

DAVID P. MACAYAYONG, PETITIONER, VS. HON. BLAS OPLE, IN HIS PERSONAL AND OFFICIAL CAPACITY AS MINISTER OF LABOR; HON. JACOBO C. CLAVE, IN HIS PERSONAL AND OFFICIAL CAPACITY AS C...

G.R. No. 51580. December 02, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and mandamus seeking the annulment of: (a) the order dated January 23, 1976 of respondent Secretary Blas Ople, entitled IN RE: ADMINISTRATIVE CHARGES AGAINST DAVID P. MACAYAYONG for Abandonment of post/Insubordination, which dropped Atty. Macayayong, Legal Officer III of the Bureau of Labor Standards, from the roster of the Department of Labor; (b) the Resolution No. 351 dated April 26, 1977 issued by respondent Jacobo Clave sustaining the order of Secretary Ople; and (c) the decision dated June 20, 1979 issued by respondent Clave sustaining his own Resolution No. 351.

The facts of the case as summarized in Resolution No. 351 of the Civil Service Commission which was quoted by the Office of the President, are as follows:

“Petitioner Macayayong had been detailed with the various offices in the Office of the President (the last one being the Board of Liquidators) from 1968 up to the time he was dropped from the roster of the Department of Labor effective January 31, 1976. The Undersecretary of Labor terminated the detail of the petitioner with the Malacanang Complaint and Action Unit effective September 26, 1974. The Chairman, Board of Liquidators, Office of the President, requested extension of petitioner’s detail with said office until after the cases he was handling are terminated. Notwithstanding the request, the Secretary of Labor in a telegram manifested that the detail of Atty. Macayayong was not sanctioned by his Office, therefore, the recall order still stood with a warning that unless he (Macayayong) reported to his home office within 72 hours from notice, he would be dropped from the rolls of personnel. In obedience thereto, Macayayong reported to the Bureau of Labor Standards on January 6, 1975 and rendered service therein up to March 11, 1975, when he applied for a leave of absence.

“Subsequently, without the knowledge of the Department, Macayayong was back in the Office of the President, detailed with the Public Information Unit on the strength of a letter-request of Assistant Executive Secretary Zamora dated April 30, 1975 and of a letter of the Deputy Executive Secretary authorizing said assignment. The Secretary of Labor in a letter dated July 24, 1975, averred that Macayayong failed to inform him and clear with him the said assignment and in view of the fact that the Department of Labor particularly the Bureau of Labor Standards, is fully engaged in the implementation of the Labor Code, the previous request to extend Macayayong’s detail was denied and as such, should the latter fail to return to his Office within 5 days from receipt of a copy of said letter, he would be replaced. In reply, the chief of the Public Information Unit requested that the recall order be held in abeyance pending the termination of the cases being handled by Macayayong.

On January 5 and 19, 1976, the Secretary of Labor notified Macayayong that his services would be

terminated effective January 31, 1976 by reason of his failure to report back to his Office which urgently needed his services. And on January 23, 1976, the Secretary issued an order dropping Macayayong from the roster of the Department of Labor for 'Abandonment of Post.' The order is anchored on the alleged fact that Macayayong blatantly defied repeated recall orders." (Rollo, Annex "V", pp. 75-76; Annex "Z", pp. 94-95).

On February 12, 1976, petitioner appealed to the Civil Service Commission from the order rendered by the Secretary of Labor.

On April 26, 1976, the Civil Service Commission chairmanned by respondent Clave rendered Resolution No. 351 affirming the appealed order of respondent Ople.

On May 19, 1977, the petitioner filed another appeal with the Office of the President from Resolution No. 351 of the Civil Service Commission.

On June 20, 1979, after the lapse of almost two (2) years, respondent Clave, as Presidential Assistant, affirmed his own appealed resolution rendered in his role as Chairman of the Civil Service Commission.

Hence, this petition for certiorari and mandamus.

In a resolution dated February 13, 1980, the Court gave due course to the petition and required both parties to submit their respective memoranda.

After the required memoranda were filed, the Court declared the case submitted for decision in the resolution dated April 30, 1980.

In the resolution dated June 22, 1988, the Court required the parties to MOVE IN THE PREMISES and to file proper manifestations. Respondents' manifestation alleging that they are not aware of any supervening event which may have rendered this case moot and academic was filed on August 12, 1988 which was noted in the Court's resolution dated August 29, 1988.

Petitioner's manifestation was filed on August 30, 1988 and in the resolution dated October 12, 1988, the Court required the respondents to comment on the said manifestation by the petitioner. Respondents' comment was filed on January 13, 1989.

The only issue in this case is whether or not petitioner's summary dismissal is in violation of the due process of law.

Petitioner alleged that the order of summary dismissal on the ground of "abandonment of post", was rendered without observing the due process requirement of the law and in violation of his security of tenure.

On the other hand, respondent alleged that petitioner was never denied due process. In fact, he was sent the necessary notifications and was given an ultimatum to report back to his home office which he disregarded. This may be considered as substantial compliance with the due process rule.

The petition is without merit.

Petitioner contends that he was denied due process because he was not given enough time to obey said recall. He alleges that the January 5 and 19 letters sent to him were received together with the order of the Secretary of Labor on January 30, 1976 (Friday), which was the eve of the effectivity of his dismissal on January 31, 1976. Hence, he was not given the opportunity to be heard.

Petitioner's contention is untenable. The records show that before petitioner was dropped from the roster of the Department of Labor, he was notified twice by his home office to report back to work, on January 5 and on

January 19, 1976. In the aforesaid notices, the petitioner was urged to come back to his home office because his services were badly needed, with a warning that in case he (petitioner) fails to report, he would be dropped from the roster of the Department of Labor.

Even assuming that petitioner's contentions as to his date of receipt of notices were true, it is well settled that due process contemplates freedom from arbitrariness and what is required is fairness or justice, the substance rather than the form being paramount. An allegation based solely on the lack of opportunity to be heard without notice does not per se merit un-conditional approval (*Superior Concrete Products, Inc. v. WCC*, 82 SCRA 270; 1978). In the case of *In Re: Atty. Asoy*, it is said that "No violation of due process is committed even where no hearing was conducted but the parties were given the chance to explain their side" (*Richards vs. Asoy*, 152 SCRA 45; 1987). Likewise, there is no denial of due process where petitioner was afforded an opportunity to present his case (*Ong, Sr. v. Parel*, 156 SCRA 768; 1987). What the principle of due process seeks to safeguard is not lack of previous notice but the denial of opportunity to be heard. But even if a party had not been given prior notice of a motion, he cannot claim denial of due process if he was given the opportunity to file a motion for reconsideration of the order which was issued pursuant to a motion without prior notice to him (*Pobre vs. Gonong*, 148 SCRA 553; 1987).

In the case at bar, petitioner was given ample opportunity to be heard and to present his case. Thus, as previously stated, he appealed his case to the Civil Service Commission and then to the Office of the President. In both appeals, he lost.

This Court had ruled that a motion for reconsideration or appeal is curative in character on the issue of alleged denial of due process by way of lack of hearing of the case (*Sampang vs. Inciong*, 137 SCRA 56, 1985).

Finally, on the merits of the case, there is no question that the right to dismiss or otherwise impose sanctions upon an employee for just and valid cause, pertains in the first place to the employer, as well as the authority to determine the existence of said cause in accordance with the norms of due process (*Foster Parents Plan, et. al. vs. Demetriou*, 142 SCRA 505; 1986).

WHEREFORE, the petition is Dismissed for lack of merit.

SO ORDERED.

Gutierrez, Jr., Davide, Jr., and Romero, JJ., concur.
Fernan, C.J., (Chairman), on leave.

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