

GERMAN P. ZAGADA, PETITIONER, VS. THE CIVIL SERVICE COMMISSION AND VEDASTO R. ORETA, RESPONDENTS.

G.R. No. 99302. November 27, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for certiorari filed pursuant to the provisions of Article IX-A, Section 7 of the 1987 Constitution seeking to review and thereafter reverse the Resolution* of the respondent Civil Service Commission (Commission, for brevity) which affirmed, with modification, the Decision** of the Merit Systems Protection Board and Resolution No. 91-263 dated February 25, 1991 of the respondent Commission which denied the petitioner's motion for reconsideration.

The case arose in September, 1984 when a letter-complaint was filed by private respondent Vedasto R. Oreta with the Regional Director, Civil Service Commission, Region V, Legaspi City, against petitioner German P. Zagada (Zagada, for brevity) and Nestor Valdez (Valdez, for brevity) for acts prejudicial to public interest consisting in falsification of entry in the district plantilla of personnel for calendar year 1981. In the "Affidavit" of key witness Cesario Guinoo (Guinoo, for brevity) who was the clerk responsible for the preparation of the plantilla of personnel in the district, it was alleged that he was the one who prepared the plantilla in question. This plantilla was prepared under the supervision of then Officer-in-Charge Eleanor Osea (Osea, for brevity), and was duly certified correct by her. Before this could be submitted to the Division Office of the then Ministry of Education Culture and Sports, petitioner Zagada took over as the new District Supervisor. While Guinoo was yet in the process of finalizing the draft of the plantilla of personnel for the year 1981, Zagada, together with Valdez, who was then District Clerk and Property Custodian for the District, came and asked him (Guinoo) to make adjustments in said plantilla so that Valdez would be listed down as EGT[1]-5, instead of EGT-3. They did this without presenting any proof that said Valdez was qualified for the position of EGT-5.

Valdez admitted that he was not qualified to the position of EGT-5 and that although he appeared to have such position in the plantilla of personnel, he was actually receiving only the salary of his real position, EGT-3, plus a two-step merit increase, the total of which incidentally added up to, and corresponded with, the salary of EGT-5. He expressed no objection to correcting the entry in the plantilla to reflect his correct designation.

Zagada, on the other hand, denied any participation in the anomaly, claiming that at the time he assumed the position of District Supervisor, the plantilla in question had already been certified correct and submitted by his predecessor, Osea. He categorically denied having had anything to do with the alleged change in the entry.

Zagada was adjudged guilty of misconduct and was made to pay a fine in an amount equivalent to one month and one day of his salary. As for Valdez, the case was considered terminated as of the date of his retirement which intervened during the pendency of the case.

Upon elevation to the Merit Systems Protection Board, this decision was affirmed but the Board imposed upon him the "penalty of six (6) months fine without pay".

The Commission, in its Resolution No. 90-1070, made the following findings:

"Undoubtedly, Zagada committed acts of misconduct in requesting for the inclusion of Valdez in the list of teachers who are EGT-5 knowing fully well that at that time, Valdez did not meet the requirements for classification to EGT-5. He even assured the submission of the requirements for classification. By this conduct, he has set a bad example which is truly demoralizing to others. Zagada's attitude and character should not be tolerated much less encouraged."[2]

and modified the Board's decision thus:

"WHEREFORE, foregoing premises considered, the Commission resolved to find German Zagada guilty of grave misconduct and imposes upon him a penalty of one (1) year suspension without pay."[3]

Hence, this petition.

The petitioner makes the following Assignment of Errors:

I

THE RESPONDENT CIVIL SERVICE COMMISSION GRAVELY ERRED IN FINDING THAT THE PETITIONER IS GUILTY OF GRAVE MISCONDUCT.

II

THE RESPONDENT CIVIL SERVICE COMMISSION GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF CESARIO GUINOO, THE WITNESS FOR THE COMPLAINANT. HOWEVER, EVEN IF IT DID NOT SO ERR, THE TESTIMONY OF THE SAID CESARIO GUINOO SHOULD HAVE EXONERATED THE PETITIONER.

III

THE RESPONDENT CIVIL SERVICE COMMISSION ERRED IN IMPUTING TO THE PETITIONER THE SUPERIMPOSITION OR INSERTION IN THE DISTRICT PLANTILLA AND, ON THE BASIS THEREOF, IN FINDING HIM GUILTY OF GRAVE MISCONDUCT.

IV

THE RESPONDENT CIVIL SERVICE COMMISSION ERRED IN IMPOSING A PENALTY MUCH TOO HARSH AND IMPROPER UPON THE PETITIONER.

We find the petition meritorious.

At the outset, it was mentioned that the instant petition was brought to this Court pursuant to Article IX-A, Section 7 of the 1987 Constitution, and this is in the nature of a petition for certiorari under Rule 65 of the Rules of Court.[4]

Under Rule 65 of the Rules of Court, the writ of certiorari is available where any tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. A person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.[5]

In certiorari proceedings under Rule 65 of the Rules of Court, questions of fact are not generally permitted, the

inquiry being limited essentially to whether or not the respondent tribunal had acted without or in excess of its jurisdiction or with grave abuse of discretion.[6] However, in order for this Court to sustain the findings of an administrative body exercising quasi-judicial functions, such body must abide by the elementary rules of due process.[7]

When there is denial of due process, there is grave abuse of discretion and the writ of certiorari is in order.

In the landmark case of *Ang Tibay, et al. vs. Court of Industrial Relations, et al.*,[8] this Court has laid down the seven Cardinal rights which constitute the administrative due process, the fourth of which reads:

"(4) Not only must there be some evidence to support a finding or conclusion x x x, but the evidence must be "substantial." x x x. "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." x x x. The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. x x x. But this assurance of desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. x x x."

We find a mere affidavit of the clerk in charge of the preparation of the plantilla of personnel for calendar year 1981 insufficient to constitute substantial evidence to sustain the finding of grave misconduct. We arrived at this conclusion after pondering upon the following:

1. The affidavit of Guinoo which was the sole basis of the respondent Commission in its ruling that the petitioner committed grave misconduct, is self-serving. Guinoo, the clerk, admitted responsibility for altering the plantilla by inserting the name of Valdez with the corresponding item of EGT-5. Should he not point to someone else as the culprit, the fault would necessarily fall heavily on him.
2. The plantilla in question had allegedly been signed and certified as correct by Osea, the Officer-in-Charge as of the time the said plantilla was prepared, and the same submitted to the Division Office prior to the assumption of office of the petitioner.[9] With the presumption of regularity in the performance of official duties, We believe that Osea affixed her signature certifying as to its correctness with the knowledge that she was signing the final and official form for submission to the Division Office. If We would further presume that the clerk, Guinoo, was regular in the performance of his duties, under no circumstances will he allow any changes thereon after it had been certified correct. It is hard to believe his allegation that he altered it upon a simple request and assurance from the petitioner.
3. It is surprising why the complainant and the affiant had not presented the very plantilla in question as evidence. Had there really been an alteration, it would have been so easy to determine this therefrom.
4. It appears that the petitioner's participation in the execution and preparation of the plantilla in question is not reflected thereon. Guinoo alleged that the plantilla was certified by Osea, as Officer-in-Charge, and not by the petitioner. Had there really been the alleged falsification or alteration, the most logical procedure would be for Guinoo to have insisted that it be counter-signed by the present District Supervisor, who is the petitioner herein. We have the impression that the petitioner's signature or initials never appeared in said document. Thus, We have no basis for the falsification.

The respondent Commission erred in finding the petitioner guilty of grave misconduct on the basis of the evidence presented, the same not being substantial evidence. This constitutes a denial of administrative due process, amounting to grave abuse of discretion.

WHEREFORE, premises considered, the petition is hereby GRANTED. The petitioner is exonerated of the charges against him and the assailed Resolutions of the respondent Commission are annulled and set aside. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Acting C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

* Resolution No. 90-1070, signed by Chairman Patricia A. Sto. Tomas, Commissioner Samilo N. Barlongay and Commissioner Mario D. Yango and dated November 22, 1990.

** MSPB Case No. 336, "Administrative Case for Misconduct, German P. Zagada and Nestor R. Valdez, respondents", October 9, 1989.

[1] EGT means Elementary Grade Teacher.

[2] Rollo, p. 57.

[3] Ibid.

[4] Lopez, Jr. vs. Civil Service Commission, 195 SCRA 777 (1991).

[5] Rules of Court, Rule 65, Section 1.

[6] Busmente, Jr. vs. NLRC, 195 SCRA 710 (1991).

[7] T.H. Valderama & Sons, Inc. vs. Drilon, 181 SCRA 308 (1990).

[8] 69 Phil. 635, 642 (1940).

[9] Rollo, p. 34.

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