

FIRST DIVISION

[G.R. NO. 144218, July 14, 2006]

EMILIE G. DE LUNA, PETITIONER, VS. FEDERICO C. PASCUAL, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER, AND DANIEL N. MIJARES, IN HIS CAPACITY AS SR. VICE-PRESIDENT FOR BRANCHES, BOTH OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 56540 granting the petition for *certiorari* and prohibition of respondent Government Service Insurance System (GSIS), through its then President and General Manager, respondent Federico C. Pascual, and its Senior Vice President (SVP) for Branches, respondent Daniel N. Mijares, as well as the Resolution denying

the motion for reconsideration thereof. The CA ruling nullified the Order^[2] of the Regional Trial Court (RTC) of Lucena City, Quezon, in Special Civil Case No. 99-186 which granted the petition for the issuance of a writ of preliminary injunction in favor of petitioner Emilie de Luna.

The factual antecedents follow:

Sometime in 1996, Adelina Aliwalas, Rosa Evero, Leonardo Evero, Necitas Tolentino, and Olivia Maano, all employees of the GSIS Lucena City Branch, filed an administrative complaint for Oppression and Grave Misconduct against petitioner who was then their Branch Manager. The accusatory portion of the charge reads:

That respondent Emilie de Luna, on several occasions, in her office, in the general meetings and in telephone conversations, scolded, humiliated, embarrassed and maligned herein complainants for not voting her KMG candidates, for filing a protest against her recommendees, for not signing petitions and for disobeying her personal and capricious instructions as narrated in the respective sworn affidavits submitted by complainants which will form an integral part of this charge.

These incidents happened after the 1991 KMG national elections and when the petitions were presented for the signatures of GSIS Lucena Branch Office employees, to wit:

- a. Petition against COA-GSIS Personnel in February 1995;
- b. Petition for the appointment of Mr. Francisco Baldeo as KMG

representative in LSPB, in place of Dra. Violeta Angat in December 1995;

c. Petition for the transfer of Dra. Violeta Angat in January 1996; and

d. Petition for retention of Ms. Emilie de Luna as Branch Manager of GSIS Lucena Branch Office on March 8, 1996.

However, despite the presence of a nurse (Julieta C. Jalbuena), Manager de Luna never recommended her to the vacant nurse position left by Ms. Espie Ravanzo, who went to the United States of America in 1988.^[3]

The case was docketed as Administrative Case No. 006-96.

Another administrative complaint for oppression had earlier been filed against petitioner, docketed as Administrative Case No. 004-96, by GSIS Lucena City Branch Medical Officer Violeta Angat. After the requisite formal investigation, petitioner was found guilty and was meted a penalty of six (6) months suspension. On appeal, however, the Civil Service Commission (CSC) found petitioner guilty of simple neglect only, and thus reduced the suspension to one (1) month and one (1) day.

During the formal investigation of Administrative Case No. 006-96, petitioner was represented by Atty. Roman Mendioro. On August 10, 1999, then GSIS President/General Manager Federico Pascual rendered a Decision^[4] finding petitioner guilty as charged, and ordered her dismissed from the government service. The dispositive portion of the decision reads:

WHEREFORE, respondent is hereby found GUILTY as charged. Considering that respondent had previously been meted an administrative penalty under Board Resolution No. 492 dated 21 December 1996 which record constitutes an aggravating circumstance against her, respondent EMILIE DE LUNA is hereby meted the penalty of DISMISSAL FROM THE SERVICE with forfeiture of whatever benefits she may be entitled to under the law, rules and regulations.^[5]

The GSIS Board of Trustees affirmed the decision on September 21, 1999 per Resolution No. 308,^[6] and confirmed the same on October 5, 1999.^[7] On October 6, 1999, respondent SVP Mijares received from Manuel C. de La Cruz, the Manager of the Department of Investigation, a Memorandum^[8] transmitting copies of the decision in Administrative Case No. 006-96 and Resolution No. 308, and requesting that these be served on petitioner.

On the same day, Mijares signed a Memorandum^[9] addressed to petitioner informing her that "the Board in Resolution No. 308 dated September 21, 1999 found [her] guilty of the charge of Oppression and Grave Misconduct in GSIS Adm. Case No. 006-96, entitled "Adelina Aliwalas vs. Emilie de Luna," and imposed the penalty of DISMISSAL FROM THE SERVICE with forfeiture of whatever benefits [she] may be entitled to under the law," and that the decision was effective upon receipt thereof. A copy of the decision was enclosed in the said Memorandum.

On October 7, 1999, Benjamin Vivas, Jr., GSIS Area I (Luzon) Vice President, called petitioner and informed her of the decision in her case, as well as the resolution of the GSIS Board of Trustees.

At about 2:00 p.m. on October 8, 1999, petitioner arrived at the GSIS Manila where Vivas held office. Vivas tried handing to her a copy of the decision, but she refused to receive it, insisting that it should be served on her counsel.^[10] Vivas then issued a Memorandum^[11] directing the Manager, General Services Department, to "send the attached memorandum of SVP Mijares to [petitioner] implementing [Board Resolution No. 308] dated September 21, 1999" through registered mail.

On October 12, 1999, respondent Mijares issued a Memorandum^[12] to Nellie S. Camo, Assistant Branch Manager of the GSIS Lucena City Branch, requesting her to serve the enclosed decision and resolution of the Board of Trustees on petitioner. The Memorandum and its enclosures were received by the said office on October 13, 1999.^[13] Camo turned over the Memorandum and its enclosures to petitioner's secretary, Maria Carmencita Ong, who was instructed to give it to petitioner. However, petitioner was not in the office and failed to report to the Lucena City Branch on said date. Ong managed to talk to petitioner over the phone on October 14, 1999 and informed her that the decision and resolution had been delivered. Petitioner told Ong that she was very sick and could not report to work. She instructed

Ong to contact Vivas and respondent Mijares to advise them that she (petitioner) would be undergoing a major operation, and to give her five to ten days' rest, after which she would personally receive the documents at their offices at the GSIS Pasay City.^[14] Ong placed the Memorandum of respondent Mijares and its enclosures in a cabinet.^[15]

A separate copy of both the decision and resolution was placed in a brown envelope, which was then sent via registered mail to petitioner in the GSIS Lucena City Branch. Ong received the envelope on November 26, 1999.^[16] Ong delivered the brown envelope, along with its contents, to petitioner, but the latter did not open it. Instead, she returned the envelope to respondent Mijares, accompanied by a handwritten note^[17] dated November 29, 1999 stating that it arrived at the GSIS Lucena Office while she was on official leave; that she had not opened it; and that in accordance with the rules, it should be addressed and delivered to her lawyer of record.

Thereafter, petitioner's counsel, Atty. Roman R. Mendioro, sent a letter^[18] dated November 26, 1999 to Investigation Department Manager Manuel De la Cruz, requesting that he be furnished with an official copy of the decision in Adm. Case No. 006-96 and Resolution No. 308. He also wrote respondent Mijares,^[19] complaining that he had not yet been furnished with a copy thereof, and pointed out that the date of such receipt would be the reckoning point to file a motion for reconsideration or notice of appeal. He requested that the order terminating the services of petitioner be withdrawn or recalled and that petitioner be allowed to continue her services until the issues are finally adjudicated.

Respondent acknowledged receipt thereof in a letter^[20] dated December 6, 1999,

and stated that the November 26, 1999 letter had been referred to the GSIS Senior Vice-President for Corporate Legal Services. Federico Pascual immediately issued Office Order No. 60-99, ^[21] designating Camo as Officer-in-Charge of the GSIS Lucena City Branch.

However, two days later, or on December 8, 1999, petitioner filed a Petition for *Certiorari* and *Mandamus* with Prayer for the Issuance of a Writ of Preliminary Injunction against respondents before the RTC of Lucena City. Petitioner averred that respondents had no authority to terminate her services since the decision of the GSIS and Resolution No. 308 was not served on her counsel in the administrative case; as such, the decision had not yet become final and executory. She prayed that after due proceedings, judgment be rendered in her favor as follows:

A. Considering the gravity and seriousness of the palpable acts of the respondents, a temporary restraining order be issued immediately upon the filing of this petition to preserve and maintain the status quo between the parties pending the resolution of this petition; and after hearing, making such injunction permanent;

B. That an order be likewise issued prohibiting respondents from terminating the services of petitioner and from withholding petitioner's salaries; and,

C. An order be issued allowing petitioner to perform her duties as Branch Manager, GSIS, Lucena City Branch, with right to receive her monthly salary and other benefits coming from her said office;

Further, petitioner prays for other reliefs and remedies which may be deemed just and equitable under the premises.^[22]

The RTC set the hearing on the issuance of a writ of preliminary injunction on December 15, 1999 at 8:30 a.m. Petitioner terminated the presentation of her evidence and the hearing was ordered continued at 3:00 p.m. the same day for reception of respondents' evidence.^[23]

On December 15, 1999, respondents filed a Motion to Dismiss Petition and Opposition to Prayer for Issuance of Preliminary Injunction^[24] on the following grounds:

I

THAT THIS HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER AND/OR THE NATURE OF THE ACTION OR SUIT.

II

THAT THE PETITIONER'S CLAIM OR DEMAND HAS BEEN ABANDONED OR OTHERWISE EXTINGUISHED, HENCE SHE HAS NO CAUSE OF ACTION, PARTICULARLY SINCE THE GSIS DECISION IN ADMINISTRATIVE CASE NO. 006-96 HAS BECOME FINAL AND EXECUTORY.

III

THAT ASSUMING WITHOUT ADMITTING THAT THE DECISION IN ADMINISTRATIVE CASE NO. 006-96 IS NOT YET FINAL AND EXECUTORY, PETITIONER EVIDENTLY LACKS A CAUSE OF ACTION FOR HAVING FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AND THERE IS STILL AN APPEAL AND/OR OTHER PLAIN, SPEEDY AND ADQUATE REMEDIES IN THE ORDINARY COURSE OF LAW.

IV

THAT THE PETITIONER HAS RESORTED TO FORUM-SHOPPING, A CONTEMPTUOUS AND DESPICABLE ACT THAT SHOULD NOT BE COUNTENANCED BY THIS HONORABLE COURT.^[25]

Respondents, as movants, averred that under Section 47(2), Title I, Subtitle A, Book V of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, respondent Pascual is empowered to remove, suspend or otherwise discipline GSIS personnel subject to the approval of the Board of Trustees; thus he could not be enjoined from performing a duty or exercising a power vested on him by law. Moreover, the RTC had no appellate jurisdiction over the decision of respondent GSIS, as such jurisdiction is vested in the Civil Service Commission (CSC) under Section 47 of E.O. No. 292, in relation to Section 5(a)(2) of the CSC Uniform Rules on Administrative Cases which took effect on September 27, 1999.

Respondents further alleged in their motion that any injunctive relief which may be granted by the RTC of Lucena City cannot be enforced against them, since they hold offices in Manila; the decision of the GSIS and Resolution No. 308 were personally handed by Vivas on October 8, 1999 to petitioner, but the latter refused to receive it; and the service of the decision and resolution on petitioner's secretary, Carmencita Ong, on October 14, 1999, was binding on petitioner.

Respondents also pointed out that petitioner failed to file a motion for reconsideration of the decision within the period therefor; hence, it had already become final and executory and can no longer be enjoined. Moreover, petitioner was guilty of forum shopping: on May 29, 1996, she had filed a petition for *certiorari* and *mandamus* against the same respondents in the RTC of Lucena City docketed as Special Civil Case No. 96-76, which was dismissed on September 25, 1996; the CA affirmed this decision on March 9, 1998 (docketed as CA-G.R. No. 44336), which the Supreme Court, in G.R. No. 133774, likewise affirmed via two Resolutions dated July 20, 1998 and September 28, 1998, respectively.

Respondents further argued that the RTC should not issue a writ of preliminary injunction until the case is decided on its merits because the main issue is whether the decision of the GSIS had become final and executory. They insisted that a writ of preliminary injunction should not issue until the resolution of the main issue.

On December 22, 1999, the RTC issued an Order^[26] denying the respondents' motion to dismiss and granted a writ of preliminary injunction. It held that under Section 84 of the CSC Uniform Rules on Administrative Cases, service of the decision must be effected on petitioner's counsel and not on petitioner herself as respondent