

FRANCISCO L. ABALOS, PETITIONER, VS. CIVIL SERVICE COMMISSION, SERGIO VILLABONA AND EDUARDO YAP, JR., RESPONDENTS.

G.R. No. 95861. April 19, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

In its resolution dated January 11, 1990, the Civil Service Commission affirmed the order of Civil Service Regional Office No. 12 directing the reinstatement in the Provincial Engineer's Office, Lanao del Sur, of Sergio Villabona and Eduardo Yap, Jr. on the ground that they had been illegally dismissed. Petitioner Francisco A. Abalos is now before us and prays that the resolution be reversed because it was issued with grave abuse of discretion.

Shortly after assuming office as Provincial Governor of Lanao del Norte, the petitioner, by resolution of the provincial board, filed with the Tanodbayan a complaint for malversation against his predecessor, Arsenio A. Quibranza, for having used for personal purposes several bulldozers belonging to the province. Cited as witnesses were the operators of the bulldozers, private respondents Villabona and Yap, who allegedly executed on September 6, 1986, affidavits in support of the complaint.

These sworn statements were disowned in a joint affidavit executed on September 25, 1986, by the private respondents, who claimed that the earlier statements were spurious. As a consequence, identical memoranda were issued by the petitioner to Villabona and Yap on September 24, 1987, reading as follows:

You are hereby ordered to explain in writing within 72 hours from receipt hereof why no disciplinary action be taken against you for having recanted your Sworn Statement which was made the basis for the filing of a criminal complaint against the late Governor Arsenio A. Quibranza, thereby causing embarrassment to the Office of the Provincial Governor.

In the meantime you are hereby suspended from work effective upon receipt thereof, until after the termination of the investigation to be conducted in accordance with law.

On October 14, 1987, the private respondents were informed in another memorandum that formal charges for "dishonesty and intentionally making false statements in material facts" had been filed against them which they should answer within 72 hours. Curiously, however, they were informed in a separate memorandum issued on that same date that their services as equipment operators had been terminated.

The resolution of CSRO No. 12 declaring their dismissal illegal having been sustained by the Civil Service Commission, the petitioner now pleads to this Court on certiorari that:

1. The charge against the private respondents did not have to be investigated because they had themselves already admitted their guilt; and

2. They could be summarily dismissed under Section 40 of the Civil Service Decree.

The petitioner stresses that on September 28, 1987, the private respondents admitted their guilt in affidavits which he said he submitted later to the Civil Service Commission as an annex to his formal appeal. Such sworn confessions rendered the usual investigation unnecessary as, according to him, "it will just be a waste of government time and money to investigate a charge that has already been admitted by the respondents. By pleading guilty, respondents waived whatever rights to a formal investigation they had."

The problem with this argument is that the private respondents have rejected their supposed confession as having been extracted from them without benefit of legal assistance. They invoke Article III, Section 17, of the Constitution, which, together with Section 12(1), might have been the reason for the dismissal by the Ombudsman on February 1, 1990, of the complaint for perjury filed against them by the petitioner.

The results of the proceedings before the Ombudsman are, of course, not decisive of the administrative charges. Nevertheless, the private respondents should have been given a chance to prove in an investigation duly called that they did not execute the affidavits against former Governor Quibranza and that they were tricked into admitting the offense imputed to them. They were not accorded this opportunity. Instead they were simply informed that, in view of the charge and their supposed admission thereof, they were being summarily dismissed from the service.

The petitioner also invokes Section 40 of P.D. No. 807 and argues that in view of the private respondents' admission of the charge against them, they could be summarily dismissed under this section.

Section 40 read:

Sec. 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.
- (b) When the respondent is a recidivist or has been repeatedly charged and there is reasonable ground to believe that he is guilty of the present charge.
- (c) When the respondent is notoriously undesirable.

Resort to summary proceedings by the 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.

It is the petitioner's contention that the private respondents come under Item (a) because the charge against them was serious and the evidence of their guilt was strong, being no less than their own sworn confessions. There was therefore no need of a formal investigation and no hindrance to their summary dismissal.

We do not have to rule at this time on the degree of the offense imputed to the private respondents. But we will say here that, in view of their rejection of the confessions supposedly made by them, the evidence of their guilt cannot by any standard be regarded as strong. Indeed, that guilt had yet to be established by preponderant evidence, especially against the dismissal by the Ombudsman of the perjury charge against them. Consequently, we cannot find that Item (a) of Section 40 could be validly applied against the private respondents to justify their summary dismissal.

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 is happy to note the little-known fact that at the instance of Senator Neptali A. Gonzales, a recognized constitutionalist with a vigilant regard for due process, and Representative Narciso D. Monfort, himself an avowed advocate of fair play, 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.

The private respondents were dismissed on October 14, 1987, when Section 40 was still in force. But as already explained, it was not applicable even then in the case at bar.

There is no question that the repeal of Section 40 will further bolster the independence and integrity of the Civil Service and protect its members from the arbitrary exercise of authority by officials with less than the proper respect for due process of law.

The right to be heard is one of the brightest hallmarks of the free society. We should be proud that in this jurisdiction every person who may be involved in controversy is entitled to present his side, no less than his adversary, at a hearing duly called for that purpose. This right is available to citizen and alien alike, from the humblest to the most exalted, and covers with its protection the offer of arguments and evidence, from the profound to the absurd, in defense of one's life, liberty and property. That is a right we must all cherish.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner. It is so ordered.

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

Sarmiento, J., No part, Gov. Abalos was my former client in many cases.

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