

ROGELIO A. TRIA, PETITIONER, VS. CHAIRMAN PATRICIA A. STO. TOMAS, CIVIL SERVICE COMMISSION, RET. BRIG. GEN. JOSE T. ALMONTE, RET. COL. ERNESTO P. RAVINA AND RET. GEN. MIGUEL M. ...

G.R. No. 85670. July 31, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Rogelio A. Tria had been employed with the Bureau of Intelligence and Investigation (later renamed Finance Ministry Intelligence Bureau ["FMIB"], now known as the Economic Intelligence and Investigation Bureau ["EIIB"]) of the Department of Finance, Region 5, Legaspi City, as a Management and Audit Analyst I, a position expressly described in the letter of appointment as "confidential." [1] The appointment was signed by "Pelagio A. Cruz, Lieutenant General, AFP (Ret), Commissioner, FMIB." [2]

On 27 September 1984, petitioner wrote a confidential report to the FMIB Deputy Commissioner detailing the nonfeasance of a FMIB lawyer assigned to Region 5. Petitioner's report recommended the lawyer's replacement "with a competent and able lawyer to handle the cases brought to his attention." [3] On 14 October 1986, petitioner submitted another confidential report, addressed to the Deputy Executive Secretary, Office of the President, this time concerning Col. Jackson P. Alparce (Ret.), FMIB Region 5 Director.

On 20 October 1986, petitioner filed an application for vacation leave for 100 working days, covering the period 1 November 1986 to 30 April 1987. Petitioner sought to take advantage of a Civil Service circular which allows employees who propose to seek interim employment abroad, to go on prolonged leave of absence without pay without being considered separated from the service. [4] The application was approved by his immediate supervisor and Chief, Intelligence and Investigation Service, Col. Ruperto Amistoso (Ret.), and the personnel officer, Col. Domingo Rodriguez (Ret.), both based in the Region 5 office of the FMIB.

On 23 October 1986, when petitioner was already in Manila attending to the processing of his travel papers, a Memorandum was sent to him in Legaspi City from the FMIB Central Office in Quezon City by respondent Assistant FMIB Commissioner Brig. Gen. Miguel Villamor (Ret.), referring to the confidential report sent out to the Office of the President. The Memorandum in part stated:

"Be reminded that as an agent of FMIB, it is inherent in your duties to report to the Commissioner or other authorities of FMIB of any irregularity committed by employees/officials in that Region [5] to enable them to take appropriate action/investigation and/or disciplinary action.

However, it appears that you opted to submit said report directly to the Office of the President, Malacanang which adversely affected the Bureau's image and placed the Commissioner in an embarrassing position.

In view thereof, you are required to submit your explanation in writing within five (5) working days from receipt hereof why no disciplinary action should be taken against you for non-compliance with office rules and

regulations."[5]

Since petitioner had failed to receive and hence to respond to the above Memorandum, another Memorandum from Quezon City dated 17 November 1986 was issued, this time by respondent Col. Ernesto Rabina (Ret.), Chief, Administrative Service, FMIB, reminding petitioner of his duty to submit the required written explanation. That Memorandum went on to state:

"Be informed further that your application for sick [should have been vacation] leave dated October 22, 1986 x x x has been disapproved pursuant to Sec. 16 of Civil Service Rule No. XVI which reads thus: 'Leave of absence for any reason other than serious illness must be contingent upon the needs of the service.'

Inasmuch as your services in that Region [5] is (sic) needed, you are directed to report for work thereat within ten (10) working days from the date of this Memorandum otherwise, this office will be constrained to drop you from the rolls of FMIB for prolonged/unauthorized absence and non-compliance with office rules and regulations."[6]

Petitioner, however, had already left the country on 26 October 1986, and was unable to comply with the express directives of the second Memorandum. He was therefore considered to be on absence without official leave (AWOL). This prolonged absence, as well as his failure to explain his sending out the confidential report to Malacanang, prompted respondent EIIB Commissioner Brig. Gen. Jose Almonte (Ret.) to issue Letter-Order No. 06-87 dated 12 January 1987 informing petitioner of the termination of his services retroactive to "1 November 1986 for continuous absence without official leave and for loss of confidence."[7]

It was upon his return to the country sometime in May 1987 that petitioner came to know of the abovementioned Letter-Order and of the two Memoranda. In a letter dated 20 May 1987 to respondent Almonte, petitioner asked for reinstatement, stating that his application for vacation leave had been approved by his immediate chief and the personnel officer. With respect to the confidential report he had addressed to the Deputy Executive Secretary, petitioner explained:

"x x x I would like to state that the reason why I submitted my report to the Office of the President is precisely to protect the image of the bureau. Earlier, I handed a report to the then Deputy Commissioner Mendoza regarding said irregularities committed sometime in 1984-85, particularly by Atty. Geronga, R-5 and Director Col. Alfarc. No investigation was undertaken inspite of my report. In the meanwhile, the FMIB-R-5 always appeared in the local newspaper regarding the unscrupulous behavior of the director which not only affects the good image of our organization but also of the subordinates of the office. Thus, I felt in good faith that the matter should be brought to the attention of the Deputy Executive Secretary of Malacanang so that appropriate action can be taken for the good of the service. I submit that I did this in my honest belief that it is my duty to do so as a public servant and a loyal member of this organization.

x x x I reiterate that the same was done in good faith and not for any selfish motive."[8]

Reinstatement was, however, denied by respondent Rabina in a letter dated 11 August 1987, which in part read:

"x x x x x x x x x

Be informed that Commissioner, EIIB has directed the Investigation & Prosecution Office this bureau to conduct a brief investigation on your case and the established facts show that this office committed no injustice. Your violation of office rules and regulations were the grounds for your termination for loss of confidence."[9]

Petitioner's request for payment of the cash equivalent of his accrued leave credits corresponding to a total of 179 days was also denied by respondent Villamor on the ground that:

"x x x Section 6 of the Civil Service rules and laws provides that 'x x x the removal for cause of an official or employee shall carry with it forfeiture of x x x other benefits arising from his employment.'"[10]

Petitioner then filed a petition for review with prayer for reinstatement and backwages before respondent Civil Service Commission ("Commission"), which the Commission denied. Respondent Commission held that the grant of petitioner's application for vacation leave, notwithstanding the accumulation of sufficient leave credits, was discretionary on the part of respondent Rabina, the approving official, citing *In re: Nicolasura, Victor* (CSC Res. No. 88-251) dated 25 May 1988 and Section 20 of the Revised Civil Service Rules which read:

"Leave of absence for any reason other than the serious illness of an officer or employee x x x must be contingent upon the needs of the service."[11]

Having failed to get reconsideration, petitioner came to this Court on the present Petition for Certiorari.

Petitioner challenges his dismissal as being arbitrary. The propriety of petitioner's alleged unlawful removal boils down to the question of whether or not an employee holding a position considered as "primarily confidential" may be dismissed on grounds of "loss of confidence" by the appointing authority on the basis of the employee's having gone on unauthorized leave of absence and of his having filed a confidential report on one of his superiors directly with the Office of the President.

We begin with the proposition that the effects of characterizing a position as "primarily confidential" are two-fold: firstly, such characterization renders inapplicable the ordinary requirement of filling up a position in the Civil Service on the basis of merit and fitness as determined by competitive examinations; and secondly, while the 1987 Constitution does not exempt such positions from the operation of the principle set out in Article IX (B), Section 2 (3) of the same Constitution that "no officer or employee of the Civil Service shall be removed or suspended except for cause provided by law," the "cause provided by law" includes "loss of confidence." [12] It is said to be a settled rule that those holding primarily confidential positions "continue for so long as confidence in them endures. Their termination can be justified on the ground of loss of confidence because in that case their cessation from office involves no removal but the expiration of their term of office." [13] Notwithstanding the refined distinction between removal from office and expiration of the term of a public officer, the net result is loss of tenure upon loss of confidence on the part of the appointing power.

A position in the Civil Service may be considered primarily confidential: (1) when the President of the Philippines, upon recommendation of the Civil Service Commission, has declared that position to be primarily confidential; or (2) when the position, given the character of the duties and functions attached to it, is primarily confidential in nature. [14] All positions in the EIIB were apparently declared as "highly confidential" by former President Marcos in Letter of Implementation No. 71, dated 4 September 1978, which reads in part as follows:

"Pursuant to Presidential Decree No. 1458, dated June 11, 1978, and letter dated August 18, 1978 of the President/Prime Minister creating the Bureau of Intelligence and Investigation (BII) [now the EIIB], the following directives are hereby issued for immediate implementation by the new Bureau:

x x x x x x x x

4. The Commissioner of the BII with the approval of the Ministry of Finance, is hereby instructed to organize and appoint his staff x x x. All positions in the BII are highly confidential in nature and incumbents thereof may be removed for loss of confidence by appropriate authority." [15]

When one examines, however, the actual duties and functions of petitioner as a "Management and Audit Analyst I" in the FMIB, as set out in the job description of that position, one is struck by the ordinary and day to day character of such duties and functions:

"Prepares required survey materials, work plans and schedules; gathers data and makes investigations and analyzes (sic) of administrative problems relating to organization, personnel and procedure; supplements data gathered by interviewing heads of office or private individuals or by observing actual operations; examines and analyzes reorganization proposals in the light gathered and facts observed; analyzes causes of inefficiency or lack of economy, undertakes required study and research; prepares survey reports and write (sic) drafts of tentative organization plans, discusses and justifies such plans to supervisor and appropriate bodies; maintains close liaison work with head of offices or organizations; studies operational methods and procedures of the organization to simplify the work and improve efficiency; studies and recommends measures to insure industrial safety and prevention of accidents; supervises the installation of management control devices; assists in the compila-tion, analysis and interpretation of important statistics for use of management." [16] (Underscoring supplied)

It is thus useful to recall that in *Piñero v. Hechanova*, [17] the Court, speaking through J.B.L. Reyes, J., said:

"It is plain that, at least since the enactment of the 1959 Civil Service Act (R.A. 2260), it is the nature of the position which finally determines whether a position is primarily confidential, policy determining or highly technical. Executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict. And it must be so, or else it would then lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the protection of section 4, Article XII, of the Constitution." [18] (Citation omitted; underscoring partly in the original and partly supplied)

The above doctrine was reiterated and relied upon in *Borres v. Court of Appeals*. [19] It is also important to note that the concept constitutive of "primarily confidential" positions has been narrowly drawn by this Court. Thus, in *De los Santos v. Mallare*, [20] the Court said, through Mr. Justice Pedro Tuason:

"x x x [T]hree specified classes of positions -- policy-determining, primarily confidential and highly technical -- are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution. These positions involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.

x x x x x x x x

Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion and delegation and reporting] without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x." [21]

The positions which this Court has in the past characterized as "primarily confidential" include: private secretaries of public functionaries; [22] a security officer assigned as bodyguard of the person of a public officer and responsible for taking security measures for the safety of such official; [23] City Legal Officer of Davao City vis-a-vis the Davao City Mayor; [24] Provincial Attorney of Iloilo Province vis-a-vis the Governor of Iloilo Province. [25] It is also instructive to refer to some of the positions which the Court has refused to designate as "primarily confidential:" e. g., members of the Customs Police Force or Port Patrol; [26] Special Assistant to the Governor of the Central Bank, in charge of the Export Department; [27] Senior Executive Assistant, Clerk I and Supervising Clerk I and stenographer in the Office of the President. [28]

It is evident that the duties of petitioner related to the study and analysis of organizational structures and procedures, with the end in view of making recommendations designed to increase the levels of efficiency and coordina-tion within the organization so analyzed. Moreover, the modest rank and fungible nature of the position

occupied by petitioner, is underscored by the fact that the salary attached to it was no more than P1,500.00 a month at the time he went on leave (October, 1986). There thus appears nothing to suggest that petitioner's position was "highly" or even "primarily confidential" in nature. The fact that petitioner may, sometimes, handle "confidential matters" or papers which are confidential in nature, does not suffice to characterize their positions as primarily confidential.[29]

Accordingly, we believe and so hold that petitioner Tria's particular position of "Management and Audit Analyst I" is not a "primarily confidential" position so as to render him removable upon, or the expiration of his term of office concurrent with, "loss of confidence" on the part of the appointing power who, as already noted, was the then Commissioner of the FMIB.

If petitioner Tria was not legally removable upon "loss of confidence" on the part of the FMIB Commissioner, was there nonetheless legal cause provided by law for his dismissal from the service?

We believe that the constitutional prohibition against suspension or dismissal of an officer or employee of the Civil Service "except for cause provided by law" is a guaranty of both procedural and substantive due process. Procedural due process requires that suspension or dismissal come as a general rule, only after notice and hearing.[30] In the case at bar, as already noted, the EIIB issued a Memorandum to petitioner, after he was already in Manila, requiring him to explain why no disciplinary action should be taken against him for having submitted a report directly to the Office of the President, Malacañang, "which adversely affected the bureau's image and placed the Commissioner in an embarrassing position," which Memorandum was not received by petitioner. However, after his return from abroad and upon request of petitioner, another investigation was conducted by the EIIB where petitioner had an opportunity to explain his side of the matter. The Court considers that, under the circumstances of this case, the subsequent investigation constituted substantial compliance with the demands of procedural due process.

Substantive due process requires, among other things, that an officer or employee of the Civil Service be suspended or dismissed only "for cause," a phrase which, so far as concerns dismissals of public officers not holding positions which are "policy determining, highly technical or primarily confidential," has acquired, according to this Court, the following "well-defined concept:"

"It means for reasons which the law and sound policy recognize as sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without cause. Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public." [31]

In the instant case, we have noted earlier that petitioner was charged with violation of official rules and regulations consisting, more specifically, of: (1) having gone on an extended unauthorized leave of absence; (2) having bypassed official channels in transmitting a report concerning alleged misfeasance or non-feasance on the part of a superior officer of the EIIB directly to the Office of the President through the Deputy Executive Secretary, rather than through the respondent EIIB Commissioner.

It is true that petitioner was probably precipitate in taking off for abroad before his application for vacation leave was formally approved by the FMIB Central Office in Quezon City. We must, however, take into account the circumstance that his application for leave without pay had been approved or indorsed for approval by his immediate superior in the FMIB, Region 5 Office, where petitioner was assigned, and so petitioner was not completely without basis in believing that the formal approval of his application in the FMIB Central Office would follow as a matter of course. It is pertinent to point out that his immediate superiors in the Region 5, FMIB

Office were the persons in the best position to ascertain whether his presence in the Regional office during the period covered by his application for leave without pay was really demanded by imperious exigencies of the service. The record is bare of any indication what those exigencies were, at that particular time. There is also no showing that the FMIB actually suffered any prejudice by reason of the non-availability of the services of petitioner during his leave without pay. Petitioner was, it should be recalled, a "Management and Audit Analyst I," a humble rank separated by many ranks from the appointing power, the FMIB Commissioner. It thus appears to the Court that, on balance, the extreme penalty of dismissal from the service was unduly harsh in the case of petitioner; that suspension for thirty (30) days would have been more than adequate punishment for precipitately going on leave without pay prior to formal approval of his leave by the Central Office of the FMIB; and that the real and efficient cause of his dismissal from the service was the fact that he had bypassed official channels in rendering the confidential report addressed to the Deputy Executive Secretary, Office of the President, concerning the then Regional Director of FMIB, Region 5.

After careful consideration, we believe and so hold that, in the circumstances of this case, that act of petitioner did not constitute lawful cause for his dismissal from the service. We believe, on the contrary, that petitioner's case is covered by the rule in *Gray v. De Vera*.^[32] Benjamin A. Gray was Secretary of the Board of Directors of the People's Homesite and Housing Corporation ("PHHC"). He sent a telegram to President Carlos P. Garcia reading as follows:

"Aye suggest complete revamp PHHC Board's top members should not usurp management functions (comma) should willingly attend meetings (comma) should not grab as quotas dwelling awards despite applicants of long standing (comma) should not divide among themselves emergency positions (comma) should create positions only in case of necessity and not because they want to accommodate their useless men (comma) and should respect civil service law."^[33]

On the following day, the PHHC Board of Directors terminated Gray's services "on account of loss of confidence due to treachery or disloyalty to the Board." In holding that Gray had been unlawfully dismissed and in ordering his reinstatement with backwages, this Court held:

"The removal of Board Secretary Gray from the primarily confidential position to which he had been permanently appointed was illegal in view of the following considerations:

(1) There was no lawful cause for removal. The sending of the telegram of January 12, 1959 to President Carlos P. Garcia suggesting a complete revamp of the Board of Directors of the PHHC due to the Board's acts of mismanagement and mis-conduct, the most serious of which was that the Directors were grabbing as 'quotas dwelling awards despite applicants of long standing,' was an act of civic duty. The telegram was a privileged communication presumably made in good faith and capable of being substantiated by evidence.

According to the testimony of Director Manuel T. Leelin, the act of Board Secretary Gray in sending the telegram of January 12, 1959 to the President of the Philippines was an act of treachery or disloyalty to the Board. x x x

x x x x x x x x

We cannot agree, for the following reasons:

First. As pointed out, the sending of the telegram to the President of the Philippines was an act of civic duty. The telegram was a privileged communication presumably sent in good faith and capable of being proved by evidence.

Second. The position of secretary to the board of a government corporation was declared by the President in Executive Order No. 399 primarily confidential in nature with the obvious intent that the position be filled by

an appointee of unquestioned honesty and integrity. Hence, the act of Board Secretary Gray in reporting to the President the Board's act of mismanagement and misconduct was in consonance with the honesty and integrity required for the position.

Assuming that Gray owed loyalty to the Board, that loyalty was in the interest of good government and not in the personal interest of the Directors to the extent of concealing the shenanigans of the Board. x x x." [34]

In the case at bar, we note that petitioner sent his confidential (and presumably sealed) report to an office having overall administrative supervision and control over the FMIB (i.e., the Office of the President); the report was not, in other words, sent either to the media or to an office or agency having no administrative jurisdiction over the public official or office complained of. That report was a privileged communication and the author thereof enjoys the benefit of the presumption that he acted in good faith. The respondents have not alleged that petitioner acted with malice in fact. We do not believe that petitioner's act constituted serious misconduct but rather, on the contrary, was an act of personal and civic courage by which petitioner exhibited his loyalty to the FMIB as an institution and ultimately to the Government of the Republic of the Philippines.

Considerations of fundamental public policy thus compel us to hold that petitioner was dismissed without lawful cause and must, therefore, be reinstated to the position he previously held or, if that position is no longer available, to some other position in the EIIB of equivalent rank and emoluments. In addition, petitioner is entitled to payment of his backwages (basic salary plus allowances, if any) computed from the time of his return from his leave of absence, minus an amount equivalent to one-month's backwages representing the appropriate penalty for petitioner's infraction of ordinary office rules.

WHEREFORE, the Petition for Certiorari is hereby GRANTED DUE COURSE, the Comments filed by respondents are hereby CONSIDERED as their Answers to the Petition and Resolutions Nos. 88-150 and 88-787 of public respondent Civil Service Commission as well as Letter-Order No. 06-87 of public respondent EIIB Commissioner, are hereby ANNULLED and SET ASIDE. Public respondents are hereby ORDERED to reinstate forthwith petitioner to his former position, or to a position of equivalent rank and compensation, and to pay him the backwages, allowances and other benefits lawfully due him counted from May 1987, when he returned to the country from his leave of absence, until actual reinstatement, less one month's backwages. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] Annex "1", Comment of Respondents, Rollo, p. 81.

[2] Id.

[3] Annex "D" of Petition, Rollo, p. 26.

[4] Resolution No. 85-444 of the Civil Service Commission entitled "Policy on Leave of Absence to Work Abroad."

[5] Annex "F" of Petition, Rollo, p. 31; underscoring supplied.

[6] Annex "G" of Petition, Rollo, p. 32; underscoring supplied.

[7] Annex "2" of Comment; Rollo, p. 82.

[8] Annex "H" of Petition, Rollo, p. 34; underscoring supplied.

[9] Annex "I" of Petition, Rollo, p. 35; underscoring supplied.

[10] Annex "K" of Petition, Rollo, p. 37.

[11] Annex "A" of Petition, Rollo, p. 21.

[12] E.g., *Corpuz v. Cuaderno*, 87 Phil. 289; 13 SCRA 591 (1965); *Hernandez v. Villegas*, 14 SCRA 544 (1965); *Cariño v. Agricultural Credit and Cooperative Financing Administration*, 18 SCRA 183 (1966); *Ingles v. Mutuc*, 26 SCRA 171 (1968).

[13] *Hernandez v. Villegas*, *supra*; *Griño v. Civil Service Commission*, G.R. No. 91602, dated 26 February 1991.

[14] *Salazar v. Mathay*, 73 SCRA 269 (1976). Section 2 of Rule 20, Revised Civil Service Rules, promulgated pursuant to the provisions of Section 16 (e) of Republic Act No. 2260 (the Civil Service Act of 1959) provided that:

"Upon recommendation of the Commissioner, the President may declare a position as policy-determining, primarily confidential or highly technical in nature. x x x" (58 Official Gazette No. 49, Supplement, 3 November 1962)

[15] Rollo, p. 72.

[16] Annex "4" of Comment, Rollo, p. 88.

[17] 18 SCRA 417 (1966).

[18] 18 SCRA at 423.

[19] 153 SCRA 120 (1987).

[20] 87 Phil. 289 (1950).

[21] 87 Phil. at 297-298; underscoring and brackets supplied.

[22] See *Corpus v. Cuaderno*, 13 SCRA at 596.

[23] *Borres v. Court of Appeals*, *supra*.

[24] *Cadiente v. Santos*, 142 SCRA 280 (1986).

[25] *Griño v. Civil Service Commission*, *supra*.

[26] *Piñero v. Hechanova*, *supra*.

[27] *Corpuz v. Cuaderno*, *supra*.

[28] *Ingles v. Mutuc*, 26 SCRA 171 (1968).

[29] In *Ingles v. Mutuc* (*supra*), *Concepcion, C.J.*, said:

"Indeed, physicians handle confidential matters. Judges, fiscals and court stenographers generally handle matters of similar nature. The Presiding and Associate Justices of the Court of Appeals sometimes investigate, by designation of the Supreme Court, administrative complaints against judges of first instance, which are confidential in nature. Officers of the Department of Justice, likewise, investigate charges against municipal

judges. Assistant Solicitors in the Office of the Solicitor General often investigate malpractice charges against members of the Bar. All of these are 'confidential' matters, but such fact does not warrant the conclusion that the office or position of all government physicians and all Judges, as well as the aforementioned assistant solicitors and officers of the Department of Justice are primarily confidential in character." (26 SCRA at 177-178; underscoring supplied)

[30] *Reyes v. Subido*, 66 SCRA 203 (1975). Section 36 (a) of the Civil Service Decree provides:

"No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process."

[31] *De los Santos v. Mallare*, 87 Phil. at 293.

[32] 28 SCRA 268 (1969).

[33] 28 SCRA at 270.

[34] 28 SCRA at 274-275; emphases supplied.

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