

## ERNESTO G. YMBONG, PETITIONER, VS. ABS-CBN BROADCASTING CORPORATION, VENERANDA SY AND DANTE LUZON, RESPONDENTS.

*G.R. No. 184885. March 07, 2012*

Ponente: VILLARAMA, JR., J.

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### VILLARAMA, JR., J.:

Before us is a Rule 45 Petition seeking to set aside the August 22, 2007 Decision[1] and September 18, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 86206 declaring petitioner to have resigned from work and not illegally dismissed.

The antecedent facts follow:

Petitioner Ernesto G. Ymbong started working for ABS-CBN Broadcasting Corporation (ABS-CBN) in 1993 at its regional station in Cebu as a television talent, co-anchoring Hoy Gising and TV Patrol Cebu. His stint in ABS-CBN later extended to radio when ABS-CBN Cebu launched its AM station DYAB in 1995 where he worked as drama and voice talent, spinner, scriptwriter and public affairs program anchor.

Like Ymbong, Leandro Patalinghug also worked for ABS-CBN Cebu. Starting 1995, he worked as talent, director and scriptwriter for various radio programs aired over DYAB.

On January 1, 1996, the ABS-CBN Head Office in Manila issued Policy No. HR-ER-016 or the “Policy on Employees Seeking Public Office.” The pertinent portions read:

- Any employee who intends to run for any public office position, must file his/her letter of resignation, at least thirty (30) days prior to the official filing of the certificate of candidacy either for national or local election.

x x x x

- Further, any employee who intends to join a political group/party or even with no political affiliation but who intends to openly and aggressively campaign for a candidate or group of candidates (e.g. publicly speaking/endorsing candidate, recruiting campaign workers, etc.) must file a request for leave of absence subject to management’s approval. For this particular reason, the employee should file the leave request at least thirty (30) days prior to the start of the planned leave period.

x x x x[3] [Emphasis and underscoring supplied.]

Because of the impending May 1998 elections and based on his immediate recollection of the policy at that time, Dante Luzon, Assistant Station Manager of DYAB issued the following memorandum:

TO : ALL CONCERNED  
FROM : DANTE LUZON  
DATE : MARCH 25, 1998  
SUBJECT : AS STATED

Please be informed that per company policy, any employee/talent who wants to run for any position in the

coming election will have to file a leave of absence the moment he/she files his/her certificate of candidacy.

The services rendered by the concerned employee/talent to this company will then be temporarily suspended for the entire campaign/election period.

For strict compliance.[4] [Emphasis and underscoring supplied.]

Luzon, however, admitted that upon double-checking of the exact text of the policy and subsequent confirmation with the ABS-CBN Head Office, he saw that the policy actually required suspension for those who intend to campaign for a political party or candidate and resignation for those who will actually run in the elections.[5]

After the issuance of the March 25, 1998 Memorandum, Ymbong got in touch with Luzon. Luzon claims that Ymbong approached him and told him that he would leave radio for a couple of months because he will campaign for the administration ticket. It was only after the elections that they found out that Ymbong actually ran for public office himself at the eleventh hour. Ymbong, on the other hand, claims that in accordance with the March 25, 1998 Memorandum, he informed Luzon through a letter that he would take a few months leave of absence from March 8, 1998 to May 18, 1998 since he was running for councilor of Lapu-Lapu City.

As regards Patalinghug, Patalinghug approached Luzon and advised him that he will run as councilor for Naga, Cebu. According to Luzon, he clarified to Patalinghug that he will be considered resigned and not just on leave once he files a certificate of candidacy. Thus, Patalinghug wrote Luzon the following letter on April 13, 1998:

Dear Mr. Luzon,

I'm submitting to you my letter of resignation as your Drama Production Chief and Talent due to your company's policy that every person connected to ABS-CBN that should seek an elected position in the government will be forced to resigned (sic) from his position. So herewith I'm submitting my resignation with a hard heart. But I'm still hoping to be connected again with your prestigious company after the election[s] should you feel that I'm still an asset to your drama production department. I'm looking forward to that day and I'm very happy and proud that I have served for two and a half years the most stable and the most prestigious Radio and TV Network in the Philippines.

As a friend[,] wish me luck and Pray for me. Thank you.

Very Truly Yours,

(Sgd.)

Leandro "Boy" Patalinghug[6]

Unfortunately, both Ymbong and Patalinghug lost in the May 1998 elections.

Later, Ymbong and Patalinghug both tried to come back to ABS-CBN Cebu. According to Luzon, he informed them that they cannot work there anymore because of company policy. This was stressed even in subsequent meetings and they were told that the company was not allowing any exceptions. ABS-CBN, however, agreed out of pure liberality to give them a chance to wind up their participation in the radio drama, Nagbabagang Langit, since it was rating well and to avoid an abrupt ending. The agreed winding-up, however, dragged on for so long prompting Luzon to issue to Ymbong the following memorandum dated September 14, 1998:

TO : NESTOR YMBONG  
FROM : DANTE LUZON  
SUBJECT : AS STATED  
DATE : 14 SEPT. 1998

Please be reminded that your services as drama talent had already been automatically terminated when you ran for a local government position last election.

The Management however gave you more than enough time to end your drama participation and other involvement with the drama department.

It has been decided therefore that all your drama participation shall be terminated effective immediately. However, your involvement as drama spinner/narrator of the drama "NAGBA[BA]GANG LANGIT" continues until its writer/director Mr. Leandro Patalinghug wraps it up one week upon receipt of a separate memo issued to him.[7]

Ymbong in contrast contended that after the expiration of his leave of absence, he reported back to work as a regular talent and in fact continued to receive his salary. On September 14, 1998, he received a memorandum stating that his services are being terminated immediately, much to his surprise. Thus, he filed an illegal dismissal complaint[8] against ABS-CBN, Luzon and DYAB Station Manager Veneranda Sy. He argued that the ground cited by ABS-CBN for his dismissal was not among those enumerated in the Labor Code, as amended. And even granting without admitting the existence of the company policy supposed to have been violated, Ymbong averred that it was necessary that the company policy meet certain requirements before willful disobedience of the policy may constitute a just cause for termination. Ymbong further argued that the company policy violates his constitutional right to suffrage.[9]

Patalinghug likewise filed an illegal dismissal complaint[10] against ABS-CBN.

ABS-CBN prayed for the dismissal of the complaints arguing that there is no employer-employee relationship between the company and Ymbong and Patalinghug. ABS-CBN contended that they are not employees but talents as evidenced by their talent contracts. However, notwithstanding their status, ABS-CBN has a standing policy on persons connected with the company whenever they will run for public office.[11]

On July 14, 1999, the Labor Arbiter rendered a decision[12] finding the dismissal of Ymbong and Patalinghug illegal, thus:

WHEREFORE, in the light of the foregoing, judgment is rendered finding the dismissal of the two complainants illegal. An order is issued directing respondent ABS[-]CBN to immediately reinstate complainants to their former positions without loss of seniority rights plus the payment of backwages in the amount of P200,000.00 to each complainant.

All other claims are dismissed.

SO ORDERED.[13]

The Labor Arbiter found that there exists an employer-employee relationship between ABS-CBN and Ymbong and Patalinghug considering the stipulations in their appointment letters/talent contracts. The Labor Arbiter noted particularly that the appointment letters/talent contracts imposed conditions in the performance of their work, specifically on attendance and punctuality, which effectively placed them under the control of ABS-CBN. The Labor Arbiter likewise ruled that although the subject company policy is reasonable and not contrary to law, the same was not made known to Ymbong and Patalinghug and in fact was superseded by another one embodied in the March 25, 1998 Memorandum issued by Luzon. Thus, there is no valid or authorized cause in terminating Ymbong and Patalinghug from their employment.

In its memorandum of appeal[14] before the National Labor Relations Commission (NLRC), ABS-CBN contended that the Labor Arbiter has no jurisdiction over the case because there is no employer-employee relationship between the company and Ymbong and Patalinghug, and that Sy and Luzon mistakenly assumed that

Ymbong and Patalinghug could just file a leave of absence since they are only talents and not employees. In its Supplemental Appeal,[15] ABS-CBN insisted that Ymbong and Patalinghug were engaged as radio talents for DYAB dramas and personality programs and their contract is one between a self-employed contractor and the hiring party which is a standard practice in the broadcasting industry. It also argued that the Labor Arbiter should not have made much of the provisions on Ymbong's attendance and punctuality since such requirement is a dictate of the programming of the station, the slating of shows at regular time slots, and availability of recording studios – not an attempt to exercise control over the manner of his performance of the contracted anchor work within his scheduled spot on air. As for the pronouncement that the company policy has already been superseded by the March 25, 1998 Memorandum issued by Luzon, the latter already clarified that it was the very policy he sought to enforce. This matter was relayed by Luzon to Patalinghug when the latter disclosed his plans to join the 1998 elections while Ymbong only informed the company that he was campaigning for the administration ticket and the company had no inkling that he will actually run until the issue was already moot and academic. ABS-CBN further contended that Ymbong and Patalinghug's "reinstatement" is legally and physically impossible as the talent positions they vacated no longer exist. Neither is there basis for the award of back wages since they were not earning a monthly salary but paid talent fees on a per production/per script basis. Attached to the Supplemental Appeal is a Sworn Statement[16] of Luzon.

On March 8, 2004, the NLRC rendered a decision[17] modifying the labor arbiter's decision. The fallo of the NLRC decision reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Nicasio C. Aninon dated 14 July 1999 is MODIFIED, to wit:

Ordering respondent ABS-CBN to reinstate complainant Ernesto G. Ymbong and to pay his full backwages computed from 15 September 1998 up to the time of his actual reinstatement.

SO ORDERED.[18]

The NLRC dismissed ABS-CBN's Supplemental Appeal for being filed out of time. The NLRC ruled that to entertain the same would be to allow the parties to submit their appeal on piecemeal basis, which is contrary to the agency's duty to facilitate speedy disposition of cases. The NLRC also held that ABS-CBN wielded the power of control over Ymbong and Patalinghug, thereby proving the existence of an employer-employee relationship between them.

As to the issue of whether they were illegally dismissed, the NLRC treated their cases differently. In the case of Patalinghug, it found that he voluntarily resigned from employment on April 21, 1998 when he submitted his resignation letter. The NLRC noted that although the tenor of the resignation letter is somewhat involuntary, he knew that it is the policy of the company that every person connected therewith should resign from his employment if he seeks an elected position in the government. As to Ymbong, however, the NLRC ruled otherwise. It ruled that the March 25, 1998 Memorandum merely states that an employee who seeks any elected position in the government will only merit the temporary suspension of his services. It held that under the principle of social justice, the March 25, 1998 Memorandum shall prevail and ABS-CBN is estopped from enforcing the September 14, 1998 memorandum issued to Ymbong stating that his services had been automatically terminated when he ran for an elective position.

ABS-CBN moved to reconsider the NLRC decision, but the same was denied in a Resolution dated June 21, 2004.[19]

Imputing grave abuse of discretion on the NLRC, ABS-CBN filed a petition for certiorari[20] before the CA alleging that:

I.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION AND SERIOUSLY MISAPPRECIATED THE FACTS IN NOT HOLDING THAT RESPONDENT YMBONG IS A FREELANCE RADIO TALENT AND MEDIA PRACTITIONER—NOT A “REGULAR EMPLOYEE” OF PETITIONER—TO WHOM CERTAIN PRODUCTION WORK HAD BEEN OUTSOURCED BY ABS-CBN CEBU UNDER AN INDEPENDENT CONTRACTORSHIP SITUATION, THUS RENDERING THE LABOR COURTS WITHOUT JURISDICTION OVER THE CASE IN THE ABSENCE OF EMPLOYMENT RELATIONS BETWEEN THE PARTIES.

II.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN DECLARING RESPONDENT YMBONG TO BE A REGULAR EMPLOYEE OF PETITIONER AS TO CREATE A CONTRACTUAL EMPLOYMENT RELATION BETWEEN THEM WHEN NONE EXISTS OR HAD BEEN AGREED UPON OR OTHERWISE INTENDED BY THE PARTIES.

III.

EVEN ASSUMING THE ALLEGED EMPLOYMENT RELATION TO EXIST FOR THE SAKE OF ARGUMENT, RESPONDENT NLRC IN ANY CASE COMMITTED A GRAVE ABUSE OF DISCRETION IN NOT SIMILARLY UPHOLDING AND APPLYING COMPANY POLICY NO. HR-ER-016 IN THE CASE OF RESPONDENT YMBONG AND DEEMING HIM AS RESIGNED AND DISQUALIFIED FROM FURTHER ENGAGEMENT AS A RADIO TALENT IN ABS-CBN CEBU AS A CONSEQUENCE OF HIS CANDIDACY IN THE 1998 ELECTIONS, AS RESPONDENT NLRC HAD DONE IN THE CASE OF PATALINGHUG.

IV.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION AND DENIED DUE PROCESS TO PETITIONER IN REFUSING TO CONSIDER ITS SUPPLEMENTAL APPEAL, DATED OCTOBER 18, 1999, “FOR BEING FILED OUT OF TIME” CONSIDERING THAT THE FILING OF SUCH A PLEADING IS NOT IN ANY CASE PROSCRIBED AND RESPONDENT NLRC IS AUTHORIZED TO CONSIDER ADDITIONAL EVIDENCE ON APPEAL; MOREOVER, TECHNICAL RULES OF EVIDENCE DO NOT APPLY IN LABOR CASES.

V.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN GRANTING THE RELIEF OF REINSTATEMENT AND BACKWAGES TO RESPONDENT YMBONG SINCE HE NEVER OCCUPIED ANY “REGULAR” POSITION IN PETITIONER FROM WHICH HE COULD HAVE BEEN “ILLEGALLY DISMISSED,” NOR ARE ANY OF THE RADIO PRODUCTIONS IN WHICH HE HAD DONE TALENT WORK FOR PETITIONER STILL EXISTING. INDEED, THERE IS NO BASIS WHATSOEVER FOR THE AWARD OF BACKWAGES TO RESPONDENT YMBONG IN THE AMOUNT OF P200,000.00 CONSIDERING THAT, AS SHOWN BY THE UNCONTROVERTED EVIDENCE, HE WAS NOT EARNING A MONTHLY “SALARY” OF “P20,000.00,” AS HE FALSELY CLAIMS, BUT WAS PAID TALENT FEES ON A “PER PRODUCTION/PER SCRIPT” BASIS WHICH AVERAGED LESS THAN P10,000.00 PER MONTH IN TALENT FEES ALL IN ALL.[21]

On August 22, 2007, the CA rendered the assailed decision reversing and setting aside the March 8, 2004 Decision and June 21, 2004 Resolution of the NLRC. The CA declared Ymbong resigned from employment and not to have been illegally dismissed. The award of full back wages in his favor was deleted accordingly.

The CA ruled that ABS-CBN is estopped from claiming that Ymbong was not its employee after applying the

provisions of Policy No. HR-ER-016 to him. It noted that said policy is entitled “Policy on Employees Seeking Public Office” and the guidelines contained therein specifically pertain to employees and did not even mention talents or independent contractors. It held that it is a complete turnaround on ABS-CBN’s part to later argue that Ymbong is only a radio talent or independent contractor and not its employee. By applying the subject company policy on Ymbong, ABS-CBN had explicitly recognized him to be an employee and not merely an independent contractor.

The CA likewise held that the subject company policy is the controlling guideline and therefore, Ymbong should be considered resigned from ABS-CBN. While Luzon has policy-making power as assistant radio manager, he had no authority to issue a memorandum that had the effect of repealing or superseding a subsisting policy. Contrary to the findings of the Labor Arbiter, the subject company policy was effective at that time and continues to be valid and subsisting up to the present. The CA cited Patalinghug’s resignation letter to buttress this conclusion, noting that Patalinghug openly admitted in his letter that his resignation was in line with the said company policy. Since ABS-CBN applied Policy No. HR-ER-016 to Patalinghug, there is no reason not to apply the same regulation to Ymbong who was on a similar situation as the former. Thus, the CA found that the NLRC overstepped its area of discretion to a point of grave abuse in declaring Ymbong to have been illegally terminated. The CA concluded that there is no illegal dismissal to speak of in the instant case as Ymbong is considered resigned when he ran for an elective post pursuant to the subject company policy.

Hence, this petition.

Petitioner argues that the CA gravely erred: (1) in upholding Policy No. HR-ER-016; (2) in upholding the validity of the termination of Ymbong’s services; and (3) when it reversed the decision of the NLRC 4th Division of Cebu City which affirmed the decision of Labor Arbiter Nicasio C. Aniñon.[22]

Ymbong argues that the subject company policy is a clear interference and a gross violation of an employee’s right to suffrage. He is surprised why it was easy for the CA to rule that Luzon’s memorandum ran counter to an existing policy while on the other end, it did not see that it was in conflict with the constitutional right to suffrage. He also points out that the issuance of the March 25, 1998 Memorandum was precisely an exercise of the management power to which an employee like him must respect; otherwise, he will be sanctioned for disobedience or worse, even terminated. He was not in a position to know which between the two issuances was correct and as far as he is concerned, the March 25, 1998 Memorandum superseded the subject company policy. Moreover, ABS-CBN cannot disown acts of its officers most especially since it prejudiced his property rights.[23]

As to the validity of his dismissal, Ymbong contends that the ground relied upon by ABS-CBN is not among the just and authorized causes provided in the Labor Code, as amended. And even assuming the subject company policy passes the test of validity under the pretext of the right of the management to discipline and terminate its employees, the exercise of such right is not without bounds. Ymbong avers that his automatic termination was a blatant disregard of his right to due process. He was never asked to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.[24]

Ymbong likewise asseverates that both the Labor Arbiter and the NLRC were consistent in their findings that he was illegally dismissed. It is settled that factual findings of labor administrative officials, if supported by substantial evidence, are accorded not only great respect but even finality.[25]

ABS-CBN, for its part, counters that the validity of policies such as Policy No. HR-ER-016 has long been upheld by this Court which has ruled that a media company has a right to impose a policy providing that employees who file their certificates of candidacy in any election shall be considered resigned.[26] Moreover, case law has upheld the validity of the exercise of management prerogatives even if they appear to limit the rights of employees as

long as there is no showing that management prerogatives were exercised in a manner contrary to law.[27] ABS-CBN contends that being the largest media and entertainment company in the country, its reputation stems not only from its ability to deliver quality entertainment programs but also because of neutrality and impartiality in delivering news.[28]

ABS-CBN further argues that nothing in the company policy prohibits its employees from either accepting a public appointive position or from running for public office. Thus, it cannot be considered as violative of the constitutional right of suffrage. Moreover, the Supreme Court has recognized the employer's right to enforce occupational qualifications as long as the employer is able to show the existence of a reasonable business necessity in imposing the questioned policy. Here, Policy No. HR-ER-016 itself states that it was issued "to protect the company from any public misconceptions" and "[t]o preserve its objectivity, neutrality and credibility." Thus, it cannot be denied that it is reasonable under the circumstances.[29]

ABS-CBN likewise opposes Ymbong's claim that he was terminated. ABS-CBN argues that on the contrary, Ymbong's unilateral act of filing his certificate of candidacy is an overt act tantamount to voluntary resignation on his part by virtue of the clear mandate found in Policy No. HR-ER-016. Ymbong, however, failed to file his resignation and in fact misled his superiors by making them believe that he was going on leave to campaign for the administration candidates but in fact, he actually ran for councilor. He also claims to have fully apprised Luzon through a letter of his intention to run for public office, but he failed to adduce a copy of the same.[30]

As to Ymbong's argument that the CA should not have reversed the findings of the Labor Arbiter and the NLRC, ABS-CBN asseverates that the CA is not precluded from making its own findings most especially if upon its own review of the case, it has been revealed that the NLRC, in affirming the findings of the Labor Arbiter, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to apply the subject company policy in Ymbong's case when it readily applied the same to Patalinghug.[31]

Essentially, the issues to be resolved in the instant petition are: (1) whether Policy No. HR-ER-016 is valid; (2) whether the March 25, 1998 Memorandum issued by Luzon superseded Policy No. HR-ER-016; and (3) whether Ymbong, by seeking an elective post, is deemed to have resigned and not dismissed by ABS-CBN.

Policy No. HR-ER-016 is valid.

This is not the first time that this Court has dealt with a policy similar to Policy No. HR-ER-016. In the case of *Manila Broadcasting Company v. NLRC*,[32] this Court ruled:

What is involved in this case is an unwritten company policy considering any employee who files a certificate of candidacy for any elective or local office as resigned from the company. Although §11(b) of R.A. No. 6646 does not require mass media commentators and announcers such as private respondent to resign from their radio or TV stations but only to go on leave for the duration of the campaign period, we think that the company may nevertheless validly require them to resign as a matter of policy. In this case, the policy is justified on the following grounds:

Working for the government and the company at the same time is clearly disadvantageous and prejudicial to the rights and interest not only of the company but the public as well. In the event an employee wins in an election, he cannot fully serve, as he is expected to do, the interest of his employer. The employee has to serve two (2) employers, obviously detrimental to the interest of both the government and the private employer.

In the event the employee loses in the election, the impartiality and cold neutrality of an employee as broadcast personality is suspect, thus readily eroding and adversely affecting the confidence and trust of the listening public to employer's station.[33]

ABS-CBN, like Manila Broadcasting Company, also had a valid justification for Policy No. HR-ER-016. Its rationale is embodied in the policy itself, to wit:

Rationale:

ABS-CBN BROADCASTING CORPORATION strongly believes that it is to the best interest of the company to continuously remain apolitical. While it encourages and supports its employees to have greater political awareness and for them to exercise their right to suffrage, the company, however, prefers to remain politically independent and unattached to any political individual or entity.

Therefore, employees who [intend] to run for public office or accept political appointment should resign from their positions, in order to protect the company from any public misconceptions. To preserve its objectivity, neutrality and credibility, the company reiterates the following policy guidelines for strict implementation.

x x x x[34] [Emphasis supplied.]

We have consistently held that so long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[35] In the instant case, ABS-CBN validly justified the implementation of Policy No. HR-ER-016. It is well within its rights to ensure that it maintains its objectivity and credibility and freeing itself from any appearance of impartiality so that the confidence of the viewing and listening public in it will not be in any way eroded. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[36]

It is worth noting that such exercise of management prerogative has earned a stamp of approval from no less than our Congress itself when on February 12, 2001, it enacted Republic Act No. 9006, otherwise known as the "Fair Election Act." Section 6.6 thereof reads:

6.6. Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall be deemed resigned, if so required by their employer, or shall take a leave of absence from his/her work as such during the campaign period: Provided, That any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party. [Emphasis and underscoring supplied.]

Policy No. HR-ER-016 was not  
superseded by the March 25, 1998  
Memorandum

The CA correctly ruled that though Luzon, as Assistant Station Manager for Radio of ABS-CBN, has policy-making powers in relation to his principal task of administering the network's radio station in the Cebu region, the exercise of such power should be in accord with the general rules and regulations imposed by the ABS-CBN Head Office to its employees. Clearly, the March 25, 1998 Memorandum issued by Luzon which only requires employees to go on leave if they intend to run for any elective position is in absolute contradiction with Policy No. HR-ER-016 issued by the ABS-CBN Head Office in Manila which requires the resignation, not only the filing of a leave of absence, of any employee who intends to run for public office. Having been issued beyond the scope of his authority, the March 25, 1998 Memorandum is therefore void and did not supersede Policy No. HR-ER-016.

Also worth noting is that Luzon in his Sworn Statement admitted the inaccuracy of his recollection of the company policy when he issued the March 25, 1998 Memorandum and stated therein that upon double-checking of the exact text of the policy statement and subsequent confirmation with the ABS-CBN Head Office in Manila, he learned that the policy required resignation for those who will actually run in elections because the company wanted to maintain its independence. Since the officer who himself issued the subject memorandum acknowledged that it is not in harmony with the Policy issued by the upper management, there is no reason for it to be a source of right for Ymbong.

Ymbong is deemed resigned  
when he ran for councilor.

As Policy No. HR-ER-016 is the subsisting company policy and not Luzon's March 25, 1998 Memorandum, Ymbong is deemed resigned when he ran for councilor.

We find no merit in Ymbong's argument that "[his] automatic termination x x x was a blatant [disregard] of [his] right to due process" as he was "never asked to explain why he did not tender his resignation before he ran for public office as mandated by [the subject company policy]."[37] Ymbong's overt act of running for councilor of Lapu-Lapu City is tantamount to resignation on his part. He was separated from ABS-CBN not because he was dismissed but because he resigned. Since there was no termination to speak of, the requirement of due process in dismissal cases cannot be applied to Ymbong. Thus, ABS-CBN is not duty-bound to ask him to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.

In addition, we do not subscribe to Ymbong's claim that he was not in a position to know which of the two issuances was correct. Ymbong most likely than not, is fully aware that the subsisting policy is Policy No. HR-ER-016 and not the March 25, 1998 Memorandum and it was for this reason that, as stated by Luzon in his Sworn Statement, he only told the latter that he will only campaign for the administration ticket and not actually run for an elective post. Ymbong claims he had fully apprised Luzon by letter of his plan to run and even filed a leave of absence but records are bereft of any proof of said claim. Ymbong claims that the letter stating his intention to go on leave to run in the election is attached to his Position Paper as Annex "A," a perusal of said pleading attached to his petition before this Court, however, show that Annex "A" was not his letter to Luzon but the September 14, 1998 Memorandum informing Ymbong that his services had been automatically terminated when he ran for a local government position.

Moreover, as pointed out by ABS-CBN, had Ymbong been truthful to his superiors, they would have been able to clarify to him the prevailing company policy and inform him of the consequences of his decision in case he decides to run, as Luzon did in Patalinghug's case.

WHEREFORE, the petition for review on certiorari is DENIED for lack of merit.

With costs against petitioner.

### **SO ORDERED.**

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe,[\*] JJ., concur.

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[\*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

[1] Rollo, pp. 150-161. Penned by Associate Justice Agustin S. Dizon with Associate Justices Francisco P. Acosta and Stephen C. Cruz concurring.

[2] Id. at 169-170. Penned by Associate Justice Francisco P. Acosta with Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz concurring.

[3] Id. at 54.

[4] CA rollo, p. 168.

[5] Id. at 157.

[6] Id. at 171.

[7] Id. at 172.

[8] Id. at 65.

[9] Id. at 67-70.

[10] Id. at 64.

[11] Id. at 76.

[12] Id. at 86-93.

[13] Id. at 92-93.

[14] Rollo, pp. 268-272.

[15] CA rollo, pp. 101-146.

[16] Id. at 147-161.

[17] Rollo, pp. 74-82.

[18] Id. at 82.

[19] CA rollo, pp. 61-62.

[20] Id. at 2-48.

[21] Id. at 13-14.

[22] Rollo, p. 19.

[23] Id. at 21-23.

[24] Id. at 27-32.

[25] Id. at 33.

[26] Id. at 212-213.

[27] Id. at 213.

[28] Id. at 217.

[29] Id. at 217-218.

[30] Id. at 219-220.

[31] Id. at 231.

[32] G.R. No. 121975, August 20, 1998, 294 SCRA 486.

[33] *Id.* at 490-491.

[34] *Rollo*, p. 54.

[35] *San Miguel Brewery Sales Force Union (PTGWO) v. Ople*, G.R. No. 53515, February 8, 1989, 170 SCRA 25, 28, citing *LVN Pictures Employees and Workers Asso. v. LVN Pictures, Inc.*, Nos. L-23495 & L-26432, September 30, 1970, 35 SCRA 147; *Phil. American Embroideries, Inc. v. Embroidery and Garment Workers Union*, No. L-20143, January 27, 1969, 26 SCRA 634; and *Phil. Refining Co., Inc. v. Garcia*, Nos. L-21871 & L-21962, September 27, 1966, 18 SCRA 107.

[36] *Abbot Laboratories (Phils.) Inc. v. NLRC*, No. L-76959, October 12, 1987, 154 SCRA 713, 717, citing *Dangan v. National Labor Relations Commission*, Nos. 63127-28, February 20, 1984, 127 SCRA 706.

[37] *Rollo*, pp. 31-32.

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