

MONICO K. IMPERIAL, JR., PETITIONER, VS. GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENT.

G.R. No. 191224. October 04, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari,[1] filed by petitioner Monico K. Imperial, Jr., from the December 10, 2009 decision[2] and the February 5, 2010 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101297.

The Factual Antecedents

On October 19, 2005, the Government Service Insurance System (GSIS) administratively charged the petitioner, then Branch Manager of the GSIS Naga Field Office, with Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service[4] for approving the requests for salary loans of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS Policy and Procedural Guidelines (PPG) No. 153-99,[5] giving them unwarranted benefits through his evident bad faith, manifest partiality or gross negligence, and causing injury to the pension fund.[6] He was required to answer and was preventively suspended for ninety (90) days.

On July 21, 2006, Atty. Manuel T. Molina, the petitioner's purported counsel, filed an unverified answer in behalf of the petitioner, who was then in the United States of America. Atty. Molina explained that the petitioner granted the loan applications under an existing board resolution, with the approval of then GSIS Vice President Romeo Quilatan; the loans were fully paid, without causing any prejudice to the service.

In a July 26, 2006 order,[7] Hearing Officer Violeta C.F. Quintos set the pre-hearing conference on August 17, 2006 at the GSIS Legazpi Field Office. A week later, in an August 2, 2006 order,[8] the Hearing Officer modified her previous order and set the venue at the GSIS Naga Field Office.

Atty. Molina filed a motion for reconsideration, pointing out that the GSIS Rules of Procedure set the venue of pre-hearing conferences at the GSIS Main Office in Pasay City. The Hearing Officer denied the motion for reconsideration in her August 11, 2006 order,[9] stating that the prosecution requested the change of venue. Copies of the order were duly sent via fax and regular mail. Atty. Molina received the faxed copy on August 14, 2006, while he received the registered mail on August 18, 2006.

At the scheduled August 17, 2006 pre-hearing conference, the petitioner and Atty. Molina failed to appear. Atty. Molina likewise failed to submit the petitioner's verification of the answer and to submit a letter of authority to represent the petitioner in the case. On the prosecution's motion, the Hearing Officer declared the petitioner to have waived his right to file his answer and to have a formal investigation of his case, and expunged the unverified answer and other pleadings filed by Atty. Molina from the records. The case was then submitted for resolution based on the prosecution's submitted documents.[10]

GSIS President and General Manager Winston F. Garcia found the petitioner guilty of grave misconduct and conduct prejudicial to the best interest of the service.[11] He noted that the evidence presented by the prosecution clearly showed that the petitioner's approval of the requests for salary loans of eight GSIS Naga Field Office employees was improper because they lacked the contribution requirements under PPG No. 153-99. He also noted that the pleadings filed by Atty. Molina, as the petitioner's purported counsel, were expunged from the records, but he, nonetheless, discussed the defenses raised in these pleadings and found them unmeritorious.

Noting that this was the petitioner's second administrative offense (he had previously been suspended for one [1] year for gross neglect of duty for failing to implement the recommendations of the Internal Audit Services Group pertaining to the handling of returned-to-sender checks, resulting in a GSIS Naga Field Office Cashier defrauding the GSIS of checks), Garcia imposed the penalty of dismissal with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility and perpetual disqualification from re-employment in the government. On the same date, the GSIS Board of Trustees approved the decision.[12]

In a June 6, 2007 resolution,[13] Garcia denied the petitioner's motion for reconsideration, noting that Atty. Molina had no authority to appear for and in behalf of the petitioner, having failed to submit any formal written authority; that the petitioner's answer was unverified; and that, in any event, the petitioner had no evidence sufficient to overturn the evidence presented by the prosecution.

The petitioner appealed to the Civil Service Commission (CSC), reiterating his arguments of denial of due process and the lack of evidence against him.

The CSC rejected the petitioner's claim of due process violation, finding that the petitioner's filing of a motion for reconsideration cured whatever procedural due process defect there might have been.[14] It noted that the records of the case showed that the petitioner approved the loan applications despite the patent ineligibility of the loan applicants. The CSC thus affirmed the petitioner's dismissal for grave misconduct, but added as an accessory penalty the prohibition from taking any civil service examination.

The petitioner elevated his case to the CA through a petition for review under Rule 43 of the Rules of Court.

In its December 10, 2009 decision,[15] the CA dismissed the petition, and denied the subsequent motion for reconsideration,[16] finding no reversible error in the challenged CSC Resolution.

The Petition

In the petition before us, the petitioner argues that he was denied due process when the August 17, 2006 pre-hearing conference was conducted in his absence without prior notice of the August 11, 2006 order denying the motion for reconsideration of the order of change of venue, since Atty. Molina received by registered mail a copy of the August 11, 2006 order only on August 18, 2006, or a day after the August 17, 2006 pre-hearing conference. The petitioner pleads good faith in approving the loans based on an existing GSIS Board Resolution which authorizes branch managers to approve loans for meritorious and special reasons; the loans were cleared by the Commission on Audit and settled by the borrowers. He contends that the penalty of dismissal is too severe in the absence of any wrongful intent and given his 40 years of government service.

The Case for Respondent GSIS

The GSIS submits that the petitioner was not denied due process because Atty. Molina received on August 14, 2006 a fax copy of the August 11, 2006 order. On the merits of the case, the GSIS maintains that the evidence on record duly established the petitioner's administrative culpability for acts inimical to the interest of the public, warranting his dismissal from the service; the penalty of dismissal was warranted since this was the petitioner's second administrative offense.

The Issues

The issues are: (1) whether the petitioner was denied due process, and (2) whether there was substantial evidence to support petitioner's dismissal from the service.

The Court's Ruling

We PARTIALLY GRANT the petition and modify the findings of the CA pertaining to the petitioner's administrative liability.

The Procedural Due Process Issue

Procedural due process is the constitutional standard demanding that notice and an opportunity to be heard be given before judgment is rendered. As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain; the essence of due process is in the opportunity to be heard.[17] A formal or trial-type hearing is not always necessary.

In this case, while the petitioner did not participate in the August 17, 2006 pre-hearing conference (despite receipt on August 14, 2006 of a fax copy of the August 11, 2006 order), Garcia's decision of February 21, 2007 duly considered and discussed the defenses raised in Atty. Molina's pleadings, although the answer was ordered expunged from the records because it was unverified and because Atty. Molina failed to submit a letter of authority to represent the petitioner.

What negates any due process infirmity is the petitioner's subsequent motion for reconsideration which cured whatever defect the Hearing Officer might have committed in the course of hearing the petitioner's case.[18] Again, Garcia duly considered the arguments presented in the petitioner's motion for reconsideration when he rendered the June 6, 2007 resolution.[19] Thus, the petitioner was actually heard through his pleadings.

Findings of facts of administrative bodies
accorded finality when supported by substantial evidence

Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.[20] A misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present.[21] Otherwise, a misconduct is only simple.

No doubt exists in our mind that the petitioner committed misconduct in this case. The records clearly show that the petitioner committed the acts complained of, i.e., he approved the requests for salary loans of eight GSIS Naga Field Office employees who lacked the necessary contribution requirements under PPG No. 153-99. After a careful review of the records, however, we disagree with the findings of the GSIS, the CSC and the CA that the petitioner's acts constituted grave misconduct. While we accord great respect to the factual findings of administrative agencies that misconduct was committed, we cannot characterize the offense committed as grave. No substantial evidence was adduced to support the elements of "corruption," "clear intent to violate the law" or "flagrant disregard of established rule" that must be present to characterize the misconduct as grave.

We are aware that to the CSC, the mere act of approving the loan applications on several occasions proves the element of flagrant disregard of established rules to constitute grave misconduct. Thus, it said:

The act of the appellant in approving salary loan applications of his subordinates over and above the prescribed rates under the GSIS policy, not only once but several times, indicates his flagrant and wanton transgression of the said policy. He, in fact, abused his authority in doing so.[22]

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated,

among others, in the instances when there had been open defiance of a customary rule;[23] in the repeated voluntary disregard of established rules in the procurement of supplies;[24] in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages;[25] when several violations or disregard of regulations governing the collection of government funds were committed;[26] and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties.[27] The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.

Under the circumstances of the present case, we do not see the type of open defiance and disregard of GSIS rules that the CSC observed. In fact, the CSC's findings on the petitioner's actions prior to the approval of the loans negate the presence of any intent on the petitioner's part to deliberately defy the policy of the GSIS. First, GSIS branch managers have been granted in the past the authority to approve loan applications beyond the prescribed requirements of GSIS; second, there was a customary lenient practice in the approval of loans exercised by some branch managers notwithstanding the existing GSIS policy; and third, the petitioner first sought the approval of his immediate supervisor before acting on the loan applications. These circumstances run counter to the characteristic flagrant disregard of the rules that grave misconduct requires.

Thus, the petitioner's liability under the given facts only involves simple misconduct. As Branch Manager of the GSIS Naga Field Office, he is presumed to know all existing policies, guidelines and procedures in carrying out the agency's mandate in the area. By approving the loan applications of eight GSIS Naga Field Office employees who did not fully meet the required qualifications, he committed a serious lapse of judgment sufficient to hold him liable for simple misconduct.

The Revised Uniform Rules of the Civil Service (Civil Service Rules) classifies simple misconduct as a less grave offense. Under Section 52(B) (2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. While records show that this is not the petitioner's first offense as he was previously suspended for one (1) year for neglect of duty, we believe that his dismissal would be disproportionate to the nature and effect of the transgression he committed as the GSIS did not suffer any prejudice through the loans he extended; these loans were for GSIS employees and were duly paid for. Thus, for his second simple misconduct, we impose on the petitioner the penalty of suspension from the lapse of his preventive suspension by GSIS up to the finality of this Decision.[28]

WHEREFORE, premises considered, we PARTIALLY GRANT the petition for review on certiorari and MODIFY the assailed decision and resolution of the Court of Appeals. Petitioner Monico K. Imperial, Jr. is found GUILTY of SIMPLE MISCONDUCT and is hereby SUSPENDED from the time the preventive suspension that GSIS imposed lapsed, up to the finality of this Decision.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

[1] Filed pursuant to Rule 45 of the Rules of Court; rollo, pp. 3-35.

[2] Penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Jane Aurora C. Lantion; id. at 39-50.

[3] Id. at 52.

[4] Pursuant to the Amended Rules of Procedure in the Administrative Investigation of GSIS Employees and Officials in relation to the Uniform Rules of Procedure on Administrative Cases in the Civil Service.

[5] Dated July 1, 1999.

[6] Rollo, pp. 53-55.

[7] Id. at 56-57.

[8] Id. at 58-59.

[9] Id. at 91-92.

[10] Id. at 93-94.

[11] Decision dated February 21, 2007; id. at 95-105.

[12] Id. at 106-107.

[13] Id. at 108-115.

[14] Resolution dated October 8, 2007; id. at 117-125.

[15] Supra note 2.

[16] Supra note 3.

[17] Catmon Sales International Corporation v. Yngson, Jr., G.R. No. 179761, January 15, 2010, 610 SCRA 236, 244; and Cuenca v. Atas, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 72.

[18] Autencio v. City Administrator Mañara, 489 Phil. 752, 760-761 (2005); Cordenillo v. Hon. Exec. Secretary, 342 Phil. 618, 643 (1997); and Rubenecia v. CSC, 314 Phil. 612, 631 (1995).

[19] Supra note 13.

[20] Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 233.

[21] Id. at 233-234.

[22] Rollo, p. 125.

[23] Narvasa v. Sanchez, Jr., G.R. No. 169449, March 26, 2010, 616 SCRA 586, 592.

[24] Roque v. Court of Appeals, G.R. No. 179245, July 23, 2008, 559 SCRA 660, 674.

[25] Bulalat v. Adil, A.M. No. SCC-05-10-P, October 19, 2007, 537 SCRA 44, 49.

[26] Valera v. Office of the Ombudsman, G.R. No. 167278, February 27, 2008, 547 SCRA 42, 64.

[27] Re: Letter of Judge Lorenza Bordios Paculdo, MTC, Branch 1, San Pedro, Laguna, A.M. No. P-07-2346, February 18, 2008, 546 SCRA 13, 21.

[28] Fact-Finding and Intelligence Bureau, Office of the Ombudsman v. Campaña, G.R. No. 173865, August 20, 2008, 562 SCRA 680, 694.

CONCURRING OPINION

CORONA, C.J.:

Petitioner Monico K. Imperial, Jr. was charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The case against him was based on his approval as branch manager of the Naga Field Office of respondent Government Service Insurance System (GSIS) of the requests for salary loan of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS Policy and Procedural Guidelines (PPG) No. 153-99. In so doing, he allegedly gave unwarranted benefits through evident bad faith, manifest partiality or gross negligence, and caused injury to the pension fund. He was subsequently found guilty of grave misconduct. He was ordered dismissed from the service with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, perpetual disqualification from re-employment in the government service and prohibition from taking any civil service examination.

Petitioner cries injustice and denial of due process as the venue was transferred to Legazpi City when GSIS rules clearly provided that the hearings should have been in the GSIS main office. He also denies administrative liability. He claims that he acted in good faith because his action on the subject loans was made relying on the common practice of branch managers and with clearance from a ranking officer of the GSIS. He further points out that there was no damage whatsoever to the GSIS as the subject loans were not only cleared by the Commission on Audit (COA) but were also repaid in full together with interest.

The ponencia partially grants the present petition, modifies the decision of the Court of Appeals, finds petitioner guilty of simple misconduct and orders his suspension.

I agree with the ponencia that there is no merit to petitioner's claim of denial of due process. He was duly notified of the charges against him and he was heard as to his defenses. I also join the ponencia in finding that, based on the evidence presented in this case, petitioner should be held liable for simple misconduct only.

The ponencia ably discussed the factual and legal basis of the Court's action in this case. Nonetheless, I submit this concurrence to express my views on the matter.

The GSIS and CSC anchored their finding of petitioner's alleged grave misconduct on petitioner's act of approving the applications for salary loans of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS PPG No. 153-99. This, to my view, is insufficient to hold petitioner liable for the serious administrative offense of grave misconduct.

There is no question that GSIS PPG No. 153-99 lays down the guidelines governing the grant of salary loans, including contribution requirements. Thus, there is also no argument that non-compliance with GSIS PPG No. 153-99 constitutes misconduct, a "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."^[1]

While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, it does not necessarily imply corruption,^[2] the element which qualifies misconduct as grave misconduct. Thus, unless there is substantial evidence of corruption, the transgression of an established rule is properly characterized as simple misconduct only.

Indeed, simple misconduct is distinct and separate from grave misconduct.^[3] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.^[4] A public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest.^[5]

These qualifying elements must also be established by substantial evidence,[6] separate from the showing of the misconduct itself. Here, as already explained earlier, the administrative agencies considered the act constituting the misconduct, that is, the non-observance of GSIS PPG No. 153-99, as the very same proof of the qualifying element of flagrant disregard of an established rule.

Petitioner may not successfully evade liability by invoking an alleged practice, based on previous policy and procedural guidelines, among branch managers to approve applications for salary loan (though lacking in contribution requirement). That practice, assuming it existed, cannot override the clear provisions of GSIS PPG No. 153-99. Neither may petitioner successfully rely on the clearance given by then GSIS Vice President Romeo Quilatan for him to approve the subject salary loans. Quilatan had no authority to overrule the requirements of GSIS PPG No. 153-99.

Nevertheless, while these two circumstances did not exculpate him from any administrative liability, they tended to show that petitioner did not willfully violate GSIS PPG No. 153-99 and that he did not flagrantly disregard existing rules. On the contrary, they evinced good faith on the part of petitioner and negated the elements that would have qualified his misconduct as a grave misconduct. In fact, they support the view that there exists no such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that petitioner had the clear intent to violate GSIS PPG No. 153-99 or to flagrantly disregard it.

In fact, the GSIS decision itself indicates that the GSIS doubted whether it properly characterized petitioner's offense as grave misconduct. In imposing the penalty of dismissal for grave misconduct on petitioner, the GSIS raised the matter of petitioner's previous administrative liability for gross neglect of duty and used this circumstance to justify the imposition of the penalty of dismissal "as maximum penalty" for grave misconduct.[7] However, the GSIS did not need to invoke this circumstance if it was indeed sure of its finding that petitioner committed grave misconduct. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[8] grave misconduct is a grave offense which merits the supreme penalty of dismissal even if committed for the first time.

The way I see it, the GSIS was in doubt of its own finding of grave misconduct on the part of petitioner. This doubt should be resolved in favor of petitioner.

In *Bureau of Internal Revenue (BIR) v. Organo*,[9] respondent Lilia B. Organo, a revenue collection officer of the BIR Revenue Region 7, Quezon City, was charged with grave misconduct for receiving without proper authority withholding tax returns with corresponding check payments from several taxpayers. She subsequently delivered them to a BIR revenue clerk who was also not authorized to receive the same. The check payments were subsequently deposited in an authorized BIR account with the Land Bank of the Philippines. Thereafter, checks were issued to different payees in various amounts drawn against the funds of the said unauthorized BIR account and were subsequently encashed to the damage and prejudice of the government.[10] While the Office of the Ombudsman found Organo liable for grave misconduct as her acts violated Revenue Regulations No. 4-93, the Court held that she only committed simple misconduct as the qualifying element of flagrancy was not established.[11]

Following *BIR v. Organo* therefore, absent any substantial evidence of corruption or flagrancy independent of the substantial evidence of petitioner's misconduct of non-compliance with GSIS PPG No. 153-99, petitioner should be held liable for simple misconduct only.

While the penalty provided by the Civil Service Rules for the first offense of simple misconduct is suspension for one month and one day to six months,[12] the records of the case show that this is not his first administrative offense. He was suspended for one year in Administrative Case No. 04-06 for gross neglect of duty. And while

dismissal is the penalty for the commission of simple misconduct for the second time,[13] still petitioner cannot be meted that extreme penalty because his first offense was not for simple misconduct. Dismissal is imposed where both the second and first offenses are for simple misconduct.

Moreover, it is significant to note here that the loans subject of this case, including the interest thereon, were all fully settled. The said loans were also cleared by the COA. Thus, any damage to the GSIS would have been completely negligible at best. Coupled with petitioner's reliance in good faith on the then existing common practice of GSIS branch managers and the prior clearance given by his superior, the totality of the circumstances merit a more lenient treatment of petitioner's misconduct. In addition, his 40 years in government service should not be simply ignored but should be taken in his favor as a mitigating factor, given that there was never any hint or accusation of corruption or flagrancy against him.

Finally, petitioner was one of the prominent leaders of the almost daily protest rallies and demonstrations against the GSIS management at that time. There was clearly a deep-seated resentment against him because of that. That triggered the filing of administrative charges against petitioner, including those which led to this case. The Court must not allow itself to be used as an instrument of personal vendetta.

In view of the above considerations, as well as for considerations of justice and equity, petitioner should just be deemed suspended for the entire duration of the pendency of this case, reckoned from his receipt of the GSIS resolution dated June 6, 2007 which denied his motion for reconsideration. In other words, his suspension for more than four years ought to be more than sufficient penalty for his administrative transgression.

Accordingly, I vote that the petition be GRANTED in PART. The decision and resolution of the Court of Appeals, which affirmed the respective resolution and decision of the Civil Service Commission and the Government Service Insurance System finding petitioner Monico K. Imperial, Jr. guilty of grave misconduct and dismissing him from the service with all the accessory penalties, should be MODIFIED insofar as petitioner should be found guilty of simple misconduct only and considered as SUSPENDED for the entire duration of the pendency of this case, reckoned from his receipt of the GSIS resolution dated June 6, 2007.

[1] Office of the Ombudsman v. Magno, G.R. 178923, 27 November 2008.

[2] Id.

[3] Id.

[4] Landrito v. Civil Service Commission, G.R. Nos. 104304-05, 22 June 1993, 223 SCRA 564.

[5] Id.

[6] Roque v. Court of Appeals, G.R. No. 179245, 23 July 2008.

[7] GSIS decision dated February 21, 2007 in ADM Case No. 05-075 (GSIS v. Monico K. Imperial, Jr.), rollo, p. 164, 173-174.

[8] Section 52(A)(3), Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service.

[9] G.R. No. 149549, 26 February 2004.

[10] Id.

[11] Id.

[12] Section 52(B)(2), Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service.

[13] Id.

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