

EDGARDO L. STO. DOMINGO, PETITIONER, VS. HON. SEDFREY A. ORDONEZ, IN HIS CAPACITY AS SECRETARY OF JUSTICE; MANUEL B. GAITE, IN HIS CAPACITY AS REPRESENTATIVE OF THE EXECUTIVE SE...

G.R. No. 81760. September 29, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner seeks the reversal of the resolution of the Review Committee established under Executive Order No. 17 in relation to section 2, Article III of the Provisional Constitution which affirmed his dismissal as municipal planning development coordinator of Boac, Marinduque effected by respondent OIC Mayor Pedrito M. Nepomuceno.

Petitioner Edgardo L. Sto. Domingo, a civil service eligible, was the municipal planning and development officer of Boac, Marinduque holding a permanent position until his employment was terminated by respondent OIC Mayor Pedrito Nepomuceno pursuant to section 3 of Executive Order No. 17 dated May 28, 1986. In this notice of termination dated November 24, 1986 addressed to Sto. Domingo, it was stated therein:

"Effective upon receipt of this notice, your services as Municipal Development and Planning Coordinator of this municipality is (sic) hereby terminated.

"Your separation from the service is pursuant to the grounds for separation and replacement of personnel as provided in Section 3 of Executive Order No. 17 dated May 28, 1986. Among these are:

"1. Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act in connection with the findings of the Commission on Audit (Supplemental CSB No. 02-02-85, dated July 17, 1985 and CSB No. 86-001-101 dated October 16, 1986) pinpointing you as one of the persons liable and which therefore necessitates the suspension and disallowances of the amount of P726,863.79 relative to the renovation of the Boac Municipal Building.

2. Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law for issuing a CERTIFICATE OF INSPECTION AND COMPLETION of the Construction of the Boac Municipal Building knowing fully well that said construction was not complete and not made in accordance with the plans and specification; furthermore you have admitted your guilt relative to this matter before the Sangguniang Bayan Members during their regular session on June 25, 1986.

3. Gross negligence and uncooperative character in the discharge of official functions."

With the above grounds for separation and replacement, you are therefore deemed unfit to remain in public office for conduct prejudicial to the best interest of the service.

You may, however, avail of your right to petition for reconsideration which you may file within 10 days with the

Committee for Reconsideration as provided for in Section 6 of Executive Order No. 17.” (Rollo, p. 20)

In reply to the notice of termination, the petitioner through counsel Manuel S. Laurel wrote respondent OIC Mayor alleging that "there is absolutely no written specification of charges that has been served upon him for any charge or charges whatsoever, that he has not been afforded the opportunity to answer said charge or charges, if any; that he has not been afforded the opportunity to examine the documents that have been used as basis for any charge or charges against him, if any; that he has not been afforded the opportunity to confront and cross-examine the witnesses who testified against him, if any; that he has not been afforded the opportunity to defend himself before you summarily and you arbitrarily terminated his services." (Rollo, p. 21) In short, the petitioner averred that his employment was terminated without due process of law. Hence, in this same letter, the petitioner demanded that he be furnished "with a written specification of the charge or charges" in order to afford him the opportunity to defend himself.

In addition, the petitioner filed a letter-petition for reconsideration with the Civil Service Commission which the latter transmitted to the Review Committee under Executive Order No. 17, Department of Justice.

The Review Committee required him to file a sworn petition for reconsideration including such documents he might deem necessary to support his petition. On March 24, 1987, the Review Committee received the petitioner's verified petition for reconsideration with attached documents.

In a Resolution dated May 15, 1987, the Review Committee dismissed the petition for reconsideration for lack of merit.

The petitioner then filed a motion for leave to cross-examine witnesses which was, however, denied by the Review Committee on the ground that under section 5 of the rules of procedure of respondent Review Committee "No formal hearing shall be conducted nor shall examination of witnesses be allowed."

The petitioner now questions the validity of section 5 of the Rules of Procedure of the Review Committee erroneously stated in the petition as section 5 of Executive Order No. 17 on the ground that it is violative of the due process clause of the Constitution. He also questions the Review Committee's Resolution dated May 15, 1987 which he contends affirmed the OIC-Mayor's termination of his services based solely on the notice of termination issued by the latter.

The resolution of this case actually revolves on whether or not the petitioner was dismissed from his office in violation of his right to due process of law and on whether or not the OIC Mayor had the authority to dismiss him.

Section 2 of the Provisional Constitution dated March 25, 1986 provides:

"All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successor, if such is made within a period of one year from February 25, 1986."

Executive Order No. 17 states that "in order to obviate unnecessary anxiety and demoralization among the deserving officials and employees, particularly in the career civil service, it is necessary to prescribe the rules and regulations for implementing the said constitutional provision to protect career civil servants whose qualifications and performance meet the standards of service demanded by the New Government, and to ensure that only those found corrupt, inefficient and undeserving are separated from the government service."

With this objective, Executive Order No. 17 outlines the rules and procedures to be followed before an employee can be separated from government service. There is no doubt that under the law, the proceedings are summary in nature. Specifically, section 7 thereof provides:

"SEC. 7. The committee shall adopt its rules of procedure, provided that proceedings in the Committee shall be summary in nature. The decision of the Ministers concerned shall be final if not reversed or modified by the Committee within thirty (30) days from receipt of the petition for reconsideration. No permanent appointment shall be issued to replace an incumbent who is separated pursuant to this Order until the expiration of the aforementioned thirty-day period or the denial of the petition for reconsideration."

Pursuant to this provision, the Review Committee promulgated its own rules and regulations, section 5 of which states that "No formal hearing can be conducted nor shall examination of witnesses be allowed".

The petitioner contends that his right to cross-examine the witnesses against him is a requirement of due process.

Trial type hearings in administrative investigations are not always necessary.

Summary proceedings are not per se violations of the principle of due process.

The summary procedures found in Section 40 of Presidential Decree No. 807, the Civil Service Decree of the Philippines may be cited in this regard.

In the case of *In re: Apolinar Flores* (65 SCRA 528, [1975]), this Court upheld the dismissal of a deputy sheriff who claimed that he was not accorded due process. The Court ruled that what is of ultimate importance is whether or not the Department Head exercised his sound discretion in summarily removing Mr. Flores from the service because of wrongful acts x x x or whether he was separated from the service purely on the mere whim or caprice of the Secretary of Justice. Summary procedures were similarly sustained in *Ganaden v. Bolasco* (64 SCRA 50 [1975]) and *Taga-an v. Roa* (72 SCRA 466, [1976]). In the latter case, the Court distinguished between criminal proceedings where proof beyond reasonable doubt is essential and administrative proceedings where disciplinary action is justified on the basis of the evidence before the investigating body showing clearly that the grounds for removal are substantiated.

In *Marcelo v. Tantuico* (142 SCRA 439 [1986]), the summary dismissal of an employee without necessity of a formal investigation when the charge is serious and the evidence of guilt is strong was again sustained.

Likewise, in the case of *Gonzales v. Honorable Secretary of Labor*, (116 SCRA 573, 581 [1982]) we said:

"The petitioners' claim that the order dismissing the complaint in NLRC (Ad hoc) Case No. 0385 'does not partake of the nature of 'judgment or order on the merits' contemplated by our Rules and the Supreme Court' since the said order was merely based on the Fact Finding Report of the Labor Mediator and issued 'without the benefit of investigation or presentation of evidence in support of their respective stand,' is also devoid of merit. In the case of *Manila Trading & Supply Co. v. Philippine Labor Union*, the Court said: When the Court of Industrial Relations refers a case to a commissioner for investigation, report and recommendation, and at such investigation the parties are duly represented by counsel, heard or at least given an opportunity to be heard, the requirements of due process has been satisfied even if the Court failed to set the report for hearing and a decision on the basis of such report, with the other evidence of the case, is a decision which meets the requirements of a fair and open hearing."

Necessarily, the fundamental rule in the principle of due process is the opportunity to be heard. (See also *Fariscal vda. de Emnas v. Emnas*, 95 SCRA 470; *Cornejo v. Secretary of Justice*, 57 SCRA 663; *Bermejo v. Barrios*, 31 SCRA 764.)

In the case at bar, the petitioner was heard on his petition for reconsideration filed with the Review Committee. He was accorded every opportunity to present evidence in his behalf. The charges against him are easily refuted with documentary evidence regarding the completion of the project and his having attended the seminar at Tagaytay City. There is absolutely no evidence of arbitrariness or caprice in the questioned act of the respondents.

Hence, he cannot claim that he was deprived of his right to due process of law. (See *Sumadchat v. Court of Appeals*, 111 SCRA 488). After filing his petition, the Review Committee asked him to submit such documents he might deem necessary to support his petition which he did. The Review Committee also made a summary investigation after which it came out with the following findings:

"The series of events leading to the filing of the aforementioned charges demonstrates the petitioner's culpability. It appears that the municipal building of Boac required renovation and, thereupon, some work was done on the building. After the work was supposed to have been finished, a certificate of Settlement and Balances was drawn up, containing all the disbursement relative to the alleged renovation.

The petitioner, being the Municipal Development and Planning Coordinator of Boac, was a signatory to the certificate. It is, of course, elementary administrative practice that his signature on it signified that he was warranting the accuracy and truth of the statements contained in the certificate.

It appears that the petitioner also executed a Certificate of Inspection and Acceptance, hereunder quoted in full:

"CERTIFICATE OF INSPECTION AND ACCEPTANCE

TO WHOM IT MAY CONCERN:

This is to certify that the RENOVATION OF MUNICIPAL BUILDING (PHASE III) located at Boac, Marinduque has been inspected by the undersigned and that the WORK has been done in accordance with the plans and specification.

Certifying further that the project has been FOUND complete and ACCEPTED for and behalf of the Municipal Government of Boac, this province.

ISSUED this 15[th] day of January 1985.

(SGD.) EDGARDO L. STO. DOMINGO

Mun. Planning & Dev't. Coordinator

APPROVED:

(SGD.) REMEDIOS R. FESTIN

Municipal Mayor."

Subsequently, however, the Office of the Provincial Auditor of Marinduque discovered that the renovation was incomplete and was in violation of certain laws and rules. Among others, it was found that the actual construction did not conform with the approved plan, that an alteration in the work amounting to P200,000.00 was not necessary, that the second phase of the construction was certified to have been fully completed and accordingly full payment thereof had been made when in fact the second phase was not yet complete. 'Consequently, P726,863.79 of the total cost of renovation was suspended and later disallowed. Vide: Report of the Office of the Provincial Auditor to the Municipal Mayor and Municipal Treasurer of Boac, Marinduque dated June 23, 1986.

In a letter dated October 16, 1986, the Provincial Auditor of Marinduque, Carlos A. Evora, Jr., gave notice that if, within thirty days from receipt thereof, there was no request for reconsideration or appeal from persons "to be liable/adversely affected (by the findings abovestated)," the order for the withholding of payment of any due

to person found liable would be made.

In answer to this notice, the petitioner wrote a letter for reconsideration to Evora on November 21, 1986. A careful perusal of this letter reveals that the petitioner raised only one defense: that the then Mayor Remedios R. Festin of Boac had advised him 'not to meddle in the renovation because it (was) exclusively within the supervision and control of the local employees that, because of such advice, he then 'filled-up' and signed the certificate of inspection in question. Significantly, even in his verified petition which was transmitted to us on March 24, 1987 and which, at this point in time, is the latest pleading we have received from him, the petitioner has raised no additional defense at all.

In his report to the Regional Office No. IV of the Commission on Audit, Evora rejected the petitioner's defense, stating:

"We believe that his (petitioner's) explanation contained under his letter dated November 21, 1986 attached hereto, does not relieve him of his liabilities. (1st Indorsement to the Regional Office No. IV, Commission on Audit, Quezon City, dated November 24, 1986)."

Thus, Evora found the petitioner as one of the persons liable for the suspension/disallowance of the aforementioned P726,863.79:

"This office found Mr. Edgardo L. Sto. Domingo Municipal and Development Officer of Boac, Marinduque, as one of the persons liable for the suspension/disallowance issued covering the disbursements made for the renovation of Boac Municipal building, particularly Nos. 1, 2, 5, 6, 12, 17, of our Certificate of Settlement and Balances issued last June 23, 1986, a copy of which was duly furnished that office. One of the functions of a Municipal Planning and Development Officer was 'to monitor or conduct the implementation of the different program, project activities in the municipality.' In the exercise of this function and for which he was a signatory to the Certificate/Statement of the work accomplished, which leads to the payment of the claim, we found him liable. (Idem)."

"We have no reason to disagree with the Provincial Auditor's findings. As Municipal Development and Planning Coordinator of Boac, the petitioner certainly had the legal obligation to oversee the renovation of the municipal building in question, and check that it was properly done, since, as such officer, it was his duty to monitor or conduct the implementation of the different programs and project activities of Boac. He could not disregard such duty simply on the advice of the incumbent mayor not to meddle in the renovation of the municipal building in question. And having erroneously heeded such advice, the petitioner committed a serious administrative infraction, resulting in the disallowance of government expenditures in the amount of P726,863.79.

"Further, it appears that the respondent, in his capacity as Officer-in-Charge Mayor of Boac, had directed the petitioner to attend a seminar on the National Building Code from October 6 to 10, 1986 in the Philippine International Convention Center in Metro Manila and also a seminar workshop on town planning and zoning for Region IV in Tagaytay City on October 13 to 17, 1986. In the corresponding directive, the respondent authorized the petitioner to claim reimbursement for his travel and other necessary expenses relative to his attending these two seminars. Nevertheless, the petitioner ignored the directive and failed to attend the two seminars, which actuation of petitioner amounted to insubordination.

"The petitioner was notified of such charge of insubordination, since he was furnished, by registered mail (registry receipt no. 70199), a copy of the respondent's letter to us dated March 10, 1987, which, among others, contained this charge. Yet to this day, even in his latest pleadings submitted to this Review Committee, the petitioner had offered no explanation for his disobedience." (pp. 31-33, Rollo)

We cannot ignore these findings of the Review Committee. The petitioner does not offer any defense against the

charges against him except his claim that he was cleared by the Commission on Audit by virtue of a letter dated July 9, 1987 (Annex I, Petition). We, however, fail to see any direct bearing of the letter on the charges directed against him.

Nevertheless, the petitioner asserts that the OIC Mayor did not have authority to dismiss him. To substantiate his stand, he cites section 5 of Executive Order No. 17 which refers to the Head of Ministry as the authority to effect dismissals. In his case, he opines that the authority to effect dismissal is the Minister (now Secretary) of Local Governments.

This argument is without merit.

Article 161 of the Local Government Code provides that the "municipal planning and development coordinator shall be appointed by the Municipal Mayor x x x". This makes the petitioner a local employee and therefore, subject to the disciplinary jurisdiction of the mayor. Under section 78 of the Local Government Code, the mayor has the authority to remove, suspend and discipline his appointees pursuant to law. The general rule is that the power to remove is inherent in the power to appoint. (See *Lacson v. Romero*, 84 Phil. 740 [1949]; *Bagatsing v. Herrera*, 65 SCRA 434 [1975]). There appears to be no abuse by the Mayor of his power to discipline. There are valid grounds to terminate the petitioner's employment.

WHEREFORE, the instant petition is DISMISSED. The questioned resolution of the Review Committee under Executive Order No. 17 is AFFIRMED. No costs.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin and Cortes, JJ., concur.

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