ELLERY MARCH G. TORRES, PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION, REPRESENTED BY ATTY. CARLOS R. BAUTISTA, JR., RESPONDENT.

G.R. No. 193531. December 06, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Petitioner Ellery March G. Torres seeks to annul and set aside the Decision[1] dated April 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110302, which dismissed his petition seeking reversal of the Resolutions dated June 23, 2008[2] and July 28, 2009[3] of the Civil Service Commission (CSC). Also assailed is the CA Resolution[4] dated July 30, 2010 denying petitioner's motion for reconsideration.

Petitioner was a Slot Machine Operations Supervisor (SMOS) of respondent Philippine Amusement and Gaming Corporation (PAGCOR). On the basis of an alleged intelligence report of padding of the Credit Meter Readings (CMR) of the slot machines at PAGCOR-Hyatt Manila, then Casino Filipino-Hyatt (CF Hyatt), which involved the slot machine and internal security personnel of respondent PAGCOR, and in connivance with slot machine customers, respondent PAGCOR's Corporate Investigation Unit (CIU) allegedly conducted an investigation to verify the veracity of such report. The CIU discovered the scheme of CMR padding which was committed by adding zero after the first digit of the actual CMR of a slot machine or adding a digit before the first digit of the actual CMR, e.g., a slot machine with an actual CMR of P5,000.00 will be issued a CMR receipt with the amount of either P50,000.00 or P35,000.00.[5] Based on the CIU's investigation of all the CMR receipts and slot machine jackpot slips issued by CF Hyatt for the months of February and March 2007, the CIU identified the members of the syndicate who were responsible for such CMR padding, which included herein petitioner.[6]

On May 4, 2007, the CIU served petitioner with a Memorandum of Charges[7] for dishonesty, serious misconduct, fraud and violation of office rules and regulations which were considered grave offenses where the penalty imposable is dismissal. The summary description of the charges stated:

> Sometime between November 2006 and March 2007, you facilitated and actively participated in the fraudulent scheme with respect to irregular manipulation of Credit Meter Reading (CMR) which, in turn, led to the misappropriation of money earmarked for the slot machine jackpot at CF Hyatt Manila. These anomalous transactions were consummated through your direct participation and active cooperation of your co-employees and customers. With malice afterthought, you embezzled and stole monies from PAGCOR, thereby resulting in substantial losses to the proprietary interest of PAGCOR.[8]

On the same day, another Memorandum of Charges[9] signed by Rogelio Y. Bangsil, Jr., Senior Branch Manager, CF Hyatt Manila, was issued to petitioner informing him of the charge of dishonesty (padding of anomalous SM jackpot receipts). Petitioner was then required to explain in writing within seventy-two (72) hours from receipt thereof why he should not be sanctioned or dismissed. Petitioner was placed under preventive suspension effective immediately until further orders.

On May 7, 2007, petitioner wrote Manager Bangsil a letter explanation/refutation[10] of the charges against him. He denied any involvement or participation in any fraudulent manipulation of the CMR or padding of the slot machine receipts, and he asked for a formal investigation of the accusations against him.

On August 4, 2007, petitioner received a letter[11] dated August 2, 2007 from Atty. Lizette F. Mortel, Managing Head of PAGCOR's Human Resource and Development Department, dismissing him from the service. The letter reads in part, to wit:

> Please be informed that the Board of Directors, in its meeting on July 31, 2007, approved the recommendation of the Adjudication Committee to dismiss you from the service effective upon approval due to the following offense:
>
> Dishonesty, gross misconduct, serious violations of office rules and regulations, conduct prejudicial to the best interests of the company and loss of trust and confidence, committed as follows: For actively and directly participating in a scheme to defraud the company in conspiracy with co-employees and SM customers by padding slot machine Credit Meter Reading (CMR) receipts in favor of co-conspirator customers who had said (sic) CMR receipts paid at the teller's booth on numerous occasions which caused substantial losses to the proprietary interests of PAGCOR.[12]

On September 14, 2007, petitioner filed with the CSC a Complaint[13] against PAGCOR and its Chairman Efraim Genuino for illegal dismissal, non-payment of backwages and other benefits. The complaint alleged among others: (1) that he denied all the charges against him; (2) that he did ask for a formal investigation of the accusations against him and for PAGCOR to produce evidence and proofs to substantiate the charges, but respondent PAGCOR did not call for any formal administrative hearing; (3) that he tried to persuade respondent PAGCOR to review and reverse its decision in a letter of reconsideration dated August 13, 2007 addressed to the Chairman, the members of the Board of Directors and the Merit Systems Protection Board; and (4) that no resolution was issued on his letter reconsideration, thus, the filing of the complaint. Petitioner claimed that as a result of his unlawful, unjustified and illegal termination/dismissal, he was compelled to hire the services of a counsel in order to protect his rights.

Respondent PAGCOR filed its Comment wherein it alleged, among others, that petitioner failed to perfect an appeal within the period and manner provided by the Uniform Rules on Administrative Cases in the Civil Service Law.

On June 23, 2008, the CSC, treating petitioner's complaint as an appeal from the PAGCOR's decision dismissing petitioner from the service, issued Resolution No. 081204 denying petitioner's appeal. The dispositive portion of which reads as follows:

> WHEREFORE, the instant appeal of Ellery March G. Torres is hereby DENIED. Accordingly, the decision contained in a letter dated August 2, 2007 of Lizette F. Mortel, Managing Head, Human Resource and Development Department (HRDD), PAGCOR, finding him guilty of Dishonesty, Gross Misconduct, Serious Violation of Office Rules and Regulations, Conduct Prejudicial to the Best Interest of the Service and Loss of Trust and Confidence and imposing upon him the penalty of dismissal from the service, is hereby AFFIRMED. The penalty of dismissal carries with it the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, perpetual disqualification from reemployment in the government service, and bar from taking future Civil Service Examination.[14]

In so ruling, the CSC found that the issue for resolution was whether petitioner's appeal had already prescribed which the former answered in the positive. The CSC did not give credit to petitioner's claim that he sent a facsimile transmission of his letter reconsideration within the period prescribed by the Uniform Rules on Administrative Cases in the Civil Service. It found PAGCOR's denial of having received petitioner's letter more

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credible as it was supported by certifications issued by its employees. It found that a verification of one of the telephone numbers where petitioner allegedly sent his letter reconsideration disclosed that such number did not belong to the PAGCOR's Office of the Board of Directors; and that petitioner should have mentioned about the alleged facsimile transmission at the first instance when he filed his complaint and not only when respondent PAGCOR raised the issue of prescription in its Comment.

Petitioner's motion for a reconsideration was denied in CSC Resolution No. 09-1105 dated July 28, 2009.

Petitioner filed with the CA a petition for review under Rule 43 of the Rules of Court seeking to set aside the twin resolutions issued by the CSC.

On April 22, 2010, the CA issued its assailed decision dismissing the petition for lack of merit.

In dismissing the petition, the CA found that petitioner failed to adduce clear and convincing evidence that he had filed a motion for reconsideration. It found insufficient to merit consideration petitioner's claim that he had sent through a facsimile transmission a letter/reconsideration dated August 13, 2007 addressed to PAGCOR's Chairman, members of the Board of Directors and the Merit Systems Protection Board; that assuming arguendo that a letter reconsideration was indeed sent through a facsimile transmission, such facsimile transmission is inadmissible as electronic evidence under the Electronic Commerce Act of 2000; and that a review of the CSC assailed resolution revealed that the telephone numbers where petitioner claimed to be the recipient of the faxed document sent was not that of PAGCOR's Office of Board of Directors. The CA found baseless and conjectural petitioner's claim that PAGCOR can easily deny having received the letter by giving orders to their employees to execute an affidavit of denial under pain and threat of administrative sanction or termination from service.

The CA then concluded that PAGCOR's decision which was contained in a letter dated August 4, 2007 dismissing petitioner from the service had already attained finality since there was no motion for reconsideration filed by petitioner in the manner and within the period provided for under the Revised Uniform Rules on the Administrative Cases in the Civil Service.

Petitioner's motion for reconsideration was denied in a Resolution dated July 30, 2010.

Hence, this petition where petitioner states the errors committed by the CA in this wise:

> The first issue that should be resolved is:
>
> 1. Whether or not the Court of Appeals erred when it affirmed the dismissal of petitioner based merely on technicality without considering the allegations on summary and arbitrary dismissal based on fabricated and unfounded accusations.
>
> Next to be raised were the issues propounded in petitioner's Memorandum dated 29 January 2010 but were not tackled upon by the Court of Appeals, thus:
>
> A. Whether or not the Civil Service Commission erred in ruling that there was no valid letter/motion for reconsideration submitted to reconsider petitioner's dismissal from the service;
>
> B. Whether or not the Civil Service Commission erred in giving more weight to PAGCOR's denial of having received petitioner's letter of reconsideration;
>
> C. Whether or not the Civil Service Commission erred in not acting/resolving the Ex-Parte Motion to Issue Subpoena Duces Tecum;
>
> D. Whether or not the Civil Service Commission erred in ruling that petitioner's failure to send his letter reconsideration through mail or by personal service as set forth in the Rules of Court, he forfeited his right to

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appeal; and

E. Whether or not the Civil Service Commission erred in favoring PAGCOR"s dismissal of petitioner from employment based on hearsay, imaginary and non-existent evidence.[15]

The threshold issue for resolution is whether the CA erred when it affirmed the CSC's dismissal of the appeal for being filed beyond the reglementary period.

Petitioner contends that he filed his letter reconsideration of his dismissal[16] on August 13, 2007, which was within the 15-day period for filing the same; and that he did so by means of a facsimile transmission sent to the PAGCOR's Office of the Board of Directors. He claims that the sending of documents thru electronic data message, which includes facsimile, is sanctioned under Republic Act No. 8792, the Electronic Commerce Act of 2000. Petitioner further contends that since his letter reconsideration was not acted upon by PAGCOR, he then filed his complaint before the CSC.

We are not persuaded.

Sections 37, 38, 39, and 43 of the Revised Uniform Rules on Administrative Cases in the Civil Service, which are applicable to this case, respectively provide, to wit:

Section 37. Finality of Decisions - A decision rendered by heads of agencies whereby a penalty of suspension for not more than thirty days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty days, or fine in an amount exceeding thirty days' salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

Section 38. Filing of motion for reconsideration. - The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen days from receipt thereof.

Section 39. When deemed filed. - A motion for reconsideration sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in case of personal delivery, the date stamped thereon by the proper office.

Section 43. Filing of Appeals. - Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days' salary, maybe appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

Clearly, a motion for reconsideration may either be filed by mail or personal delivery. When a motion for reconsideration was sent by mail, the same shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. On the other hand, in case of personal delivery, the motion is deemed filed on the date stamped thereon by the proper office. And the movant has 15 days from receipt of the decision within which to file a motion for reconsideration or an appeal therefrom.

Petitioner received a copy of the letter/notice of dismissal on August 4, 2007; thus, the motion for reconsideration should have been submitted either by mail or by personal delivery on or before August 19, 2007. However, records do not show that petitioner had filed his motion for reconsideration. In fact, the CSC found that the non-receipt of petitioner's letter reconsideration was duly supported by certifications issued by PAGCOR employees.

Even assuming arguendo that petitioner indeed submitted a letter reconsideration which he claims was sent through a facsimile transmission, such letter reconsideration did not toll the period to appeal. The mode used by

petitioner in filing his reconsideration is not sanctioned by the Uniform Rules on Administrative Cases in the Civil Service. As we stated earlier, the motion for reconsideration may be filed only in two ways, either by mail or personal delivery.

In Garvida v. Sales, Jr.,[17] we found inadmissible in evidence the filing of pleadings through fax machines and ruled that:

> A facsimile or fax transmission is a process involving the transmission and reproduction of printed and graphic matter by scanning an original copy, one elemental area at a time, and representing the shade or tone of each area by a specified amount of electric current. The current is transmitted as a signal over regular telephone lines or via microwave relay and is used by the receiver to reproduce an image of the elemental area in the proper position and the correct shade. The receiver is equipped with a stylus or other device that produces a printed record on paper referred to as a facsimile.
>
> x x x A facsimile is not a genuine and authentic pleading. It is, at best, an exact copy preserving all the marks of an original. Without the original, there is no way of determining on its face whether the facsimile pleading is genuine and authentic and was originally signed by the party and his counsel. It may, in fact, be a sham pleading. x x x[18]

Moreover, a facsimile transmission is not considered as an electronic evidence under the Electronic Commerce Act. In MCC Industrial Sales Corporation v. Ssangyong Corporation,[19] We determined the question of whether the original facsimile transmissions are "electronic data messages" or "electronic documents" within the context of the Electronic Commerce Act, and We said:

> We, therefore, conclude that the terms "electronic data message" and "electronic document," as defined under the Electronic Commerce Act of 2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence. (Italics ours.)[20]

We, therefore, found no reversible error committed by the CA when it affirmed the CSC in dismissing petitioner's appeal. Petitioner filed with the CSC a complaint against PAGCOR and its Chairman for illegal dismissal, non-payment of backwages and other benefits on September 14, 2007. The CSC treated the complaint as an appeal from the PAGCOR's dismissal of petitioner. Under Section 43 which we earlier quoted, petitioner had 15 days from receipt of the letter of dismissal to file his appeal. However, at the time petitioner filed his complaint with the CSC, which was considered as petitioner's appeal, 41 days had already elapsed from the time he received his letter of dismissal on August 4, 2007; hence, the CSC correctly found that it has no jurisdiction to entertain the appeal since petitioner's dismissal had already attained finality. Petitioner's dismissal from the service became final and executory after he failed to file his motion for reconsideration or appeal in the manner and within the period provided for under the Revised Uniform Rules on Administrative Cases in the Civil Service.

In Peña v. Government Service and Insurance System,[21] We said:

> Noteworthy is that the right to appeal is neither a natural right nor a part of due process, except where it is granted by statute in which case it should be exercised in the manner and in accordance with the provisions of law. In other words, appeal is a right of statutory and not of constitutional origin. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and the failure of a party to conform to the rules regarding appeal will render the judgment final and executory and, hence, unappealable, for it is more important that a case be settled than it be settled right. Furthermore, it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of

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the resolution of the case.[22]

WHEREFORE, the petition is DENIED. The Decision dated April 22, 2010 and the Resolution dated July 30, 2010 of the Court of Appeals are hereby AFFIRMED.

SO ORDERED.

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

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[1] Penned by Presiding Justice Andres B. Reyes, Jr., with Associate Justices Japar B. Dimaampao and Stephen C. Cruz, concurring; rollo, pp. 33-44.

[2] Penned by Commissioner Mary Ann Z. Fernandez-Mendoza; id. at 62-73.

[3] Id. at 75-83.

[4] Penned by Presiding Justice Andres B. Reyes, Jr., with Associate Justices Japar B. Dimaampao and Stephen C. Cruz, concurring; id. at 129-131;

[5] CA rollo, p. 84.

[6] Id. at 85-86.

[7] Rollo, p. 91.

[8] Id.

[9] Id. at 92.

[10] Id. at 93-94.

[11] Id. at 95.

[12] Id.

[13] Id. at 84-90.

[14] Id. at 73.

[15] Id. at 10-11.

[16] Id. at 96-100.

[17] G.R. No. 124893, April 18, 1997, 271 SCRA 767.

[18] Id. at 779. (Citations omitted.)

[19] G.R. No. 170633, October 17, 2007, 536 SCRA 408.

[20] Id. at 455.

[21] G.R. No. 159520, September 19, 2006, 502 SCRA 383.

[22] at 396-397. (Italics supplied.)

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