

RAMON C. RUBIO, JR., PETITIONER, VS. HON. PATRICIA A. STO. TOMAS AS CHAIRMAN OF THE CIVIL SERVICE COMMISSION, FILEMON B. CAWAD AND ALFREDO B. DEZA, RESPONDENTS.

G.R. NO. 83067. March 22, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The instant Petition prays for Writs of Certiorari, Prohibition and Mandamus to enjoin respondent, Patricia A. Sto. Tomas, Chairman of the Civil Service Commission, from implementing her letter, dated 21 April 1988, which approved petitioner Ramon C. Rubio, Jr.,'s application for optional retirement, and to compel her to restore his name in the payroll.

Petitioner Ramon C. Rubio, Jr. had been employed with the Civil Service Commission (the Commission, for short) since 1967. Immediately prior to this case he held the position of Chief Personnel Specialist at the CSC Regional Office, No. XI, Davao City. Respondents, Filemon B. Cawad and Alfredo B. Deza, are the Regional Director, Davao City, and Executive Director of the Commission, respectively. Petitioner blames both of them as the source of false information that forced him to apply for optional retirement.

The pertinent dates and facts, in chronological order, follow:

On 28 December 1987, then Commission Chairman Celerina G. Gotladera addressed a letter to petitioner reading:

"You are hereby notified that you are not reappointed in the reorganization of the Commission and pursuant to Section 3 of Executive Order No. 181, dated June 1, 1987, you are separated from the service effective at the close of office hours on February 1, 1988.

"You are advised to accomplish/secure the required papers/clearance to avoid delay in the payment of benefits which may be due you.

"Please acknowledge receipt hereof." (Annex "E", Respondents' Comment/Manifestation, p. 130, Rollo).

Petitioner is said to have received said letter on 22 January 1988 (*ibid.*), which he, however denies.

On 29 January 1988, in a letter addressed to Chairman Gotladera, Petitioner Rubio applied for optional retirement as Chief Personnel Specialist of CSC Regional Office No. XI, Davao City, effective 7 March 1988. In a marginal note on the same date, CSC Commissioner Mario D. Yango recommended approval (Annexes "1," "1-A," Respondents' Memorandum, p. 228, Rollo).

On 18 February 1988, Petitioner wrote the Commission Chairman withdrawing his application papers for retirement. The letter was stamped "received" in the Office of the Chairman on 7 March 1988, although there was a note that the letter "was already received on February 18, 1988 by the Office of the Executive Director Deza" in the Commission's Central Office, Quezon City (p. 229, Rollo).

It appears that on 18 February 1988, the Commission was still without a Chairman as the appointment of respondent Chairman Sto. Tomas as such was still pending confirmation by the Commission on Appointments. Chairman Gotladera's last day in office was 2 February 1988 while 7 March 1988 was the first day in office of Chairman Sto. Tomas.

Under date of 7 March 1988, of record is Petitioner's Application for Retirement under RA 1616 addressed to the Government Service Insurance System (GSIS) through Chairman Sto. Tomas. In a 1st Indorsement of the same date, the latter recommended approval, to take effect on 8 March 1988, with Petitioner's last day of service indicated as 7 March 1988 (p. 230, Rollo).

Petitioner denies, however, having filed an application for retirement on 7 March 1988. He claims that said application for retirement dated 7 March 1988 had been filed between 29 January and 15 February 1988 and that it was dated 7 March to coincide with his date of retirement (Manifestation, p. 105, Rollo, last paragraph).

On the same date of 7 March 1988, Petitioner was cleared of all money and property accountabilities for purposes of retirement by the different CSC offices (p. 231, *ibid.*).

In a Memorandum, dated 14 April 1988, addressed to Petitioner, Chairman Sto. Tomas informed him that

"in the interest of the service your request to retire is hereby granted. Accordingly, your application for retirement will be forwarded to the Government Service Insurance System (GSIS) for approval" (p. 234, *ibid.*).

The GSIS approval was received by the Commission on 12 September 1988 together with a computation of Petitioner's retirement gratuity (p. 250, *ibid.*).

On 21 April 1988, Chairman Sto. Tomas addressed a letter to petitioner, reading:

"This has reference to your petition for the withdrawal of your application paper for optional retirement, restoration of your name in the payroll, and getting the original copy of your reappointment.

"In this regard, it is informed that your application for retirement has already been approved. Please get in touch with the Central Administrative office for the requirements in the expeditious processing of your retirement benefits" (p. 235, *ibid.*).

Challenging the aforesaid approval of his optional retirement, Petitioner has come to this Court.

Petitioner's submission is that on 29 January 1988, he was informed by respondents' Regional Director Filemon B. Cawad and Executive Director Alfredo B. Deza that he was not re-appointed in the reorganization of the Commission; that he was advised to submit at once his application for optional retirement to take effect on or before 7 March 1988 to be able to avail of monetary benefits; that on the same day, 29 January 1988, he submitted his application for optional retirement to take effect on 7 March 1988 (Annex "E," Petition, p. 20, Rollo); but that on 18 February 1988, he "discovered from official records" that as early as 1 July 1987, he had been re-appointed as Chief Personnel Specialist (Annex "C," Petition, p.18, *ibid.*); that he thereupon wrote a letter to the CSC Chairman on 18 February 1988 withdrawing his application for optional retirement (Annex "B," Petition, p. 17, Rollo); but that notwithstanding such withdrawal, Chairman Sto. Tomas officially informed him, on 21 April 1988, that his application for retirement had been approved (Annex "A," p. 16, Rollo).

In addition to charging respondents Cawad and Deza with malice towards him, Petitioner faults Chairman Sto. Tomas with grave abuse of discretion in having approved his retirement despite his withdrawal thereof which, according to him is tantamount to an unlawful dismissal without due process of law.

Required to comment, the Commission requested the Office of the Solicitor General to represent it. The Solicitor

General, however, sustains petitioner's stand. The Commission thus appears on its own behalf. But, it manifests that although it does not question the action of the Solicitor General in refusing to represent it before this Court, inasmuch as, under the law, a lawyer-client relationship exists between them, the Solicitor General should have refrained or inhibited himself from representing petitioner, who is a private individual.

On the merits of the case, public respondents' viewpoint is that, during the reorganization of the Commission, then Chairman Gotladera, was not inclined to reappoint Petitioner due to adverse reports regarding his competence to perform his duties as Chief Personnel Specialist in the Civil Service Commission, Regional Office No. XI, Davao City, and his inability to relate effectively with his subordinates as reported by respondent Regional Director Cawad (Annexs "10," "11," "12," "13," "14," Respondents' Memorandum); that on 28 December 1987, then Chairman Gotladera notified petitioner that he was not re-appointed in the reorganization of the Commission and that pursuant to Section 3 of Executive Order No. 181, dated 1 June 1987, he will be separated from the service effective 1 February 1988 (Annex "E," p. 130, Rollo), that the said notice was received by Petitioner on 22 January 1988; that Petitioner requested respondent Deza that he be re-appointed for purposes of retirement; that said request was conveyed to Chairman Gotladera who approved it and thereafter authorized the release of Petitioner's re-appointment (Annexes "C," Petition; "15-A," respondent Memo) to enable Petitioner to retire with more benefits; that pursuant to the agreement, Petitioner filed his application for retirement but the same was withdrawn on 18 February 1988; that on 7 March 1988, Petitioner again filed an application for optional retirement effective 8 March 1988 and submitted his clearance for money and property accountabilities (pp. 73-74, Rollo); that by reason thereof, respondents were made to believe that Petitioner had already abandoned his earlier intention to withdraw his application for optional retirement and that on 21 April 1988, respondent Sto. Tomas informed Petitioner that his application for retirement had already been approved.

On 25 July 1989, we gave due course to the Petition and required the submittal of memoranda. On 10 October 1989, we resolved to calendar the case for deliberation.

Petitioner stresses that the notification to him of his termination from the service by Chairman Gotladera, dated 28 December 1987, is "false on its very face" because on 1 July 1987, some six (6) months earlier, during the reorganization of the Civil Service Commission, Chairman Gotladera herself re-appointed him as Chief Personnel Specialist effective 1 July 1987 with the employment status indicated as "permanent," and with a salary increase from P50,117.76 to P78,756.00.

That appointment paper does exist (Annex "C," Petition; Annex "15-A," Respondents' Memorandum). We incline towards respondent Executive Director Deza's explanation, however, that although the appointment was prepared in the process of the reorganization of the Commission, it was withheld because of adverse reports regarding Petitioner's ability to perform the duties of Chief Personnel Specialist in CSC Regional office No. XI, Davao City, embodied particularly in the letters of Regional Director Cawad to the Chairman, dated 23 June 1987 (Annex "11"), 24 July 1987 (Annex "12"), and 11 August 1987 (Annex "13"). The appointment was put into effect only much later after respondent Executive Director Deza in a handwritten note to the CSC Chairman, dated 29 January 1988, conveyed Petitioner's request that he be issued an appointment to the same position as Chief Personnel Specialist for purposes of retirement, which request was approved by the Chairman. That the re-appointment was not, in fact, released to Petitioner is clear from the first paragraph of Chairman Sto. Tomas' letter to Petitioner dated 21 April 1988, *supra*, which speaks of Petitioner's request that he be furnished the original copy of his re-appointment. He also did not receive the corresponding increase in salary since July 1987, the date of his "re-appointment" but was only given his salary differentials for the period 1 July to 31 December 1987 sometime on 8 February 1988 (Annex "A," Petitioner's Sur-Rejoinder, p. 180) or after he had opted to retire on 29 January 1988.

It is true that Petitioner had withdrawn his application for retirement on 18 February 1988. Yet of record is "GSIS Application Form for Retirement under RA 1616," dated 7 March 1988, to take effect on 8 March 1988, duly accomplished and signed by him. Chairman Sto. Tomas endorsed the same to the GSIS on the same date (Annex "3," Respondents' Memo, p. 230, Rollo). Also on 7 March 1988, Petitioner was cleared of all money and property accountabilities by the different Commission offices (Annex "4," *ibid.* p. 231). Although Petitioner denies having filed any application for retirement on said date of 7 March 1988, the document should be made to speak for itself and given full faith and credence accompanied as it is by a clearance from all his accountabilities on the same date. Respondents cannot be faulted, therefore, if they had construed Petitioner's equivocal act as an abandonment of his earlier request to withdraw his application for optional retirement.

Petitioner cannot successfully claim, therefore, that respondents Cawad and Deza had duped and forced him to apply for optional retirement. The official written communication to him from Chairman Gotladera, dated 28 December 1987, that he had not been re-appointed in the re-organization of the Commission out rightly belies that claim. Indications are that it was because of that notice that he filed his application for optional retirement so that he could avail of monetary benefits. The information allegedly given him by Respondents Deza and Cawad was but a reiteration of that official communication, without any malice aforethought.

Had Petitioner's performance been satisfactory, the Commission may have been impelled to accede to the withdrawal of his retirement. As it was, however, in the face of official reports of his inability to perform satisfactorily and efficiently the duties of his position, capped by that from Eliseo S. Gatchalian, Director of the Central Administrative Services re Petitioner's withdrawal of his application for retirement, Chairman Sto. Tomas, on 5 April 1988 decided in a marginal note thereon "let retirement request stand" (Annex "5," Respondents' Memorandum, p. 232, Rollo).

The scenario that Petitioner would like to depict that he was re-appointed because he is competent and deserving of retention in the service has been effectively rebutted in a series of official communications within the Commission. Thus: [1] in a letter to Chairman Gotladera, dated 23 June 1987, from Respondent Regional Director Cawad when petitioner was asking for a transfer to the Central office, said Regional Director wrote, among others, "seemingly, Mr. Rubio does not function effectively in his present position due perhaps to the incongruity between the demand and requirements of his present position on one hand, and his work preference, personal values, and work acumen, on the other hand. If the planned transfer of Mr. Rubio does not materialize, it is our recommendation that he be made a Supervising Personnel Specialist under the Inspection and Audit Division" (Annex "11," Respondents' Memo, p. 241, *ibid.*). [2] In a letter, dated 24 July 1987, of Respondent Cawad to Chairman Gotladera, he had also written "in our previous letters, we have proposed that Mr. Rubio be given the position of Supervising Personnel Specialist because of his inability to cope with the duties and responsibilities required as Chief of Division. He also lacks oral and written skills, intellectual maturity and emotional stability." (Annex "12," *ibid.*, p. 243, *ibid.*). [3] In a letter of 11 August 1987 Respondent Cawad also wrote "Ramon C. Rubio, Jr. cannot be recommended to the position of Chief Personnel Specialist (CPS) because of his inability to cope with the duties and responsibilities of a Chief of Division, to cite a few deficiencies which (he) discovered x x x; he cannot organize work and make work equitable for human beings to make work productive and the worker achieving x x x " (Annex "13," *ibid.*, p. 244, *ibid.*). [4] In a letter of 27 November 1987, Respondent Cawad again wrote Chairman Gotladera "except for Mr. Rubio Jr., x x x whose cases were referred to you previously, we are reiterating the retention of all our personnel x x x." [5] In a Memorandum, dated 5 April 1988, to the CSC Chairman, Eliseo Gatchalian, Director, Central Administrative Office observed: "when the Commission finally decided to reappoint officials and employees, Mr. Rubio was among those who were initially not reappointed based on reports submitted by Director Cawad x x x" (p. 232, Rollo).

Under the circumstances, the acceptance or not of the withdrawal of an employee's optional retirement should be made to lie within the discretion of the head of office in the interest of the service. The filing of an application for optional retirement and the withdrawal thereof are unilateral acts that cannot by themselves become effective without the approval thereof by the proper official, in this case, the Chairman of the Commission. The withdrawal is subject to the judgment and discretion of the approving authority after an assessment and evaluation of the competence and effectiveness of employees within the service. In fact, an employer is authorized to request the optional retirement of an employee who, by reason of disqualification is unable to perform satisfactorily and efficiently the duties of his position (Section 12[d], CA No. 186, as amended by Republic Act Nos. 660 and 1616).

In so far as the representation by the Solicitor General is concerned, suffice it to state that while the Office of the Solicitor General (OSG) represents the Government and its officers in this Court, the Court of Appeals and all other Courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party (Section 35[1], Chapter 12, EO 292), it is also incumbent upon it to present to the Court the position that will legally uphold the best interests of the Government although it may run counter to a client's position (see *Jorge P. Tan, et al. vs. Judge Pedro Gallardo, etc., et al.*, G.R. Nos. L-41213-14, October 5, 1976; 73 SCRA 306). Faced with that situation, however, it behooved the OSG to have informed the Commission of its stand, to have returned all supporting documents it may have received to that office, and to have refrained from representing petitioner as against the said Commission. The final adjudication on the merits of the controversy rests with the Courts.

WHEREFORE, the instant Petition for Certiorari, Prohibition and Mandamus is hereby DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Aquino, Medialdea, and Regalado, JJ., concur.

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