

EDGARDO DYTIAPCO, PETITIONER, VS. CIVIL SERVICE COMMISSION, OFFICE OF THE PRESS SECRETARY AND DIRECTOR, BUREAU OF BROADCAST SERVICES, RESPONDENTS.

G.R. No. 92136. July 03, 1992

Ponente: NOCON, J.

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NOCON, J.:

This petition for review seeks to annul and set aside the resolutions of respondent Civil Service Commission dated June 28, 1989 and November 27, 1989 dismissing the appeal of petitioner Edgardo Dytiapco to be reinstated in the government service on the ground that he had already received his separation and terminal leave benefits.

It appears from the records that on July 28, 1977, petitioner, a Professional Career Service Eligible, was permanently appointed Junior Newscaster in the Bureau of Broadcast Services (BBS). Thereafter, he was promoted Senior Newscaster on February 16, 1979[1] and sent to Anaheim, California on September 1987 as representative of the Bureau of Broadcast in the National Association of Broadcaster Convention.

Meanwhile, Executive Order No. 297 reorganizing the Office of the Press Secretary including the Bureau of Broadcast took effect on July 25, 1987.

On December 28, 1987, petitioner received a letter from the Press Secretary "That due to limited number of positions in the approved new staffing pattern," his "services shall be considered only until January 31, 1988.[2]

Petitioner immediately appealed his dismissal to the Press Secretary and protested the adverse rating given him by the Evaluation Committee formed to effect the reorganization of the Bureau of Broadcast Services.[3] However, pending the outcome of his appeal to the Press Secretary and finding himself in dire financial straits, petitioner filed a claim for separation and terminal leave benefits and on May 5, 1988 received from the Bureau of Broadcast the sums of P26,779.72 and P19,028.86 as separation and terminal leave pay.[4]

On May 12, 1988 or seven days after receiving his separation and terminal leave benefits, petitioner wrote respondent Civil Service Commission appealing for his reinstatement on the ground that his termination was without a valid cause as he is a Civil Service eligible holding a permanent appointment.[5]

On June 28, 1980, respondent Civil Service Commission rendered its disputed resolution, pertinent portions of which, We quote:

"In a conference held on May 17, 1989, the BBS Director informed the Commission, through Division III, Task Force on Reorganization Appeals, that appellants have already claimed their separation and terminal leave benefits on various dates in 1988 immediately after the reorganization of the Bureau took effect, and such was shown by the various documents furnished to the Commission.

"In view of the foregoing, and on the basis of an earlier decision made on similar case (CSC Case No. 234, Teofilo Pa-alan, Promulgated on April 21, 1989), the Commission hereby dismisses the appeal of Edgardo Dytiapco, . . . for lack of merit."[6]

His Petition for Reconsideration having been denied by the Civil Service Commission in its resolution of November 27, 1989, petitioner instituted this Petition for Certiorari alleging grave abuse of discretion on the part of the Civil Service Commission in ruling that receipt of his separation and terminal leave pay as fatal to his appeal for reinstatement.[7]

The petition is impressed with merit.

Petitioner never abandoned his appeal for reinstatement when he accepted separation pay and terminal leave benefits. In fact as early as December 22, 1987, petitioner was protesting respondent Bureau of Broadcast's findings that he lacked writing experience when it conducted evaluation of employees in preparation to the reorganization of said office pursuant to Executive Order No. 297.[8]

This was followed by his letter to Chairman Patricia Sto. Tomas of respondent Commission, dated May 12, 1988 or seven (7) days after receiving his separation and terminal leave benefits on May 5, 1988, appealing for his reinstatement on the ground that his dismissal was without a valid cause as he is a permanent civil service eligible employee. Again, on July 28, 1988 and June 9, 1989, he wrote Chairman Sto. Tomas following up his appeal for reinstatement.[9] These acts of petitioner can in no way be interpreted as abandonment of his appeal. On the contrary, it showed petitioner's strong desire for reinstatement and not separation from government service. His acceptance of separation and terminal leave benefits was dictated more by economic necessity rather than a desire to leave government employment.

The procedures for the removal of employees pursuant to government reorganization such as that mandated by Executive Order No. 297 was laid down by Republic Act No. 6656, entitled "An Act To Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization", which was given retroactive effect as of June 30, 1987. They are as follows:

"Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization giving rise to a claim for reinstatement or reappointment by an aggrieved party;

- a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- b) Where an office is abolished and another performing substantially the same functions is created;
- c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
- d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;
- e) Where the removal violates the order of separation provided in Section 3 hereof."

"x x x

"x x x

"Sec. 4. Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing pattern comparable to their former positions or in case there are not

enough comparable positions, to position next lower in rank.

"No new employees shall be taken in until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirements among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature.

"Sec. 5. Officers and employees holding permanent appointments shall be given preference for appointment in other agencies if they meet the qualification requirement of the positions therein."

Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. The reason given for his termination, that there is a "limited number of positions in the approved new staffing pattern" necessitating his separation on January 31, 1988, is simply not true. There is no evidence that his position as senior newscaster has been abolished, rendered redundant or merged and/or divided or consolidated with other positions. According to petitioner, respondent Bureau of Broadcast had accepted applicants to the position he vacated. He was conveniently eased out of the service which he served with distinction for thirteen (13) years to accommodate the proteges of the "new power brokers".

Respondent Commission's reliance on its earlier decision in the *leofilo Pa-alan* case[10] promulgated on April 21, 1989, that acceptance of benefits renders an appeal "closed and terminated", is misplaced. It deprives petitioner of his right to due process and added another ground for his removal not contemplated by R.A. No. 6656, that is, the mere payment of his separation and terminal leave benefits.

Settled is the rule that separation or replacement of officers and employees pursuant to government reorganization should be only for "justifiable reasons"[11] or for any of the grounds enumerated in Section 3 of Executive Order No. 17.[12]

Even though in the case of *Dario vs. Mison, et. al.*[13] We have ruled that the State has not lost its right to reorganize the Government even after the effectivity of the 1987 Constitution on February 2, 1987, the separation of Career Civil Service employees pursuant to such reorganization must be done in good faith.

In recourse, petitioner is a holder of a Professional Career Civil Service eligibility. He had been permanently appointed to the government service since 1977, had been president and even sent abroad to represent the Bureau of Broadcast in the National Association of Broadcaster Convention in 1987. He was not removed for any of the grounds mentioned in Section 3 of E.O. No. 17 nor pursuant to a valid cause under Section 2 of R.A. No. 6656.

Respondent Civil Service Commission gravely abused its discretion in finding that petitioner's receipt of separation and terminal leave benefits renders his appeal closed and terminated and consequently its Resolutions of June 28, 1989 and November 27, 1989 are hereby annulled and set aside.

WHEREFORE, the petition for certiorari is given due course and the Resolutions of the CSC of June 28, 1989 and November 27, 1989 are hereby annulled and set aside. Respondents Press Secretary and Director of the Bureau of Broadcasts are hereby ordered to reinstate petitioner Edgardo Dytiapco to the position he was holding immediately before his dismissal without loss of seniority with full pay for the period of his separation. Petitioner is likewise ordered to return to respondent Bureau of Broadcast the separation pay and terminal leave benefits he received in the amount of P26,779.72 and P19,028.86 respectively. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Bellosillo, JJ., concur.

Feliciano, J., in the result.

[1] Letter of then Minister Francisco Tatad dated February 16, 1979 in the Records of the Civil Service Commission.

[2] Annex "A", Petition.

[3] Annex "A", Reply.

[4] Disbursement Vouchers in the Records of the Civil Service Commission.

[5] Annex "B", Petition.

[6] Rollo, pp. 31-32.

[7] Petition, p. 4.

[8] Annex "C", Petition for Reconsideration of CSC Resolution dated July 28, 1989, CSC Records.

[9] Annexes "C" and "D", Reply.

[10] CSC Case No. 234F.

[11] Sec. 1, Executive Order No. 17.

[12] PRESCRIBING RULES AND REGULATIONS FOR THE IMPLEMENTATION OF SECTION 2, ARTICLE III OF THE FREEDOM CONSTITUTION. Executive Order No. 17 recognized the "unnecessary anxiety and demoralization among the deserving officials and employees" the ongoing government reorganization had generated, and prescribed as "grounds for the separation/replacement of personnel:

- 1) Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;
- 2) Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;
- 3) Gross incompetence or inefficiency in the discharge of functions;
- 4) Misuse of public office for partisan political purposes;
- 5) Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service.

See also Floreza vs. Ongpin, G.R. No. 61356, 182 SCRA 692 (1990), at 704.

[13] G.R. Nos. 81954, 81967, 82023, 83737, 85310, 85335 and 86241, 176 SCRA 84 1989.

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