

LUIS B. DOMINGO, PETITIONER, VS. DEVELOPMENT BANK OF THE PHILIPPINES AND CIVIL SERVICE COMMISSION, RESPONDENTS.

G.R. No. 93355. April 07, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

This special civil action impugns the resolution[1] of respondent Civil Service Commission (CSC) promulgated on April 10, 1990 in CSC Case No. 473 setting aside its earlier resolution of November 27, 1989 and affirming the separation of petitioner Luis B. Domingo as Senior Training and Career Development Officer of the Development Bank of the Philippines (DBP).

Petitioner was employed by DBP as Senior Training and Career Development Officer on permanent status from February, 1979 to December, 1986.

On December 3, 1986, Executive Order No. 81 (The Revised Charter of DBP) was passed authorizing the reorganization of DBP in this wise:

"Sec. 32. Authority to Reorganize. - In view of the new scope of operations of the Bank, a reorganization of the Bank and a reduction in force are hereby authorized to achieve simplicity and economy in operations, including adopting a new staffing pattern to suit the reduced operations envisioned. The formulation of the program of reorganization shall be completed within six months after the approval of this Charter, and the full implementation of the reorganization program within thirty months thereafter."

Further, Sections 33 and 34 thereof provide:

"Sec. 33. Implementing Details; Organization and Staffing of the Bank. -

x x x

"In the implementation of the reorganization of the Bank, as authorized under the preceding section, qualified personnel of the Bank may be appointed to appropriate positions in the new staffing pattern thereof and those not so appointed are deemed separated from the service. No preferential or priority rights shall be given to or enjoyed by any officer or personnel of the Bank for appointment to any position in the new staffing pattern nor shall any officer or personnel be considered as having prior or vested rights with respect to retention in the Bank or in any position as may have been created in its new staffing pattern, even if he should be the incumbent of a similar position therein.

x x x

"Sec. 34. Separation Benefits. - All those who shall retire from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank: x x x."

Pursuant thereto, DBP issued Board Resolution No. 304-87 allowing the issuance of temporary appointments to

all DBP personnel in order to fully implement the reorganization. The resolution states in part:

"It is understood that pursuant to Section 32 of the new DBP Charter full implementation of the reorganization program shall be completed within a period of thirty-six (36) months from the approval of this Charter. In this connection, the plantilla approved and appointments issued are purely interim and the Bank is reserving its right to put in place the permanent structure of the Bank as well as the permanent appointments thereto until the end of the 36-month period." [2]

In effect, said resolution authorized the issuance of temporary appointments to all DBP personnel to allow maximum flexibility in the implementation of the reorganization. Such temporary appointments issued had a maximum period of twelve (12) months during which period the performance of the incumbents were assessed on the basis of the results of their evaluation.

With the passage of Executive Order No. 81 and Board Resolution No. 304-87, DBP undertook the evaluation and comparative assessment of all its personnel under the CSC-approved New Performance Appraisal System, a peer and control rating process which served as an assessment tool of DBP's screening process.

Petitioner Domingo was issued a temporary appointment on January 2, 1987 for a period of one (1) year, which was renewed for another period up to November 30, 1988. Thereafter, in a memorandum [3] dated November 23, 1988 issued by the Final Review Committee, petitioner got a performance rating of "below average," by reason of which his appointment was "made to lapse."

Consequently, petitioner, together with a certain Evangeline Javier, filed with the CSC a joint verified complaint [4] against DBP for illegal dismissal. The complainants therein alleged that their dismissal constituted a violation of the Civil Service Law against the issuance of temporary appointments to permanent employees, as well as of their right to security of tenure and due process.

On November 27, 1989, CSC issued a resolution [5] in CSC Case No. 473 directing "the reappointment of Mr. Domingo and Ms. Javier as Senior Training and Career Development Officer and Research Analyst or any such equivalent rank under the staffing pattern of DBP." The order for reappointment was premised on the findings of the CSC that "(t)he action of the DBP to issue temporary appointments to all DBP personnel in order to allow for the 'maximum flexibility' in evaluating the performance of incumbents is not in accord with civil service law and rules," in that "(t)o issue a temporary appointment to one who has been on permanent status before will deprive the employee of benefits accorded permanent employees and will adversely affect his security of tenure," aside from the fact that such an act is contrary to Section 25 (a) of Presidential Decree No. 807.

DBP filed a motion for reconsideration [6] on December 27, 1989 alleging, inter alia, that the issuance of temporary appointments to all the DBP employees was purely an interim arrangement; that in spite of the temporary appointment, they continued to enjoy the salary, allowances and other benefits corresponding to permanent employees; that there can be no impairment of herein petitioner's security of tenure since the new DBP charter expressly provides that "qualified personnel of the bank may be appointed to appropriate positions in the new staffing pattern and those not so appointed are deemed separated from the service;" that petitioner was evaluated and comparatively assessed under a rating system approved by the respondent commission; and that petitioner cannot claim that he was denied due process of law considering that, although several appeals were received by the Final Review Committee from other employees similarly situated, herein petitioner never appealed his rating or the extension of his temporary appointment although he was advised to do so by his direct supervisor.

On April 10, 1990, CSC rendered the questioned resolution setting aside its previous decision and affirming the separation of herein petitioner. In so ruling, CSC explained that:

"While it is true that this Commission ruled that the issuance of temporary appointment to all DBP personnel in order to allow 'for maximum flexibility' in evaluating the performance of incumbents is not in accord with civil service laws and rules, however it cannot lose sight of the fact that appellants are among those who indeed got a below average rating (unsatisfactory) when their performance were reevaluated and comparatively reassessed by the Final Review Committee of the Bank approved by the Vice Chairman.

x x x

"In effect, the determinative factor for retention and the separation from the service is the individual performance rating.

"While the Commission supports the principle of merit and fitness and strongly protects the security of tenure of civil service officials and employees which are the essence of careerism in the civil service, it does not however, sanction the reappointment of said officials and employees who have fallen short of the performance necessary in order to maintain at all times efficiency and effectiveness in the Office.

"It bears stressing that the DBP submitted the records and documents in support of its allegations that Mr. Domingo and Ms. Javier have indeed got (ten) a below average rating (unsatisfactory) during the filing of the instant motion for reconsideration. Had DBP promptly submitted the records/documents supporting its allegations, this Commission at the outset should have sustained the separation of the appellants from the service on ground of poor performance (below average rating, unsatisfactory) after the reassessment and re-evaluation by the Bank through the Final Review Committee. The CSC could not have guessed that such was the basis of the DBP's termination of Domingo and Javier until the papers were submitted to it. x x x.

"It must be pointed out that appellants' separation from the service was the lapse of their temporary appointment. The non-extension or non-issuance of permanent appointments were principally based on their below average rating (unsatisfactory) performance after they were reevaluated and comparatively reassessed by the Final Review Committee of the Bank. After all, the 1986 DBP Revised Charter (E.O. NO. 81) gives the Bank a wide latitude of discretion in the reappointment of its personnel, subject to existing civil service laws, rules and regulations.

"There is no doubt that the DBP conducted a reevaluation and comparative reassessment of its employees for placement/retention (for permanent) and for separation from the service and found out that appellants are wanting of performance, having been rated as 'Below Average'." [7]

Hence this petition, whereby petitioner raises the following issues:

1. Petitioner's tenure of office was violated by respondents;
2. Petitioner was not afforded a day in court and was denied procedural due process in the unilateral evaluation by his peers of his efficiency ratings for the years 1987 and 1988;
3. Average and below average efficiency ratings are not valid grounds for termination of the service of petitioner;
4. Section 5 of the rules implementing Republic Act No. 6656 is repugnant to the constitutional mandate that "no officer or employee of the Civil Service shall be removed or suspended except for cause provided by law;" and
5. Section 16, Article XVIII. Transitory Provisions of the New Constitution was also violated by respondents.[8]

I. Petitioner puts in issue the validity of the reorganization implemented by DBP in that the same violates his right to security of tenure. He contends that government reorganization cannot be a valid ground to terminate the services of government employees, pursuant to the ruling in the case of *Dario vs. Mison, et al.*[9]

This statement of petitioner is incomplete and inaccurate, if not outright erroneous. Either petitioner misunderstood or he totally overlooked what was stated in the aforesaid decision which held that "reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith." As we said in Dario:

"Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. As a general rule, a reorganization is carried out in 'good faith' if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall."

Clearly, from our pronouncements in Dario, reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith. No less than the Constitution itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency.

The facts of this case, particularly the evaluation process adopted by DBP, bear out the existence of good faith in the course of reorganization.

As a tool in the assessment process, a bank-wide peer and control rating process was implemented. Under this process, the peers and supervisors rated the DBP employees.[10]

To make the reorganization as open, representative and fair as possible, two principal groups were formed: (1) the Group Placement Screening Committee (GPSC) and (2) the Central Placement Screening Committee (CPSC), to review all recommendations (for retention or separation) prior to submissions to the Chairman and the Board of Directors. The members of the two screening committees were the Department and Group Heads and representatives from the Career Officials Association and the DBP Employees Union. The CPSC was further represented by the DBP Civil Service Officer, who sat as consultant to help resolve questions on Civil Service rules and regulations.

As an assessment tool to the Bank's screening process, a peer and control rating process was implemented bank-wide, the results of which were used as a gauge to determine the suitability of an employee to stay in the Bank. Through this rating, the Bank determines the value of the individual employee to the Bank with the help of his peers (peer rating) and his supervisors (control rating).[11]

Also, as part of the evaluation process, a Final Review Committee, composed of the group, department or unit head, the heads of the Human Resource Center and of the Personnel Services, and representatives from the Career Officials Association and the Employees Union, was created to screen further and to recommend the change in status of the employee's appointment from temporary to permanent beginning 1988. For the rank and file level, the committee was chaired by the Vice-Chairman while the officer level was presided over by the Chairman of the Bank.[12]

The performance rating system used and adopted by DBP was duly approved by the Civil Service Commission. Herein petitioner was evaluated and comparatively assessed under this approved rating system. This is shown by the memorandum to the DBP Vice-Chairman from the DBP Final Review Committee wherein petitioner, among other DBP employees, was evaluated and rated on his performance, and was shown to have gotten a rating of "below average." [13]

In the Comment[14] filed by DBP with the CSC, respondent bank explained the procedure it adopted in the evaluation of herein petitioner, together with one Evangeline Javier, to wit:

x x x

"4. During the second phase of the screening process, the Bank used several instruments for determining proficiency or skills on the job. More than skills, however, the evaluation also covered trait factors to determine a positive work attitude. The Bank placed a premium on work attitude because it believes that technical and professional skills can easily be acquired by an ordinary normal individual as long as he has the right attitude towards learning.

"5. These attitudes are part of the new corporate culture outlined in the corporate philosophy instituted for the Bank and disseminated thru the various corporate culture seminars, monthly tertulias, speeches of the Chairman and numerous various internal communications and bulletins. One of the most important values emphasized was TEAMWORK due to the very lean personnel force that the Bank was left with and the competition it has to contend with in the industry.

"6. Mr. Domingo and Miss Javier were sub-jected to this rating process as all other employees of the Bank were.

x x x

"8. Mr. Domingo and Miss Javier were recom-mended for a renewal of temporary status after assessment of their performance because of several indications of lack of skill and their inability to work with others in the department where they were stationed. In a compassionate stance, it was considered in the Central Personnel Committee to transfer them to another department or unit of the Bank where they may be more effective and productive, but they expressed preference to stay in the training unit of the Bank, the Human Resource Center.

"9. Along with others whose performance for 1987 was found wanting, Mr. Domingo and Miss Javier were recommended for reappointment as temporary for another period from January to November 1988 to give the Bank sufficient time to consider their cases. However, in an evaluation of performance for all extendees in November 1988, Mr. Domingo and Miss Javier were again found wanting having both acquired a rating of 'Below Average'."

In addition, it is not disputed that DBP now has less than 2,000 employees from a former high level of around 4,000 employees in 1986. And, under Section 27 of Presidential Decree No. 807, the Government is authorized to lay off employees in case of a reduction due to reorganization, thus:

"Sec. 27. Reduction in Force. - Whenever it becomes necessary because of lack of work or funds or due to a change in the scope or nature of an agency's program, or as a result of reorganization, to reduce the staff of any department or agency, those in the same group or class of positions in one or more agencies within the particular department or agency wherein the reduction is to be effected shall be reasonably compared in terms of relative fitness, efficiency and length of service, and those found to be least qualified for the remaining positions shall be laid off."

Lastly, petitioner failed to invoke the presence of any of the circumstances enumerated under Section 2 of Republic Act No. 6656 which would show or tend to show the existence of bad faith in the implementation of the reorganization.

Quintessentially, the reorganization having been conducted in accordance with the mandate of Dario, it can safely be concluded that indeed the reorganization was attended by good faith, ergo, valid. The dismissal of herein petitioner is a removal for cause which, therefore, does not violate his security of tenure.

As a final note on this issue, we quote with approval the statement of Mme. Justice Ameurfina A.

Melencio-Herrera in her dissenting opinion in the above-cited case:

"To be sure, the reorganization could affect the tenure of members of the career service as defined in Section 5, Article IV of Presidential Decree No. 807, and may even result in the separation from office of some meritorious employees. But even then, the greater good of the greatest number and the right of the citizenry to a good government, and as they themselves have mandated through the vehicle of Proclamation No. 3, provide the justification for the said injury to the individual. In terms of values, the interest of an employee to security of tenure must yield to the interest of the entire populace and to an efficient and honest government."

II. Petitioner also maintains that "average" and "below average" efficiency ratings are not valid grounds for his termination from the service.

It has become a basic and primordial concern of the State to insure and promote the constitutional mandate that appointments in the civil service shall be made only according to merit and fitness pursuant to its adopted policy of requiring public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency.[15] As a matter of fact, the development and retention of a competent and efficient work force in the public service is considered as a primary concern of the Government.[16] Hence, employees are selected on the basis of merit and fitness to perform the duties and assume the responsibilities of the position to which they are appointed.[17] Concomitantly, the government has committed itself to engender a continuing program of career and personnel development for all government employees,[18] by establishing a performance evaluation system to be administered in such manner as to continually foster the improvement of individual employee efficiency and organizational effectiveness.[19]

All these abundantly show that the State puts a premium on an individual's efficiency, merit and fitness before one is accepted into the career service. A civil service employee's efficiency rating, therefore, is a decisive factor for his continued service with the Government. The inescapable conclusion is that a "below average" efficiency rating is sufficient justification for the termination of a government employee such as herein petitioner. This is the reason why, painful as it may be, petitioner's separation must be affirmed if public good is to be subserved. In the words of respondent commission in its questioned resolution, it cannot "sanction the reappointment of said officials and employees who have fallen short of the performance necessary in order to maintain at all times efficiency and effectiveness in the Office." [20]

III. Petitioner finally contends that where the purpose of the evaluation proceeding is to ascertain whether he should be retained or separated from the service, it is a proceeding to determine the existence of a ground for his termination and, therefore, he should be afforded a day in court, pursuant to the requirements of procedural due process, to defend himself against any adverse findings in the process of evaluation of his performance.

Petitioner's contention cannot be sustained.

Section 2 of Republic Act No. 6656 provides that "no officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing." Thus, there is no question that while dismissal due to a bona fide reorganization is recognized as a valid cause, this does not justify a detraction from the mandatory requirement of notice and hearing. However, it is equally true and it is a basic rule of due process that "what the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard." [21] There is no violation of procedural due process even where no hearing was conducted for as long as the party was given a chance to present his evidence and defend himself.

The records show that petitioner had the opportunity to present his side and/or to contest the results of the evaluation proceedings. In DBP's motion for the reconsideration of the original decision of respondent commission, respondent bank averred:

"It may be stated that although several appeals were received by the Final Review Committee from other employees similarly situated (i.e., also given temporary appointments for 1988), Mr. Domingo and Miss Javier never appealed their ratings or the extension of their temporary appointments in 1988. Even at this writing, the Bank has not received any formal appeal from them although they were advised to do so by their direct supervisor." [22]

The fact that petitioner made no appeal to the Final Review Committee was duly considered by respondent commission in resolving said motion for reconsideration and in affirming the separation of petitioner from the service, noting that "appellants Mr. Domingo and Miss Javier did not file or submit their opposition to the motion for reconsideration." Consequently, petitioner cannot, by his own inaction, legally claim that he was denied due process of law.

Considering petitioner's years of service, despite the unfortunate result of the reorganization insofar as he is concerned, he should be allowed separation and other retirement benefits accruing to him by reason of his termination, as provided for in Section 16, Article XVIII of the 1987 Constitution, as well as in Section 9 of Republic Act No. 6656 and Section 34 of Executive Order No. 81.

WHEREFORE, no grave abuse of discretion having been committed by respondent Civil Service Commission, its challenged resolution of April 10, 1990 is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Acting C.J.), Cruz, Paras, Padilla, Bidin, Grino-Aquino, Medialdea, Davide, Jr., Romero, and Nocon, JJ., concur.

Narvasa, C.J., Feliciano, and Bellosillo, JJ., on leave.

Gutierrez, Jr., J., I base my concurrence solely on the reduction in force argument.

[1] Annex A. Petition; Rollo, 18-21.

[2] Rollo, 35.

[3] Original Record, 26.

[4] Annex C, Petition; Rollo, 23-28.

[5] Annex D, id.; ibid., 30-33.

[6] Annex E, id.; ibid., 34-45.

[7] Rollo, 19-21.

[8] Ibid., 4.

[9] 176 SCRA 84 (1989).

[10] Rollo, 113.

[11] Ibid., 39.

[12] Ibid., 42.

[13] Ibid., 40-41.

- [14] Original Record, 20-21.
- [15] Sec. 2, P.D. No. 807.
- [16] Sec. 28, P.D. No. 807.
- [17] Sec. 3, General Rules, Rules on Personnel Actions & Policies.
- [18] Sec. 28, P.D. No. 807.
- [19] Sec. 31, P.D. No. 807.
- [20] Rollo, 20.
- [21] Tajonera, et. al. vs. Lamaroza, et. al., 110 SCRA 438 (1981).
- [22] Rollo, 43.

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