

THERON V. LACSON, PETITIONER, VS. THE HON. EXECUTIVE SECRETARY, THE PRESIDENTIAL ANTI-GRAFT COMMISSION, PUBLIC ESTATES AUTHORITY, AND TEODORICO C. TAGUINOD, IN HIS CAPACITY AS G...

G.R. Nos. 165399 and 165475. May 30, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

These are consolidated petitions for review on certiorari under Rule 45 seeking to set aside the June 8, 2004 Decision and the September 20, 2004 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 78749 and CA-G.R. SP No.78290.[1]

The Facts

Petitioners Theron V. Lacson (Lacson), Jaime R. Millan (Millan) and Bernardo T. Viray (Viray) were non-presidential appointees and career service officials of respondent Philippine Estates Authority (PEA), holding the positions of Deputy General Manager for Finance, Legal and Administration; Assistant General Manager; and Department General Manager, respectively.[2]

On October 3, 2002, Sulficio O. Tagud (Tagud) filed a complaint-affidavit with the Office of the Ombudsman (Ombudsman) accusing petitioners Lacson, Millan and Viray for overpricing, by P600,000,000.00, the contract for the construction of the Central Boulevard Project (the Project), otherwise known as the President Diosdado Macapagal Boulevard.[3]

Acting on the complaint, the Ombudsman proceeded with the investigation of both the criminal and the administrative aspects of the case.[4] The criminal case, docketed as OMB-C-C-02-0667-J and entitled "Sulficio O. Tagud Jr., et al. v. Ernesto Villareal, et al.," charged petitioners for committing an act in violation of Republic Act (R.A.) No. 7080. The administrative case, docketed as OMB-C-A-02-0523-K, on the other hand, charged them with Dishonesty, Serious Misconduct and Acts Inimical to the Interest of the Public Service in violation of Section 52A (1), (3) and (20) of the Uniform Rules on Administrative Cases.[5]

Meanwhile, on October 14, 2002, the Presidential Anti-Graft Commission (PAGC) requested the Ombudsman for authority to conduct administrative disciplinary proceedings against the petitioners and other individuals involved in the Project.[6]

In its Letter-Reply dated October 17, 2002,[7] the Ombudsman responded in the following manner:

This has reference to your letter dated 14 October 2002 requesting for authority to conduct administrative disciplinary proceedings against the presidential appointees at the Public Estates Authority (PEA) named respondents in the case involving the construction of the President Diosdado Macapagal Boulevard (PDMB). It is our humble view that the authority is not necessary.

The Office takes the opportunity to confirm the fact that the case filed with this Office on 3 October 2002, involving the subject controversy, is criminal in nature. It now bears the docket number OMB-C-C-02-0667-J, entitled "Sulficio Tagud, Jr., et al. versus Ernest Villareal, et al." The basic complaint has not been further docketed as an administrative case. Thus, the same did not preclude the subsequent filing with the PAGC of an administrative complaint against the concerned PEA officials. [Emphasis supplied]

Subsequently, on November 12, 2002, a formal complaint was filed by the Investigation Office of PAGC charging several employees of PEA, including petitioners, with acts and/or omissions contrary to: (1) Item 1B2 of the Implementing Rules and Regulations (IRR) of Presidential Decree (P.D.) No. 1594, as amended; (2) Section 3(i), (g) and (e) of R.A. No. 3019, as amended; (3) Article 217 of the Revised Penal Code in relation to R.A. No. 3019, as amended; (4) Articles 8.1 and 8.2 of the Construction Agreement signed on April 10, 2000 between PEA and J.D. Legaspi Construction; and (5) Section 46 (a) and (b) of Executive Order (E.O.) No. 292, as amended, in particular Item (B), Nos. 3, 4 and 27, in relation to R.A. No. 3019, as amended.[8]

On the same date, PAGC issued an order requiring petitioners to file their counter-affidavit/verified answer (not a motion to dismiss or motion for bill of particulars) within a non-extendible period of 10 days from receipt of the order. Preliminary conference was set on November 22, 2002.[9]

During the preliminary conference, petitioners raised several jurisdictional issues, particularly the following: the absence of certification of non-forum shopping in the complaint; the primary jurisdiction of the Ombudsman to investigate them; the lack of jurisdiction of PAGC over the complaint against them considering that they were not presidential appointees and there was no allegation that they had conspired with the presidential appointees who were charged with them; the futility of any investigation by PAGC as the same would have no bearing on the case filed with the Ombudsman; and the fatally defective complaint which was not based on personal knowledge of the complainant who, as an officer of PAGC, was merely a nominal party and was never privy to the project subject of the investigation.[10]

PAGC directed petitioners to file their memoranda to formalize their arguments.[11]

On November 28, 2002, PAGC issued a resolution recommending the dismissal of petitioners from PEA with the imposition of the corresponding accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government.[12]

In a letter dated December 16, 2002, the Office of the President, through the Executive Secretary, informed the PEA Chairman and Members of the Board that the President approved the recommendation of PAGC in its November 28, 2002 Resolution dismissing the petitioners from PEA and imposing upon them the accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government service, and directed them to take the necessary actions to effect the instructions of the President. [13]

On December 18, 2002, petitioners received a notice dated December 4, 2002 informing them that PAGC had resolved their case and that the records therein had been forwarded to the Office of the President. It also advised the petitioners that any inquiry relative thereto should be addressed to the said office.[14]

After securing a copy of the PAGC Resolution, petitioners Millan and Viray, together with Manuel R. Beriña, Jr. (Beriña) filed a motion for reconsideration[15] dated January 2, 2003 with the Office of the President assailing the November 28, 2002 Resolution and Recommendation of the PAGC.

This motion was not acted upon.[16]

On July 25, 2003, PEA dismissed the petitioners. They received their copies of the notice of dismissal on July 28, 2003.[17]

Aggrieved, Beriña, Millan and Viray filed their Petition for Certiorari and Prohibition under Rule 65 with the CA on July 30, 2003, which was docketed as CA G.R. SP No. 78290.[18]

Lacson, on the other hand, filed a motion for reconsideration of the dismissal order[19] in a letter dated August 11, 2003 addressed to Teodorico C. Taguinod (Taguinod), PEA General Manager and Chief Executive Officer. This motion, however, was denied on August 20, 2003.[20]

On August 25, 2003, Ernesto L. Enriquez (Enriquez) and Lacson filed a petition for certiorari and prohibition under Rule 65 with the CA, which was docketed as CA G.R. SP No. 78749.[21] Said petition, however, was later consolidated with CA G.R. SP No. 78290 upon motion of the Office of the Solicitor General (OSG). But, before the consolidation of the mentioned petitions, writs of preliminary injunction were issued.[22] The writs, dated August 6, 2003 in CA G.R. SP No. 78290 and September 16, 2003 in CA G.R. SP No. 78749, temporarily enjoined the respondents from implementing the dismissal orders.[23]

Finally, in a consolidated decision dated June 29, 2004, the CA dismissed the consolidated petitions.[24]

On July 5, 2004 and July 22, 2004, Lacson in CA-G.R. SP No. 78749 and Beriña, Millan and Viray in CA-G.R. SP No. 78290, filed their respective motions for reconsideration.[25] Unfortunately for petitioners, both motions were denied in a resolution dated September 20, 2004.[26]

Hence, these petitions.

Upon motion of the OSG, on behalf of respondents Executive Secretary and PAGC, the Court issued a resolution ordering the consolidation of the petitions in G.R. Nos. 165404 and 165489 with the petitions in G.R. Nos. 165399 and 165475.[27]

ISSUES

In their respective petitions for review, petitioners assigned the following errors, to wit:

I.

RESPONDENTS ERRED WHEN THEY ISSUED THE QUESTIONED MEMORANDA AND ORDERED THE DISMISSAL OF PETITIONERS ALLEGEDLY ON THE BASIS OF THE RECOMMENDATION OF THE RESPONDENT PAGC, IN THAT:

A. UNDER THE CONSTITUTION AND THE LAWS APPLICABLE, IT IS THE OMBUDSMAN WHICH HAS THE JURISDICTION TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF CAREER SERVICE OFFICERS SUCH AS PETITIONERS HEREIN.

B. IT IS THE OMBUDSMAN WHO HAS PRIMARY JURISDICTION OVER THE INVESTIGATION AND REMOVAL OF PETITIONERS AND NOT RESPONDENT PAGC.

C. EXECUTIVE ORDER NO. 12, SERIES OF 2002, WHICH GRANTS RESPONDENT PAGC THE AUTHORITY TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF PUBLIC OFFICERS AND EMPLOYEES WITHIN THE CIVIL SERVICE WHO ARE NON-PRESIDENTIAL APPOINTEES AS PETITIONERS HEREIN IS UNCONSTITUTIONAL AND INVALID FOR BEING CONTRARY TO LAW.

D. THE DIRECT ACTION OF RESPONDENTS IN DISMISSING THE PETITIONERS FROM THE SERVICE WITHOUT THE HEAD OF RESPONDENT PEA HAVING CONDUCTED ANY INVESTIGATION AT ALL IS CONTRARY TO LAW.

II.

RESPONDENTS ERRED IN DISMISSING THE PETITIONERS FROM RESPONDENT PEA AND PUBLIC OFFICE IN THAT:

A. PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO DUE PROCESS OF LAW, PETITIONERS HAVING BEEN DEPRIVED OF A FORMAL INVESTIGATION WHICH THEY ARE ENTITLED TO UNDER THE RULES OF PROCEDURE OF THE OMBUDSMAN AND THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

B. THE PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO SECURITY OF TENURE AS THEY WERE TERMINATED FROM SERVICE UPON A MERE PRESIDENTIAL DIRECTIVE.

III.

RESPONDENTS ENGAGED IN PROHIBITED FORUM SHOPPING BY THE FILING OF MULTIPLE ADMINISTRATIVE COMPLAINTS AGAINST PETITIONERS FOR THE SAME CAUSE; HENCE, THE INSTANT CHARGE AGAINST PETITIONERS SHOULD BE DISMISSED.[28]

These alleged errors in G.R. Nos. 165399 and 165475 and G.R. Nos. 165404 and 165489 can be categorized into two principal issues:

- (1) Whether it is the Ombudsman who should conduct the investigation on the charge of overpricing of the Project against petitioners; and
- (2) Whether the Court can still review the dismissal ordered by PEA.

THE COURT'S RULING

The Ombudsman has concurrent jurisdiction with similarly authorized agencies

Petitioners argue that because they are not presidential appointees, it is only the Ombudsman which has jurisdiction over them.

In this regard, the petitioners are not correct. The Court has repeatedly ruled that the power of the Ombudsman to investigate offenses involving public officials is not exclusive, but is concurrent with other similarly authorized agencies of the government in relation to the offense charged. [29] Therefore, with respect to petitioners, the Ombudsman may share its authority to conduct an investigation concerning administrative charges against them with other agencies.

At any rate, this issue is already moot and academic as the Ombudsman has terminated its investigation of petitioners. This can be gleaned from the certified true copies of the Ombudsman's May 30, 2008 Decision as well as the July 3, 2008 Review and Recommendation which the petitioners submitted in compliance with the November 22, 2010 Resolution requiring them to inform the Court of the status of their cases before the Ombudsman. It appears therefrom that the Ombudsman dismissed the administrative case against the petitioners because the charges had already been passed upon by PAGC.[30]

Having been dismissed by PEA, petitioners should have appealed to the Civil Service Commission

Despite the claim of petitioners that the decision to dismiss them was upon orders of the President or upon undue pressure exerted by the Office of the President to implement the PAGC recommendations, still the undeniable fact

is that the dismissal of petitioners was actually made and effected by PEA.

Granting that PEA committed an error, whether substantial or procedural, petitioners should have appealed to the Civil Service Commission (CSC), pursuant to Section 47, Chapter 6, Title I, Book V of E.O. No. 292 (The Administrative Code of 1987), to wit:

(1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned." [Emphasis Supplied]

It is only after appealing the case to the CSC that it can be elevated to the CA via a petition for review under Rule 43 of the Rules of Court. From there, said case can be appealed to the Court through a petition for review on certiorari under Rule 45.

Unfortunately, petitioners chose the wrong remedy. Instead of appealing their dismissal by the PEA to the CSC, they chose to question it before the CA.

For their failure to appeal to the proper forum, the decision of the PEA dismissing them has become final and executory. It should be emphasized that "the right to appeal is a statutory right and the party who seeks to avail himself of the same must comply with the requirements of the law. Failure to do so, the right to appeal is lost." [31]

As petitioners' dismissal has become final and executory, the Court no longer has the power to review and act on the matter.

There was no violation of petitioners' right to due process and security of tenure

Even granting that this Court can still review the PEA action to terminate the petitioners, they have not shown that their right to due process and security of tenure was violated.

Petitioners argue that they were denied due process because their order of dismissal was not accompanied by any justification from the PEA Board of Directors who merely relied on the findings of PAGC.

This argument, however, deserves scant consideration.

As conversely pointed out by respondents, petitioners cannot claim that their dismissal was unattended by the requisite due process because they were given the opportunity to be heard in the course of PAGC's investigation.

Indeed, as career service officers, the petitioners enjoy security of tenure as guaranteed under the 1987

Constitution.[32] This is further reiterated in Section 36(a) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, which clearly provides that "no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process."

The tenurial protection accorded to a civil servant is a guaranty of both procedural and substantive due process. Procedural due process requires that the dismissal, when warranted, be effected only after notice and hearing. On the other hand, substantive due process requires, among others, that the dismissal be for legal cause, which must relate to and effect the administration of the office of which the concerned employee is a member of and must be restricted to something of a substantial nature directly affecting the rights and interests of the public.[33]

Nevertheless, the right to security of tenure is not tantamount to immunity from dismissal. Petitioners cannot seek absolute protection from this constitutional provision. As long as their dismissal is for a legal cause and the requirements of due process were met, the law will not prevent their removal from office.

Per records of the case, the exercise of disciplinary action against petitioners was justified because (1) they committed acts punishable under the anti-graft laws; and (2) their conduct was prejudicial to the best interest of the service.[34] Thus, their removal from office was for a legal cause.

Anent the alleged failure of respondents to observe due process, well-established is the rule that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense.[35] The demands of due process are sufficiently met when the parties are given the opportunity to be heard before judgment is rendered.[36] In the landmark case of *Ang Tibay v. Court of Industrial Relations*,[37] this Court laid down the cardinal and primary rights to be observed and respected in administrative proceedings:

(1)

The right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof;

(2)

The tribunal must consider the evidence presented;

(3)

The decision must have some evidence to support a finding or conclusion;

(4)

The evidence must be substantial (that is, such relevant evidence as a reasonable mind accepts as adequate to support a conclusion);

(5)

The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;

(6)

The tribunal must act on its own independent consideration of the law and facts of the controversy, and not simply accept the view of a subordinate in arriving at a decision; and

(7)

The tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reasons for the decisions rendered.[38]

In this regard, petitioners actively participated in the proceedings before PAGC where they were afforded the opportunity to explain their actions through their memoranda. The essence of due process is the right to be heard and this evidently was afforded to them. Thus, petitioners' assertion that their dismissal was unattended by the requisite due process cannot be sustained.

In sum, the removal from office of petitioners was valid. PEA dismissed them for cause and in accordance with the requisites of due process. Petitioners, as PEA officers and employees, are under the disciplining authority of the PEA Board, pursuant to Section 11 of P.D. No. 1084, the Charter of the Public Estates Authority,[39] which states that:

Section 11. Appointment, control and discipline of personnel. The Board, upon recommendation of the General Manager of the Authority, shall appoint the officers and employees of the Authority and its subsidiaries; fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper; grant them leaves of absence under such regulations as it may promulgate; discipline and/or remove them for cause; and establish and maintain a recruitment and merit system for the Authority and its affiliates and subsidiaries. (Emphases supplied)

At any rate, as earlier stated, as the petitioners did not appeal the decision of the PEA to dismiss them to the CSC, it has become final and executory and the Court can no longer review it.

WHEREFORE, the petitions are DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion,[*] Abad, and Sereno,[*] JJ., concur.

[*] Designated as additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Diosdado M. Peralta, per Raffle dated May 6, 2011.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Edgardo F. Sundiam.

[2] Rollo (G.R. Nos. 165404 and 165489), pp. 39-40.

[3] Id. at 42.

[4] Id.

[5] Id. at 42 and 44.

[6] Id. at 42 and 148.

[7] Id. at 148.

[8] Id. at 149.

[9] Id. at 158.

[10] Id. at 43-44.

[11] Id. at 44.

[12] Id. at 142.

[13] Id. at 102.

[14] Id. at 45.

[15] Id. at 178.

[16] Id. at 605.

[17] Id. at 145-147; rollo (G.R. Nos. 165399 and 165475), pp. 144 and 147.

[18] Rollo (G.R. Nos. 165404 and 165489), p. 201.

[19] Rollo (G.R. Nos. 165399 and 165475), p. 256.

[20] Id. at 228.

[21] Id. at 112.

[22] Rollo (G.R. Nos. 165404 and 165489), p. 48.

[23] Id.

[24] Id. at 37.

[25] Id. at 239; rollo (G.R. Nos. 165399 and 165475), p. 302.

[26] Rollo (G.R. Nos. 165404 and 165489), p. 61.

[27] Rollo (G.R. Nos. 165399 and 165475), p. 540.

[28] Rollo (G.R. Nos. 165404 and 165489), pp. 12-13; rollo (G.R. Nos. 165399 and 165475), pp. 26-28.

[29] *Honasan v. Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004, 427 SCRA 46, 65 citing *Cojuangco, Jr. v. Presidential Commission on Good Government*, G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226, 240; *Sanchez v. Demetriou*, G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627, and *Aguinaldo v. Domagas*, G.R. No. 98452, September 26, 1991.

[30] Rollo (G.R. Nos. 165399 and 165475), p. 1028.

[31] *Acena v. Civil Service Commission*, G.R. No. 90780, February 6, 1991, 193 SCRA 623, 629, citing *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).

[32] Article IX-B, Sec. 2, par. 3.

[33] *Tria v. Sto. Tomas*, G.R. No. 85670, July 31, 1991, 199 SCRA 833, 843-844 citing *Reyes v. Subido*, 160 Phil. 891 (1975) and *De los Santos v. Mallare*, 87 Phil. 293 (1950).

[34] P.D. No. 807, Civil Service Decree of the Philippines, Sec. 36(b)(9) and (27).

[35] *Larin v. Executive Secretary*, 345 Phil. 962, 977 (1997), citing *Midas Touch Food Corp. v. NLRC*, 382 Phil. 1033 (1996).

[36] *Medina v. Commission on Audit*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 696, citing *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

[37] 69 Phil. 635 (1940).

[38] Id. at 642-644.

[39] February 4, 1977.

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