

EMILIE J. QUEZON, PETITIONER, VS. HON. JESUS N. BORROMELO, IN HIS CAPACITY AS CHAIRMAN, CIVIL SERVICE COMMISSION, JOINED BY ALEJANDRO A. MADAMBA, AND MARIO D. YANGCO, IN THEIR OF...

G.R. No. 70953. April 09, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this petition for certiorari, petitioner seeks the annulment of Resolution No. 85-015 dated 14 February 1985 of the Civil Service Commission; she also seeks reinstatement in the government service as Chief Nurse in the Iligan City Hospital, Regional Health Office No. 12.

In 1977, petitioner Emilie J. Quezon was a Chief Nurse II of the Iligan City Hospital. By Department Order No. 125-A, s. 1977, dated 25 April 1977, the Secretary of Health authorized petitioner to go on a special study detail to take up or complete a degree course in nursing (BSN) during the academic year 1977-1978, for a period of not more than 12 months. Department Order No. 125-A expressly provided, among other things, that Mrs. Quezon "shall not be allowed any extension of the twelve (12) months study grant".^[1] On 1 June 1977, petitioner availed of the one-year special study detail and went on study leave.

On 10 February 1978, she requested a one-year extension of her study leave, counted from the expiry date of her original study leave (i.e., from 31 May 1978). Notwithstanding the provisions of Department Order No. 125-A, petitioner's request was approved by the Chief of the Iligan City Hospital in his second indorsement dated 27 February 1978, and approved as well by the Chief of the Office of Health Education and Personnel Training, Department of Health, subject to the following conditions:

- "1) The Hospital will no longer pay petitioner's training allowance at the rate of P300 a month;
- 2) The Hospital will pay Mrs. Quezon's salary up to the extent of her leave credits;
- 3) Mrs. Quezon will continue her studies at her own personal expense and will be on leave without pay after her accumulate leave credits shall have been used."^[2]

As of June 1978, petitioner's accumulated leave credits amounted to 19.7 days of vacation leave and 26.8 days of sick leave, which leave credits were consumed or utilized by 18 July 1978.

On 9 May 1979, she requested a second extension of her original study leave of additional seven months, counted from expiration of her first extension, i.e., from 31 May 1979 to 31 December 1979. The Chief of the Iligan City Hospital forwarder her request for a second extension to the regional Director of Regional Health Office No. 12, inviting attention to the first extension which had been approved and went on to state that:

"Apparently [Mrs. Quezon], now pursuing her masters degree in public administration, a course which is not stipulated in said Department Order [125-A] for which she was granted special study detail.

It may be worthy [of] note that her services is (sic) urgently needed and any further extension would be detrimental to the hospital service.”

Notwithstanding the above comment, petitioner’s request for a second extension of seven months was apparently approved, presumably by the Regional Director of Regional Health Office No. 12.[3] In any case, she continued to stay away from her post at the Iligan City Hospital.

Petitioner then sought a third extension of leave, this time for five months or up to May 1980. No action thereon was taken by the authorities of the Iligan City Hospital nor by the Regional Health Office No. 12. Notwithstanding this lack of approval, petitioner remained on leave or, more precisely, did not report back for work. Instead, on 24 June 1980, she submitted a request for a fourth extension of her leave for twelve months, or from July 1980 to June 1981. By a fourth indorsement dated 5 January 1981, the Regional Director of Regional Office No. 12 disapproved the petitioner's request for a fourth extension, stating that:

"The continuous leave of absence of Mrs. Quezon is in violation of Section 33, Rule XVI of Civil Service Rules, which states: x x x

It is, therefore, understood that since Mrs. Quezon has been on leave without pay for the past three (3) years, any application for extension of the same shall no more (sic) be granted by this office." (Italics supplied)

A few months earlier, on 27 October 1980, the Regional Health Director had issued an appointment to Lourdes Crisol as acting Chief Nurse II, Iligan City Hospital "vice Emilie Quezon, dropped from the service". On 1 July 1981, the Regional Health Director issued another appointment to Lourdes Crisol, this time as Chief Nurse II, "vice Emilie Quezon, dropped". The second appointment of Lourdes Crisol was approved as a permanent one by the Civil Service Regional Office No. 12, subject to the condition, among others, "that the separation/promotion/resignation of the former incumbent [was] in order".

On 6 March 1982, four years and nine months after she first went on study leave, and two years and two months after expiration of her last approved leave extension, petitioner reported for duty at the Iligan City Hospital. There, she was informed that she had been dropped from the government service. By a letter dated 8 March 1982 to the Regional Director of Civil Service Regional Office No. 12, petitioner questioned her being dropped from the service. The Regional Director CSRO No. 12 referred petitioner's letter to the Regional Health Director. The Regional Health Director in turn explained that because petitioner, in violation of Civil Service Rules, failed to report back for duty after completion of her Bachelor of Science in Nursing (BSN) course and to file leave applications, she was considered absent without leave (AWOL) "up to 1981" and that it had become necessary to designate an acting Chief Nurse at the Iligan City Hospital.

On 16 March 1982, and again on 3 May 1982, petitioner asked the Civil Service Regional Director for reinstatement. Petitioner's request was forwarded by the CSRO No. 12 to the Civil Service Merit Systems Board for appropriate action.

Initially, the Merit Systems Board found the request of petitioner meritorious and on 22 February 1983, directed her reinstatement as Chief Nurse II in the Iligan City Hospital. On 16 May 1983, however, the Director of the Regional Health Office No. 12 moved for reconsideration. By a decision dated 30 July 1984, the Merit Systems Board reconsidered and set aside its previous decision and held that the "dropping from the rolls [of Mrs. Quezon] [was] in order". The Board noted that no requests for leave of absence had been filed by Mrs. Quezon in respect of the extensions of her leave, certainly after the second extension, and that no approvals had been given for such subsequent extensions of leave. In effect, the Board considered Mrs. Quezon as "being absent without leave [AWOL]".[4]

The petitioner appealed to the Civil Service Commission. On 14 February 1985, the Civil Service Commission dismissed the appeal and affirmed the 30 July 1984 decision of the Merit Systems Board. It is this decision of the Civil Service Commission that petitioner seeks to set aside and annul in the present petition for certiorari.

Petitioner asserts two principal grounds for annulment or reversal of the decision of the Civil Service Commission. Firstly, petitioner asserts that the decision of the Merit Systems Board dated 22 February 1983 had already become final and executory when the motion for reconsideration dated 16 May 1983 was filed by the Regional Health Office, Region 12, through counsel, and that the Merit Systems Board had lost jurisdiction over the case with the supposed result that the subsequent decision of the Merit Systems Board dated 30 July 1984 was null and void. Petitioner asserts, secondly, that she was denied her right to procedural due process.

We consider these grounds seriatim.

Turning to the first ground, petitioner claims that the 22 February 1983 decision of the Merit Systems Board was actually received by the Civil Service Regional Office, Region 12, Cotabato City, on 1 March 1983 and that a copy of the said decision was actually received by the Chief of the Iligan City Hospital on 15 March 1983. Petitioner concludes that the motion for reconsideration filed by the Regional Health Director dated 16 May 1983 was filed 84 or more days after receipt of the decision by the Chief of the Iligan City Hospital.

Section 39 of Presidential Decree No. 807, dated 6 October 1975 (the "Civil Service Decree of the Philippines") reads as follows:

"SECTION 39. Appeals — (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen (15) days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen (15) days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the Appellate authority within fifteen (15) days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

(b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; or (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained." (Italics supplied)

Under Section 39 (a), quoted above, a petition for reconsideration may be filed by "the party adversely affected by the decision" within the period for filing an appeal from the decision, i.e., within fifteen (15) days from receipt of the decision by the "party adversely affected by [it]". The party adversely affected by the decision of 22 February 1983 of the Merit Systems Board was not the Civil Service Regional Office, Region 12, nor was it the Chief of the Iligan City Hospital. It was rather the Director of the Regional Health Office, Region 12, who had issued the appointments dated 27 October 1982 and 1 July 1981 to Lourdes Crisol as "Acting Chief Nurse II" and as "Chief Nurse II", respectively, in both cases "vice Emilie Quezon, dropped". In his Comment on the Petition for Review, the Solicitor General stated that the Regional Health Director was never served a copy of the decision.^[5] If so, then we agree with the Solicitor General that that decision of the Merit Systems Board never became final and executory as to the Regional Health Director. Upon the other hand, petitioner claims that the lawyer who had represented the Regional Health Director in the proceedings before the Merit Systems Board, was furnished a copy of that decision. The records of this case are, however, bereft of any indication (apart from the simple assertion of petitioner's counsel) that counsel for the Regional Health Director had received a copy of the 22 February 1983 decision and of the date of such receipt. We are, hence, entitled to rely upon the presumption of regularity (which includes the timeliness) of performance of official functions both on the part of the Merit

Systems Board when it reconsidered the 22 February 1983 decision and on the part of the Civil Service Commission when it upheld the second decision of the Board. The Regional Health Director was similarly entitled to the benefit of the same presumption when he filed the motion for reconsideration.[6] Petitioner has not overcome this presumption.

We turn to the second contention of the petitioner: that the petitioner was dropped from the government service without notice and without affording her an investigation where she could explain her side, and without the prior warning contemplated in Section 33, Rule XVI of the Revised Civil Service Rules.

Section 33 of Rule XVI reads as follows:

"Under no circumstances shall leave without pay be granted for more than one year. If an employee who is on leave without pay for any reason fails to return to duty at the expiration of one year from the effective date of such leave, he shall be considered automatically separated from the service; Provided, That he shall, within a reasonable time before the expiration of his one year leave of absence without pay, be notified in writing of the expiration thereof with a warning that if he fails to report for duty on said date, he will be dropped from the service. (Italics supplied)

In the present case, as noted earlier, petitioner was given a one-year extension of her special study leave, subject to certain conditions, commencing from June 1978. Petitioner's leave credits were exhausted by 18 July 1978. If we assume, under them view of this case most favorable to the petitioner, that the restriction in Department Order No. 125-A prohibiting any extension of the original 12-month study grant was waived by the Department of Health, and assuming further (but *arquendo*, merely) that both the first extension of twelve months and the second extension of seven months of her leave without pay (i.e., from June 1978 to June 1979, and from June 1979 to December 1979, respectively) were validly approved, then, under Section 33 of Rule XVI, petitioner was automatically dropped from the service as of January 1980 when she failed to return to work at the end of her approved leave without pay which then already totalled nineteen (19) months.

In the present case, it does not appear that petitioner was, at some "reasonable time" before expiration of her approved leave without pay, notified in writing of the impending expiration of such leave and warned that petitioner will be dropped from the service if she failed to report for duty upon such expiration. What was the effect of the Department of Health's failure to notify the petitioner in writing of the approaching expiration of the maximum permissible leave without pay? Fortunately, this is not a question of first impression. In *Isberto vs. Raquiza*,[7] the Court had occasion to consider and pass upon Rule XVI, Section 33 of the Revised Civil Service Rules:

"But it may be argued that plaintiff-appellee was not ever given a written notice within a reasonable period before the date of the expiration of his leave of absence without pay, warning him that if he fails to report for duty on the date his leave of absence without pay expires, he will be dropped from the service. The [purpose of the] proviso in Section 33 of Rule XVI of the Revised Civil Service Rules x x x is to remind the officer concerned of his impending separation from the service so he could prepare for such an eventuality. In the case before Us, however, the plaintiff-appellee did not even have the proper leave of absence without pay because his leave of absence without pay was only up to April 30, 1958 and he did not extend it. He went AWOL (absence without official leave) beginning May 1, 1958 and applied for reinstatement only on June 20, 1961. The failure of plaintiff-appellee to claim for reinstatement for a period of two and a half years from January 29, 1959 when he was deemed automatically separated from the service is a clear case of abandonment. He ought to have known that he was automatically separated from the service on January 29, 1959. His ignorance of the provision of Rule XVI, Section 33 of the Revised Civil Service rules, providing for automatic separation from the service of an [employee] who fails to return to work after the expiration of his leave of absence without pay did not excuse him. x x x"[8]

Ramo v. Elefaño,[9] is also helpful in this connection. There, the Court noted that respondent Elefaño had requested an extension of her leave of absence without pay for another year, 27 days before her one year leave expired. The Regional Civil Service Director did not approve the request for extension and instead invited attention to Section 33, Rule XVI. The letter of the Regional Director was communicated to respondent Elefaño after expiration of her one Year leave without pay "for her information and compliance". Elefaño nonetheless failed to return to her position and continued her efforts to secure extension of her leave of absence without pay but without success. Elefaño returned to her position approximately 11 months after expiration of her one year leave of absence without pay. The Court sustained the action of the Board of Trustees of Leyte State College in dropping Elefano from service of the college "for having failed to return to duty after the expiration of her one year leave of absence" and reversed the judgment of the lower court which had ordered the Board of Trustees to reinstate Elefano.

We read Isberto and Ramo to have held, and In any case we now so hold, that the written notice contemplated in Rule XVI, Section 33 is not jurisdictional in nature and that the failure to give such notice by the appropriate government office does not prevent the dropping of the employee concerned from the government service. In the nature of things, staying away from one's regular employment in the government or remaining on leave without pay is something that an employee can scarcely be unaware of. In the instant case, the petitioner was clearly aware that she was on an extended leave without pay. Her repeated requests for extensions of her original special study leave are evidence of her awareness that she needed official approval for such continued leave. When approval of her requests for the third and fourth extensions of her original study leave was not forthcoming, petitioner resorted to a request on 13 September 1980 that she be detailed to the Zamboanga General Hospital. This too was not approved by the Regional Health Office, Region 12.

Here, Isberto and Ramo, there is not only violation of Rule XVI, Section 33 but also abandonment of her position on the part of petitioner. From January 1980, when she was automatically dropped from the service pursuant to Rule XVI, Section 33, up to 6 January 1982 when petitioner reported for duty and in effect asked for reinstatement, a period of two years had elapsed, during which time petitioner must be regarded as having been absent without leave (AWOL). Petitioner completely disregarded the fact that her requests for extensions and for detail to Zamboanga were never approved by the Department of Health authorities, and continued to stay away until it suited her to return and demand reinstatement at the Iligan City Hospital. She was of course not entitled to assume that her requests would be approved, as they could not be approved, being in direct contravention of Rule XVI, Section 33.[10]

Petitioner also complains that no investigation was held by the Department of Health authorities before she was in fact regarded as dropped from the service and Lourdes Crisol appointed to petitioner's former position. Even so, we do not believe that she has been denied procedural due process. Rule XVI, Section 33 speaks of automatic dropping from the government service and thus clearly does not require prior hearing before an employee may be dropped from the government service. The requirements of procedural due process do frequently include a prior hearing before adverse consequences may be visited by the government upon individuals.[11] There are, however, exceptions and what we have here is an exception. There appears no way by which the government can compel an unwilling employee to return to his post; the instant case affords ample illustration of this incapacity. The automaticity of the sanction of dropping or removal from the government service under Rule XVI, Section 33 is precisely one of the means by which return to an employee's post is sought to be achieved. That automaticity also enables the government to fill the office in effect abandoned by the employee involved, as the exigencies of the service may demand. The requirements of government service, especially the needs of a government hospital for the services of nurses, cannot be made to wait upon the convenience of an employee who insists on being "AWOL". The demands of procedural due process are satisfied by giving an employee who has been "AWOL"

the opportunity to contest the legality of his being dropped from the government service upon his return to his post. Indeed, as a purely practical matter, it is very difficult to see how hearing can be had and due process extended to the employee unless he first reports for work. Here, petitioner was given a full hearing and full opportunity to present her side before the Merit Systems Board and the Civil Service Commission after she had reported for work and demanded reinstatement. Here, the requirements of procedural due process were fully met.

The petitioner having failed to show any grave abuse of discretion or any act done without or in excess of jurisdiction on the part of the Civil Service Commission, the petition for certiorari is DENIED. The decision of the Civil Service Commission is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Yap, J., on leave.

[1] Decision, Merit Systems Board, Civil Service Commission, MSB Case No. 829, promulgated 22 February 1983; p. 14, Rollo.

[2] Civil Service Commission Resolution No. 85-015, pp. 10-11, Rollo.

[3] Civil Service Commission Res. No. 85-015, p. 11, Rollo, cites a 2nd Indorsement dated 5 November 1979 of the Chief of the Iligan City Hospital as approving the 2nd extension. This 2nd Indorsement does not in fact approve the 2[nd] extension; See p. 70, Rollo.

[4] Decision, Merit Systems Board, MSB Case No. 829 promulgated 30 July 1984, p. 24, Rollo.

[5] Comment, p. 7; p. 34, Rollo.

[6] E.g., *Quien v. Serina*, 17 SCRA 67 (1966); *Sadang v. Government Service Insurance System*, 18 SCRA 491 (1966); and *Martinez v. Union de Maquinistas, Fugoneros y Motormen*, 19 SCRA 167 (1967).

[7] 67 SCRA 116 (1975).

[8] 67 SCRA at 121-122; Italics supplied.

[9] 106 SCRA 221 (1981).

[10] See *Ramo v. Elefaño*, 106 SCRA 221 at 234.

[11] *Ynot v. Intermediate Appellate Court et al.*, G.R. No. 74457, promulgated 20 March 1987. In specific connection with civil service employees, see e.g., *Ricamara v. Subido*, 98 SCRA 97 (1980); *Abaya v. Villegas*, 18 SCRA 1034 (1966); and *Aguilar v. Valencia*, 40 SCRA 210 (1970).

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