

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SPOUSES EVELYN T. KINTANAR AND DIONISIO KINTANAR, RESPONDENTS.

G.R. No. 86083. September 24, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Respondent Evelyn T. Kintanar, second-grade civil service eligible, was employed by petitioner Government Service Insurance System ("GSIS") at its Cebu Branch, initially as a casual employee on 3 September 1976, and later as records clerk, and then as control clerk. As a control clerk, she was assigned to the Records and Communication (mailing) Section, Information and Services Division, where her principal duties and functions were "to receive checks [specifically, policy loan, educational assistance loan, and miscellaneous checks] coming from the accounting section and list down the checks in the log book, to attend to members who would get their checks personally, by requiring them to secure release papers to be signed by the division head, or to mail the checks to the borrower-members." [1]

Sometime in 1979, two (2) members of the GSIS, in separate affidavits, complained that they had not received their policy loan checks, namely: Josefina Guerrero, a head teacher at the South Central Elementary School, Hinatuan, Surigao del Sur; and Vicente Ancajas, a teacher at the Tayuman Elementary School, Cayung, Bogu, Cebu. As a result, two (2) investigations were conducted separately on 5 October 1979 and 29 October 1979, by the GSIS Cebu Branch Attorney, Atty. Dulce A. Sy, and the GSIS Cebu Branch Manager, Atty. Reinerio L. Macalindong, respectively of GSIS employees who might have been involved in the loss and fraudulent encashment of the two (2) checks: Messrs. Victor Asubar, Severino Tabasa, Pantaleon Mellijor, Cresente Natinga, and respondent Evelyn Kintanar. All the declarations of the employees investigated were reduced to writing and duly subscribed and sworn to.

Meanwhile, in a letter dated 16 October 1979 addressed to the Officer-in-Charge of the Department of Investigation, GSIS, Manila, Evelyn Kintanar requested another and separate investigation. The Department of Investigation thereafter sent Atty. Elpidio Divina to Cebu City. Curiously enough, Evelyn Kintanar was never considered for investigation, although she had requested such re-investigation. It turned out that on the basis of affidavits taken from the first five (5) abovementioned GSIS employees, Atty. Divina had concluded that the loss of the two (2) checks occurred while they were in the custody of Evelyn Kintanar. Atty. Divina therefore did not try to secure Evelyn's statement, as he had intended to file formal charges against her, at which time Evelyn would have the opportunity to refute the charges against her.

Atty. Divina's suggestion that charges be filed against Evelyn Kintanar was, however, turned down by his superiors in Manila. In a report dated 24 April 1980, submitted to the Board of Trustees, the Officer-in-Charge, Department of Investigation, GSIS, Manila, instead recommended that:

"In the investigation it was established that Mrs. Evelyn Kintanar who was charged with the disposition of

policy loan checks at the Cebu Branch Office took advantage of her position by releasing two policy loan checks drawn in the names of Josefina Guerrero and Vicente Acejas and dated February 6, 1979 and February 21, 1979, respectively, to unauthorized third parties. As further shown by the evidence, she (Mrs. Kintanar) thereafter took possession of the said checks and fraudulently negotiated the same with a certain Mr. Julian Abarrientos, an outsider.

x x x x x x x x

In relation to the check issued to Mr. Vicente Acejas, the unauthorized release of the same to a third party was made possible thru guarantee of Mr. Victor Asubar, also of the Cebu Branch Office. Mr. Asubar admitted in his sworn statement that he guaranteed the delivery of the check in question to a person whom he did not personally know. He explained, however, that it was Mrs. Kintanar who requested him to identify the payee. There is no evidence though that Mr. Asubar had participated in the fraudulent encashment of the check; neither was it shown that he ever received any amount for acting as guarantor."^[2]

On 9 May 1980, petitioner GSIS, through Board Resolution No. 310 adopted by its Board of Trustees, resolved, upon recommendation of the Officer-In-Charge, Department of Investigation, summarily to dismiss respondent Evelyn from the service. The GSIS Board also resolved that Victor Asubar be charged administratively for misconduct and/or conduct prejudicial to the interest of the System, although this part of the resolution was apparently never carried out.

On 29 May 1980, the GSIS Cebu Branch Manager, by a letter bearing the same date, terminated the services of Evelyn Kintanar "effective upon the close of office hours of May 29, 1980."^[3]

On 3 June 1980, Evelyn Kintanar filed an appeal with the Civil Service Commission, contending that her summary dismissal was a violation of her right to security of tenure and of the constitutional guarantee of due process. The Civil Service Commission indorsed the appeal to GSIS President and General Manager Roman A. Cruz for comment.

By a letter dated 31 July 1980, Roman A. Cruz informed respondent Evelyn that she was "summarily dismissed from the service as mandated under [paragraph a] of Sec. 40 of Presidential Decree No. 807 x x x."^[4]

On 23 October 1980, respondent Evelyn (this time joined by her husband, private respondent Dionisio Kintanar) filed with the Regional Trial Court of Cebu City an action for mandamus, certiorari, and declaration of unconstitutionality of Section 40 of P.D. No. 802, alleging that she "had exhausted all administrative remedies but her appeal to the Commissioner of Civil Service was [remanded] to the General Manager of GSIS who affirmed the illegal dismissal."^[5]

Petitioner moved to dismiss the complaint in the lower court on the ground of prematurity, insisting that the subject matter of the case was still within the jurisdiction of the Merit Systems Board ("Board"), Civil Service Commission. On 10 June 1981, while the motion was still before the lower court, the Board, finding that Evelyn Kintanar had indeed been denied an opportunity to present her evidence, remanded her case to petitioner in an Order, reading thus:

"A thorough perusal of the records shows that Mrs. Kintanar was deprived of the fundamental requirements of due process. Admittedly, a formal investigation may be dispensed with in summary proceedings, but it is undeniably true that before summary proceedings can be resorted to, the respondent should be informed of the nature of the charges against him and afforded the opportunity to answer and refute the said charges.

Section 40 of Presidential Decree No. 907 provides thus:

'Section 40. Summary Proceedings. — No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

a) When the charge is serious and the evidence of guilt is strong.

x x x x x x x x

Resort to summary proceedings by disciplining authority shall be done with utmost objectivity and impartiality to the end that no injustice is committed: Provided, that removal or dismissal except those by the President himself, or upon his order, may be appealed to the Commission.'

Applying the aforecited provision, it is observed that before one becomes a respondent, he must have been informed of the charges against him and given an opportunity to answer the same. For want of this basic requirement, a government employee remains an employee of good standing. The essence of due process is that the respondent must be apprised of the charge imputed to him and afforded an opportunity to present his side. What is dispensed with in summary proceeding is the formal investigation.

WHEREFORE, in the interest of justice, the Board hereby remands the case to the GSIS for compliance with the above requirements. In the meantime, the respondent may be placed under preventive suspension in accordance with Section 41 of Presidential Decree No. 807.

SO ORDERED."[6] (Italics supplied)

Petitioner's motion for reconsideration of the above Order was denied in an Order of the Board dated 20 October 1981. A second motion for reconsideration was similarly denied. Petitioner, however, did not comply with the directive that the case be remanded for further investigation, apparently believing that respondent had, by seeking relief before the regular courts, abandoned her administrative appeal before the Board.

The trial court, for its part and taking cognizance of the administrative proceedings before the Board, in an Order dated 19 April 1982, denied petitioner's motion to dismiss, finding that:

"x x x. The [Merit Systems Board] recognized that the removal of [respondent] was not in accordance with the requirements of P.D. No. 807, Section 40. However [petitioner GSIS] x x x failed to comply with the directive [to remand the case] within a reasonable period, but instead x x x allowed a period of 37 days before filing its motion for reconsideration, which is detrimental and prejudicial to the rights of [respondent] to a speedy hearing more so that at the time she was already dismissed from the service. x x x [Petitioner's filing a second motion for reconsideration] is again prejudicial to the rights of [respondent] who had been deprived summarily of her position in a summary proceedings."[7]

The lower court, in a Decision dated 18 October 1985, finding that respondent had been denied due process, and that the evidence against her was not sufficient to support dismissal, ordered petitioner to reinstate respondent and pay her back salaries.

On appeal, the Court of Appeals affirmed. Petitioner moved for reconsideration, without success.

Petitioner maintains in this Petition for Review that respondent's summary dismissal from the service was justified, the charge being serious and the evidence of guilt being strong; and that whatever lack of procedural due process may have attended the summary dismissal had been cured by respondent's subsequent appeal not only to the Civil Service Commission but also to the regular courts.

The instant Petition thus raises the question of the correct reading and application of Section 40, paragraph (a) of P.D. No. 807, otherwise known as the Civil Service Decree. It is useful to quote again its pertinent provisions:

"Section 40. Summary Proceedings. — No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

a) When the charge is serious and the evidence of guilt is strong.

x x x x x x x x

Resort to summary proceedings by disciplining authority shall be done with utmost objectivity and impartiality to the end that no injustice is committed: Provided, that removal or dismissal except those by the President himself, or upon his order, may be appealed to the Commission."

In *Abalos v. Civil Service Commission, et al.*,^[8] the Court had this to say about Section 40 of the Civil Service Law quoted above:

"The Court had earlier entertained serious misgivings about the constitutionality of Section 40 as against strong protests that it was violative of due process in so far as it deprived the civil servant of the right to defend himself against the ex parte decision to dismiss him. While it is true that this section had been upheld in earlier decisions (albeit not very categorically), there was a growing sentiment that the law should be re-examined more closely in deference to the right to a hearing that it was foreclosing.

Fortunately, the question has been rendered moot and academic by the Congress of the Philippines, which has itself seen fit to remove it from our statute books. The Court [notes that] x x x Section 40 was repealed by Republic Act No. 6654, which was approved on May 20 1988, and published in the Official Gazette on May 30, 1988.

x x x x x x x x"

(Italics supplied)

The repeal, however, of Section 40 of the Civil Service Decree on 20 May 1988 does not dissolve the question before us, considering that the commission of the acts imputed to respondent Evelyn Kintanar took place long before such repeal and long after the decision of the trial court ordering her reinstatement and payment of backwages.

In the case at bar, there is no question that no charges had been filed before respondent Evelyn Kintanar was dismissed from the service. She simply was not informed of any charges against her; she was not even interviewed by the lawyer sent by the GSIS to look into the matter. This was confirmed by petitioner's witness Atty. Elpidio Divina, whose earlier recommendation that respondent be formally charged, had been rejected or disregarded:

"Q:

Companero, do I understand from you that you came over to Cebu City as a result of Mr. Arsenio Magpale for you to investigate the case of Mrs. Kintanar per her request in said letter?

A:

Yes, sir.

Q:

Despite the fact that it was Mrs. Evelyn Kintanar who filed that letter-complaint asking for investigation, you did not talk to Mrs. Kintanar?

A:

I reserved the matter of interviewing her for the reason that anyway after a formal charge has been filed, then that is her opportunity to explain her side on the case.

Q:

Was that reservation made use of?

A:

It was not. My request was turned down.

Q:

By whom?

A:

By my superior.

x x x x x x x x

Q:

In other words, there was no complaint sent to Mrs. Evelyn Kintanar?

A:

To my knowledge there were no formal charges filed against her."^[9] (Italics supplied)

It is also not disputed that dishonesty, the offense imputed to Evelyn Kintanar, is a serious offense.

Petitioner, however, contends that the phrase "no formal investigation is necessary" in Section 40 dispenses with the need to serve charges upon a respondent; otherwise, petitioner argues, respondent may well elect, as a matter of right, a formal investigation, the conduct of which investigation would then be inconsistent with the portion of Section 40 which says that the respondent "may be immediately removed or dismissed."

In *Philippine National Bank, et al. v. Hon. S.M. Apalisok, etc, et al.*,^[10] the Court had before it a set of facts similar to those before us here. The Court, however, there refrained from directly passing upon the constitutional validity of Section 40 (a) and instead held Section 40 (a) as inapplicable to the facts before it; at the same time, the Court held that the proceedings actually taken by the petitioner Bank were null and void for being violative of procedural due process:

"The trouble is, the Bank's own fact-finders, despite their opinion that prima facie there had been 'flagrant

violations of Bank rules and regulations,' had recommended that a formal investigation be conducted. That recommendation was obviously impelled by the fact that Virtudazo's formal answer had traversed the accusations against him and there was a not unreasonable possibility that if allowed to present evidence, as he was then demanding, the allegations of that answer would be substantiated and destroy the prima facie evidence of guilt collated by the fact-finders. Implicit in that recommendation, in other words, is that although standing alone, the proofs of Virtudazo's guilt were strong, the possibility could not be discounted that said proofs could be overcome by the evidence that Virtudazo was insisting on submitting. Be this as it may, the recommendation of the very investigators of the Bank that a formal hearing be had of the charges is inconsistent with the subsequent view expressed by the Bank that no such formal hearing was necessary, a virtual assertion that it was inutile to allow Virtudazo to adduce evidence as no proof on his part could possibly negate the proofs already gathered by the investigators against him.

Upon these considerations, the Court holds inapplicable the provisions of Section 40 (a) of P.D. 807, invoked by petitioner Bank. Given the facts, the provisions properly applicable are paragraphs (a) and (c) of Section 38, P.D. 807, reading as follows:

'SEC. 38. Procedure in Administrative Cases Against Non-Presidential Appointees. — (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chief of agencies, or regional directors, or upon sworn, written complaint of any other persons.

x x x x x x x x

(c) Although a respondent does not request a formal investigation, one shall nevertheless be conducted when from the allegations of the complaint and the answer of the respondent including the supporting documents, the merits of the case cannot be decided judiciously without conducting such an investigation.

x x x x x x x x'

The Bank contends, too, that Virtudazo's failure to exhaust administrative remedies is fatal to his judicial action. The contention is rendered innocuous and inconsequential by the circumstance established in the record that Virtudazo had been denied due process. As already pointed out, he was not given a copy of the judgment discharging him from his employment on account of serious misconduct, hence, he was not informed of the various issues involved and the reason for the decision rendered; neither was the evidence on which that decision was based disclosed to him; and he was not accorded an opportunity to present his case and submit evidence in his behalf, and not given a copy of the decision. The proceedings having been conducted without according to Virtudazo the 'cardinal primary rights of due process' guaranteed to every party in an administrative or quasi-judicial proceeding, said proceedings must be pronounced null and void. x x x" (Italics supplied)

We think it is time this Court firms up its position on the validity of Section 40 of the Civil Service Act. It is clear to us that what the opening sentence of Section 40 is saying is that an employee may be removed or dismissed even without formal investigation, in certain instances. It is equally clear to us that an employee must be informed of the charges preferred against him, and that the normal way by which the employee is so informed is by furnishing him with a copy of the charges made against him. This is a basic procedural requirement that a statute cannot dispense with and still remains consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defenses. The ordinary way by which a Civil Service employee is given this opportunity is by holding an investigation, in the course of which the employee may assert his defenses and present his supporting evidence. If Section 40 of the Civil Service Decree is to be saved from unconstitutionality, it cannot be interpreted or applied in such a manner as to deprive a respondent employee of

these two (2) minimum rights. These are not the only indispensable requirements of procedural due process; they are, however, most directly involved in the matter of whether or not an investigation of charges against a civil service employee is essential.

In *Tria v. Chairman Patricia Sto. Tomas, et al.*,^[11] the Court held that the prohibition in Article IX (B)(2)(3) of the Constitution 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."

By the same token, to the extent that Section 40 of P.D. No. 807 dispenses with the need to inform a respondent employee of the charges against him, and with the need to accord him reasonable opportunity to meet those charges by presenting his defenses and his evidence in support thereof, Section 40 suffers from a constitutional vice as constituting a deprivation of procedural due process. To that extent, it is invalid under both the general due process clause (Article III [1]) and the guarantee of due process to Civil Service officers and employees (Article IX [B] [2] [3]) of the Constitution.

Petitioner GSIS next contends that the alleged lack of procedural due process in the case at bar had nevertheless been cured when respondent Evelyn Kintanar went before the Civil Service Commission and the regular courts and there had the opportunity to ventilate her position.

The principal difficulty with this argument is that petitioner has implicitly assumed it was incumbent upon Evelyn Kintanar to prove her innocence of the offense imputed to her. The burden, however, was upon petitioner of showing at least a prima facie case that Evelyn Kintanar had indeed committed acts of dishonesty; only upon prior discharge of that burden does the onus of rebutting or explaining away the prima facie case shift to respondent Evelyn Kintanar. Petitioner, however, because it never accorded Evelyn Kintanar an investigation of the charges made against her, never disclosed to her either the charges or the evidence on the basis of which it had dismissed her. Evelyn Kintanar, in other words, could not reasonably be expected to meet and counter charges and evidence which had never been made known to her.

It is, of course, true that the Regional Trial Court ("RTC") did accord Evelyn Kintanar due process. In the course of doing so, the trial court assayed the evidence submitted by the GSIS against Evelyn and adjudged it inadequate to sustain her dismissal from the service. The evidence against Evelyn Kintanar was summarized by the trial court in the following terms:

"The different sworn statements of the employees investigated by Rei Macalindog, Dulce Sy and Elpidio Divina do not show any strong indication to prove the guilt of Evelyn Kintanar. It is true however that the check of Josefina Guerrero was lost and was cashed by a certain Abarrientos. There is no showing however that the check of Josefina Guerrero got lost while in the possession of Evelyn Kintanar. Cresente Natinga admitted to have affixed his signature in the list of policy loan checks where the check of Josefina Guerrero was included to be among those to be mailed in the post office. There is therefore the possibility that the check of Josefina Guerrero was lost while in the possession of Cresente Natinga. The mailing list and the envelopes containing the checks as listed in Exh. 11 was delivered by Cresente Natinga to the incharge of the mailing section in the post office. There is herefore the possibility that the check of Josefina Guerrero could have been lost while in the post office. With these circumstances the evidence of guilt of Evelyn Kintanar is not strong enough to support her summary dismissal.

On the matter of the loss of the check of Vicente Ancajas, the evidence of [petitioner] does not show the culpability of Evelyn Kintanar. Actually from the records of the case the check of Vicente Ancajas was not lost. It was only received and cashed by a wrong party. The records will show that Evelyn Kintanar does not know Vicente Ancajas. A certain person however posed himself as Vicente Ancajas who wanted to get the check. Evelyn Kintanar therefore went to Victor Asubar who certified that he knows the payee Vicente

Ancajas and guaranteed the genuineness of the signature of Vicente Ancajas as shown in the request for delivery of check (Exh. 5). So with that guaranty of Victor Asubar, the check was delivered by Evelyn Kintanar to that person who claimed to be Vicente Ancajas and Evelyn Kintanar even admitted to have cashed said check. Under this situation the Court opines that Evelyn Kintanar cannot be guilty of delivering the check of Vicente Ancajas to that person guaranteed by Victor Asubar to be the payee."^[12] (*Italics supplied*)

Thus, the records show that it was petitioner which, both before the Civil Service Commission and the trial court, failed in producing convincing evidence of respondent's guilt. It had earlier turned down the recommendation of its own investigator that formal charges be filed against respondent; it thereafter refused to comply with the order of the Civil Service Commission remanding the case for further hearing. Confronted with its inability to muster convincing proof — in a full-dressed trial before the regular courts — petitioner tried unsuccessfully to highlight instead the apparent inability of respondent to clear herself of the offense charged. Petitioner has adduced no basis for overturning the factual conclusions reached by the trial court and affirmed by the Court of Appeals.

WHEREFORE, premises considered, the present Petition for Review is hereby DENIED due course for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 06705 dated 24 August 1988 is hereby AFFIRMED.

SO ORDERED.

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

[1] TSN, 22 October 1982, p. 81.

[2] Records on Appeal, p. 14.

[3] *Id.*, p. 12.

[4] *Id.*, p. 17.

[5] *Id.*, p. 5.

[6] *Id.*, pp. 106-107.

[7] *Id.*, pp. 133-134.

[8] G.R. No. 95861, 19 April 1991.

[9] TSN, pp. 22-27, 9 September 1983.

[10] G.R. No. 52439, 12 July 1991.

[11] G.R. No. 85670, promulgated 31 July 1991.

[12] Rollo, p. 117.

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