIO, ET AL., RESPONDENTS AND APPELLANTS.*G. R. No. 18379. October 31, 1962*

Ponente: DIZON, J.

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This is an appeal taken by Amado del Rosario, as Commissioner of Civil Service, Dominador R. Aytona, as Secretary of Finance, Eleuterio Capapas, as Commissioner of Customs, and Pedro Gimenez, as Auditor General, from the decision of the Court of First Instance of Manila in special civil action No. 44193 ordering them to reinstate appellee, Amanda V. Cabigao, "in the service of the Bureau of Customs" but assigning her "to perform purely clerical duties pending the decision of the Civil Service Board of Appeals of the administrative case against her."

Appellee Amanda V. Cabigao was appointed as Customs Examiner in the Appraisers' Division of the Bureau of Customs, Manila, in 1957. On May 16, 1958, having been charged with "grave neglect of duty and acts prejudicial to the best interest of the service", she was suspended from office by the Secretary of Finance, through the Commissioner of Customs. However, on July 21, 1959, she was reinstated, pursuant to the provisions of Section 35 of the Civil Service Act of 1959, but only to perform clerical duties and payment of her salary during the period of suspension was ordered withheld pending final determination by the Commissioner of Civil Service of the charges filed against her (Administrative Case No. R-18519).

On November 16, 1959, after a formal investigation of the charges, the Commissioner of Civil Service found appellee guilty of gross negligence in the performance of official duty and considered her "resigned effective on her last day of duty with pay, without prejudice to reinstatement to another office." She received notice of said decision on December 7, 1959. In a letter addressed to the Commissioner on the same date, she requested that its enforcement or execution be stayed because she was filing a motion for reconsideration. Her request having been denied by the Commissioner, she filed a motion for reconsideration of the decision, which was likewise denied. Notice of the denial was served on her on March 17, 1960 and on the following day she filed with the Commissioner a written notice of appeal from the decision to the Civil Service Board of Appeals, at the same time renewing her request for reinstatement pending appeal invoking the decision in the case of Tan vs. Gimenez, et al., 107 Phil., 17; 57 Off. Gaz. (12) 2130, but on September 2, 1960, the Secretary of Finance denied the said request.

On September 12, 1960 appellee filed the present action for mandamus in the Court of First Instance of Manila (Civil Case No. 44193) praying that appellants Commissioner of Civil Service and Secretary of Finance be ordered to reinstate her immediately to her former position pending her appeal in Administrative Case No. R-18519; that appellants be ordered to pay her monthly salary from December 8, 1959 until actual reinstatement and every month thereafter during the pendency of her appeal in the aforesaid administrative case; and that appellants Commissioner of Civil Service and Secretary of Finance be ordered to pay, jointly and severally, the costs of suit.

On March 3, 1961, the court rendered the appealed decision, the dispositive portion of which reads as follows:

"Wherefore, judgment is hereby rendered in favor of the petitioner and against the respondents, commanding the later to reinstate immediately the petitioner in the service of the Bureau of Customs, but the petitioner shall be assigned to perform purely clerical duties pending the decision of the Civil Service Board of Appeals of the Administrative case against her.

"The petition is dismissed, insofar as it asks that the respondents be ordered to pay the monthly salary of the petitioner from December 8, 1959, until actual reinstatement and every month thereafter during the pendency of her appeal, in Administrative Case No. R-18519".

The issue to be decided in this appeal is whether or not a civil service employee who has appealed to the Civil Service Board of Appeals from a decision of the Commissioner of Civil Service finding him guilty of gross negligence in the performance of official duty and considering him as resigned effective on his last day of duty with pay, is entitled to remain in the service during the pendency of his appeal.

The burden of appellee's contention is that while the decision of the Commissioner of Civil Service is final in character, it is not executory from the beginning but appealable, and that upon the perfection of an appeal therefrom, it must be deemed vacated and its execution stayed. Upon these premises and invoking our decision in *Tan vs. Gimenez* (supra), she contends that her removal after the decision—notwithstanding her appeal—was unlawful and that, therefore, she is entitled to immediate reinstatement.

On the other hand, appellants contend that a decision of the Commissioner of Civil Service finding a government employee guilty of misconduct is final and executory from the beginning, in accordance with an opinion rendered by the Secretary of Justice in 1940 construing the provisions of Executive Order No. 39 in connection with Section 695 of the Administrative Code; that appellee's view would compel the government to retain in its service an employee found unfit for the public service, during all the time that his appeal remains pending in the Civil Service Board of Appeals, thus encouraging frivolous appeals and exposing public interest to untold risks and prejudice; that, on the other hand, while the view of the government affords protection to public interest, it results in no substantial prejudice to the employee concerned because if, on appeal, he is exonerated, he will be entitled not only to reinstatement but to full relief in the form of back salaries and other privileges to his position appertaining.

It is manifest that Section 35 of Republic Act No. 2260 commonly known as the Civil Service Act of 1959, providing for the compulsory reinstatement of an employee under preventive suspension does not apply to the present case because it governs only those "not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent".

The statute mentioned above contains no clear and express provision decisive of the issue before us. It is true that its Section 16, subsection (i) vests on the Commissioner of Civil Service final authority to pass upon the removal, separation, and suspension of all permanent officials and employees in the competitive or classified service, but this provision is clearly subject to that of Section 36 of the same act to the effect that the decision of the Commissioner of Civil Service in an administrative case involving discipline of subordinate officials and employees is appealable to the Civil Service Board of Appeals within thirty days from notice.

On the other hand, we said in the case of *Tan vs. Gimenez* (supra) that the appeal taken by an employee found guilty of misconduct, from the decision of the Commissioner of Civil Service to the Civil Service Board of Appeals, precludes "the execution of the decision of the Commissioner of Civil Service". This statement, however, must not be taken to mean that the decision of the Commissioner can not be executed pending appeal, or that the appeal interposed by the employee necessarily stays its execution, for precisely to clarify the meaning and

scope of said statement, we added: "in other words, the decision did not become final and executory." The Tan case, therefore, is not a decisive authority for the proposition that the decision of the Commissioner of Civil Service finding a government employee guilty of misconduct cannot be executed or enforced during the pendency of the appeal interposed by the employee to the Civil Service Board of Appeals. On the other hand, well known is the rule that in civil actions involving purely private rights, a decision may be ordered executed pending appeal, for special reasons. There would seem to be no valid reason not to follow this rule in actions and proceedings involving public interest.

While the issue is obviously not entirely free from doubt because of what has been stated heretofore, we are however, of the opinion that, although the decision of the Commissioner of Civil Service adverse to the government employee under investigation is appealable to the Civil Service Board of Appeals, the Commissioner has discretion to enforce it and make it effective pending appeal, to protect public interest. However, the removal or the continued suspension of the employee affected through the execution of the appealed decision shall be considered as unjustified should said decision be reversed by the Civil Service Board of Appeals and, in such case, as provided for in Section 35 of the Civil Service Act of 1959, the employee "shall be restored to his position with full pay for the period of suspension".

In the present case it is clear that the Commissioner of Civil Service deemed it proper, for the protection of public interest, to remove appellee from office immediately after the rendition of the decision finding her guilty. Considering the nature of appellee's position, we cannot find our way clear to holding that, in doing so, the Commissioner of Civil Service acted unlawfully or with grave abuse of discretion. Obvious it should be to everyone that appellee's continuation in the service after having been found guilty of gross negligence in the performance of her official duties would have entailed grave risks for the state. On the other hand, should her appeal prosper, she would be entitled to reinstatement with full pay for the period during which she was removed or suspended from office.

It results from the foregoing that appellee does not have a clear legal right to be reinstated during the pendency of her appeal from the decision of the Commissioner of Civil Service to the Civil Service Board of Appeals, nor do appellants have the imperative duty to reinstate her. The writ of mandamus, therefore, should have been denied.

Wherefore, the decision appealed from is reversed, and the petition for mandamus filed by appellee against appellant is dismissed, with costs.

Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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