

# **FIRST DIVISION**

**[ G.R. No. 222471, July 07, 2020 ]**

## **ESTRELLA K. VENADAS, PETITIONER, VS. BUREAU OF IMMIGRATION, RESPONDENT.**

### **D E C I S I O N**

**REYES, J. JR., J.:**

This is a Petition filed under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) November 3, 2015 Decision<sup>[1]</sup> and January 20, 2016 Resolution<sup>[2]</sup> in CA-G.R. SP No. 135988, which reversed the Civil Service Commission (CSC) May 6, 2014 Decision<sup>[3]</sup> and reinstated the February 12, 2013 Resolution<sup>[4]</sup> of the Department of Justice (DOJ). The DOJ affirmed the dismissal from service of petitioner Estrella K. Venadas (Venadas), an Administrative Aide II of respondent Bureau of Immigration (BI), for grave misconduct and conduct prejudicial to the best interest of the service.

The facts follow.

On February 11, 2007, Venadas enticed a new acquaintance, Emyly Lim-Ines (Ines), to invest in a money lending enterprise allegedly operated by Venadas within the BI. Venadas supposedly extended loans to co-employees at amounts based on their overtime pay at 10% interest, and collected the cash advance from the BI's cashier upon release. In return for the investment, Ines was promised 5% or half of the interest collected.<sup>[5]</sup>

To bolster the representations, Venadas showed Ines some Landbank checks payable to "BI Employees" and/or "BI Employees - Estrella Venadas" and copies of payslips of employees. The scheme was allegedly carried out with the help of Disbursing Officer Percida Binalay and Finance Officer Atty. Marcela Malaluan at the Cash Section of the BI. For credibility, Venadas claimed to have close ties with Landbank personnel, as well as former DOJ Secretary Raul Gonzales and Congressman Mikey Arroyo. Thus, persuaded, Ines gave Venadas money in exchange for postdated checks. For a time, Venadas was able to timely remit Ines' supposed share of the interest earned.<sup>[6]</sup>

In November of 2008, Ines decided to withdraw the investment and demanded its return. Venadas, however, failed to return the money and gave excuses, claiming that the BI became strict in releasing employees' salaries. The checks issued by Venadas, payable to Ines, were also dishonored by the bank. To reassure Ines that the money was forthcoming, Venadas gave Ines copies of Landbank checks with serial numbers 0000830301 to 301-EE.<sup>[7]</sup> Ines decided to verify the checks after Venadas' continued failure to return the money invested. Landbank - PEZA branch informed Ines that Landbank check numbers 0000830301 to 301-EE were not

genuine.<sup>[8]</sup>

Upon learning that the checks bore the forged signature of the disbursing officer and that there was no such money-lending scheme within the BI, Ines lodged a Complaint<sup>[9]</sup> with the bureau against Venadas on April 3, 2009. In the administrative complaint, Ines accused Venadas of enriching herself by abusing or taking advantage of her position in the BI through false pretenses and other deceitful acts, including possible forgery and/or falsification of documents.

An investigation ensued and concerned parties were directed to answer the allegations. In an Answer<sup>[10]</sup> dated April 24, 2009, Venadas denied the accusations and countered that it was Ines who offered to invest in Venadas' beauty salon, lotto outlet, and pharmacy. Venadas also denied showing or issuing any checks to Ines, or showing Ines any payroll documents of the BI.

Upon recommendation of Senior State Prosecutor Peter Lim Ong (Senior State Prosecutor Ong), then Officer-in-charge (OIC) Atty. Ronaldo P. Ledesma (Atty. Ledesma) issued a Formal Charge<sup>[11]</sup> on July 30, 2010 against Venadas for grave misconduct and conduct prejudicial to the best interest of the service. Consequently, Venadas was also preventively suspended for ninety days. Venadas moved for reconsideration of the charges, but the motion was denied.<sup>[12]</sup>

On March 23, 2011, BI Commissioner Ricardo A. David, Jr. (Commissioner David) found Venadas guilty of grave misconduct and conduct prejudicial to the best interest of the service, imposing the penalty of dismissal from the service with all accessory penalties.<sup>[13]</sup> Venadas sought reconsideration of Commissioner David's decision, but the motion did not prosper.<sup>[14]</sup>

Aggrieved, Venadas appealed the BI decision to the DOJ Secretary. Venadas posited that an OIC is not authorized by law to exercise the power of discipline, for which reason the Formal Charge was defective for having been issued by an OIC. The appeal was denied by the DOJ Secretary through a February 12, 2013 Resolution.<sup>[15]</sup>

The DOJ ruled that: the alleged defect of the Formal Charge was deemed waived for not having been raised at the earliest opportunity despite Venadas' active participation in the proceedings; photocopies of documents may be admissible in evidence in administrative cases; and, technical rules of procedure are not strictly applied in administrative cases for as long as the person charged is given fair opportunity to be heard and present evidence. Finally, the DOJ sustained the conclusion that Venadas indeed took advantage of being employed with the BI to gain access to guarded files.

On June 6, 2013, Commissioner David issued an Order implementing the DOJ resolution that affirmed Venadas' dismissal from the service.<sup>[16]</sup>

Undeterred, Venadas appealed anew before the CSC, which set aside the resolution of the DOJ Secretary in a May 6, 2014 Decision.<sup>[17]</sup> Without touching on the merits of the administrative complaint, the CSC ruled that an OIC, such as Atty. Ledesma, enjoys limited powers in the discharge of its functions. Considering that an OIC is

not authorized to issue appointments which only the head of office or disciplining authority can exercise, it reasoned that an OIC is not authorized to issue a Formal Charge and an order of preventive suspension. The CSC viewed this to be a deprivation of Venadas' right to due process.

The BI questioned the CSC's reversal of the DOJ resolution *via* a Rule 43 petition before the CA, which the latter found meritorious. The CA agreed with the BI that Venadas is estopped from raising questions as to the alleged defect of the Formal Charge after actively participating in the proceedings before the bureau. Thus, in the decision subject of this review, the CA set aside the CSC's decision and upheld the DOJ's resolution.<sup>[18]</sup>

On November 23, 2015, Venadas filed a Motion for Reconsideration<sup>[19]</sup> of the CA decision, as well as a Motion for Inhibition<sup>[20]</sup> against CA Associate Justice Danton Q. Bueser and other members of its then Special 1411 Division. The CA denied Venadas' Motion for Reconsideration for lack of merit through the presently assailed January 20, 2016 Resolution.<sup>[21]</sup>

Undaunted, Venadas now invokes this Court's extraordinary review power over the CA's decision and resolution, insisting that the alleged defect in the Formal Charge renders it a nullity that is not susceptible to waiver or estoppel.<sup>[22]</sup> Venadas denies assailing belatedly the OIC's authority for the first time on appeal or having actively participated in a formal investigation.<sup>[23]</sup> The petition also assails the decision of the BI commissioner and resolution of the DOJ, contending that the finding of guilt lacked adequate evidence and was based on unauthenticated photocopies.<sup>[24]</sup> It further imputes grave abuse of discretion on the CA in allegedly ignoring the motion for inhibition filed by Venadas and accuses the *ponente* of the decision of undue interest in the case.<sup>[25]</sup>

On August 11, 2016, the BI, through the Office of the Solicitor General (OSG), filed its Comment<sup>[26]</sup> on the current petition. The OSG highlighted that only legal issues may be raised in a petition for review on *certiorari*, but Venadas also raises issues requiring an examination of the evidence presented before the BI.<sup>[27]</sup> As argued by the OSG, not only was Venadas' guilt substantially established, but that Venadas was properly charged and accorded due process during the administrative proceedings.<sup>[28]</sup> Furthermore, resolution of the motion for inhibition is discretionary on the part of the CA, and Venadas' accusation of horse trading in the CA is reckless and without basis.<sup>[29]</sup>

The issue for our resolution, through the lens of a Rule 45 mode of review, is whether or not the CA erred in ruling that Venadas was already estopped from making an issue of the fact that the Formal Charge was issued by an OIC.

We deny the petition for failing to present any serious error warranting a reversal of the CA's disposition.

The CSC anchored its decision, not on whether or not Venadas had full and proper notice of the charges and given sufficient opportunity to answer, but on whom the

Revised Rules on Administrative Cases in the Civil Service cites as the proper person to issue a Formal Charge, *i.e.*, the disciplining authority.

Section 20. Issuance of Formal Charge; Contents. - After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge/s, a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge/s, and a notice that he/she may opt to be assisted by a counsel of his/her choice.

Relative to the power of discipline, "the OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC."<sup>[30]</sup> Given that "[a]bsent any contrary statutory provision, the power to appoint carries with it the power to remove or to discipline,"<sup>[31]</sup> the CSC interpreted it as beyond the authority of Atty. Ledesma, as a mere OIC, to issue the Formal Charge against Venadas. We, nonetheless, find that under the present circumstances, it does not render the Formal Charge an absolute nullity. It is a defect that is susceptible to waiver and estoppel.

The CSC failed to consider that Atty. Ledesma issued the Formal Charge only upon recommendation of Senior State Prosecutor Ong, after the latter conducted the preliminary investigation. Thus, it is an act which was not solely dependent on Atty. Ledesma's discretion as OIC on the sufficiency of the charges and evidence. Recall that it is an OIC's lack of discretion in the appointment and discipline of employees that makes it incumbent that such matter be deferred to one possessed of such authority. Although the task of signing the Formal Charge devolved upon Atty. Ledesma, the fate of the complaint remained at the discretion of the head of the bureau. Both the BI Commissioner and the DOJ Secretary are disciplining authorities over BI employees. In this instance, the OIC may be presumed to be acting under the cloak of the DOJ's authority and under the supervision of the BI Commissioner.

Venadas misappreciates *Salva v. Valle*,<sup>[32]</sup> an insubordination case wherein the respondent faculty member was merely issued memorandum orders by the state university president, a far cry from the Formal Charge contemplated under CSC rules. In *Salva*, the memoranda were grossly insufficient both in form and in substance, such that the respondent had no real opportunity to be heard. In that case, even the Commission on Higher Education took a contrary view to the state university's Board of Regents and opined that due process was not observed.

As to holding Venadas in estoppel, records disclose that Venadas vigorously and mindfully participated throughout the administrative proceedings, despite the attempt to downplay an active role. Venadas' submissions were also considered, even if it failed to controvert evidence of culpability. Furthermore, Venadas appears to have been ably represented by counsel. Thus, it would be an error to say that