

## SECOND DIVISION

[ G.R. No. 213502, February 18, 2019 ]

### JERLINDA M. MIRANDA, PETITIONER, VS. THE CIVIL SERVICE COMMISSION AND THE DEPARTMENT OF HEALTH, RESPONDENTS.

#### DECISION

##### REYES, J. JR., J.:

Petitioner Jerlinda M. Miranda (Miranda) was an Accountant III at the Western Visayas Medical Center (WVMC).<sup>[1]</sup> She was administratively charged with Inefficiency and Incompetence in the Performance of Her Official Duties, Grave Misconduct and Conduct Grossly Prejudicial to the Service,<sup>[2]</sup> for failure to submit with the Commission on Audit (COA) WVMC's Financial Report, particularly the trial balance, for the period from March to December 1996, 2001, 2002 and 2003.

In her Answer, Miranda denied all allegations imputed against her. She explained that the delay in the submission of financial reports was on account of her being new to the position. It was likewise brought about by the introduction of changes in the accounting system. She maintained that all charges against her are baseless. She should not have obtained a "Very Satisfactory" performance rating if the said allegations against her were true.

After the hearing, the Department of Health (DOH), through then Secretary Francisco T. Duque III, found Miranda guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, imposing upon her the penalty of dismissal from the service with accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service. Miranda moved to reconsider but the motion was denied.

On appeal to the Civil Service Commission (CSC), the CSC affirmed the Decision of the DOH. Miranda's motion for reconsideration was again denied.

Miranda filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals (CA).

The CA, in a Decision<sup>[3]</sup> dated July 5, 2013, in CA-G.R. SP No. 123552, dismissed the Petition on the following grounds: (1) The Petition for *Certiorari* under Rule 65 is a wrong mode of appeal, the petition for review under Rule 43 of the 1997 Rules of Court, being the only remedy from the decisions, final orders or resolution of the Civil Service Commission; and (2) Even if the CA will permit recourse under Rule 65, still there was no basis to grant the petition since the Decision rendered by the CSC failed to disclose any grave abuse of discretion, correctible by *certiorari*. First, the CA ruled that failure of Chairman Duque (Duque) to inhibit himself from resolving the appeal can hardly be said to be one that is tantamount to grave abuse of

discretion. The CA explained that the CSC acts as a collegial body, whose Decision<sup>[4]</sup> and Resolution<sup>[5]</sup> were arrived at only after deliberations and consultations among the commissioners. Hence, the assailed CSC Decision and Resolution were not acts of Duque alone. Second, the CA found as sufficient the substantial evidence introduced by respondents DOH and CSC which established that indeed Miranda incurred unreasonable delays in submitting the required financial reports despite receipt of the directives from the COA.

Miranda filed a Motion for Reconsideration of the aforesaid CA Decision but the said motion was denied in a Resolution<sup>[6]</sup> dated May 27, 2014.

Dissatisfied with the ruling, Miranda filed the instant Petition for *Certiorari*<sup>[7]</sup> under Rule 65 of the 1997 Rules of Court, anchored on the following grounds:

A.

WHETHER OR NOT PUBLIC RESPONDENT CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN CHAIRMAN FRANCISCO T. DUQUE III DID NOT INHIBIT IN THE RESOLUTION OF THE CASE.

B.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS AND THE CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THE DECISION OF THE DEPARTMENT OF HEALTH DISMISSING PETITIONER FROM PUBLIC SERVICE DESPITE ABSENCE OF SUBSTANTIAL EVIDENCE ON RECORD.<sup>[8]</sup>

As a preliminary matter, it must be noted that we agree with the CA that Miranda availed of the wrong remedy when she filed the petition for *certiorari* (with the CA) to assail the CSC Decision instead of filing a Petition for Review under Rule 43 of the 1997 Rules of Court. Hence, the same should have been dismissed outright.

This Court has repeatedly held that where the remedy of appeal is available, the remedy of *certiorari* should not have been entertained.<sup>[9]</sup> A special civil action for *certiorari* under Rule 65 is proper only when there is neither appeal, nor plain, speedy, and adequate remedy in the ordinary course of law.<sup>[10]</sup> The remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive such that where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion.<sup>[11]</sup>

We could hardly believe Miranda's assertion that the CSC committed grave abuse of discretion such that recourse to *certiorari* is proper. The more tenable explanation for Miranda's wrong choice of remedy is that the period to appeal simply lapsed without an appeal having been filed. Having lost her right to appeal, Miranda instituted the only remedy that she thought was still available. To reiterate, *certiorari* is not a substitute for a lost appeal.<sup>[12]</sup> It is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.<sup>[13]</sup>

Nonetheless, since the CA permitted recourse to *certiorari* and proceeded to entertain it, the case is now before this Court for our consideration. Judging from the averments of the pleading filed, We have observed that the petition before Us is a Petition for *Certiorari* under Rule 65 because the grounds relied upon to support the petition hinge on the issue of grave abuse of discretion.

It bears to stress that a Petition for *Certiorari* is not proper to assail the final order of the CA. Here, the assailed Decision of the CA dismissing petitioner's Petition for *Certiorari* is already a disposition on the merits. And consequently, the assailed Resolution denying the motion for reconsideration is considered a final disposition of the case, which, under Section 1, Rule 45 of the Revised Rules of Court, is appealable to this Court *via* a Petition for Review on *Certiorari*, *viz*:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Underscoring supplied)

From the foregoing, it is clear that decisions (judgments), final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.<sup>[14]</sup>

However, in the spirit of liberality that pervades the Rules of Court and in the interest of substantial justice, this Court has, on appropriate occasions, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly when: (1) the petition for *certiorari* was filed within the reglementary period to file a petition for review on *certiorari*; (2) the petition avers errors of judgment; and (3) when there is sufficient reason to justify the relaxation of the rules.<sup>[15]</sup>

Considering that the present petition was filed within the period of extension granted by this Court and that errors of law and judgment were averred, this Court deems it proper to treat the present petition for *certiorari* as a petition for review on *certiorari* in order to serve the higher ends of justice.

With the procedural issue being settled, the remaining issue is whether or not the CA erred when it dismissed the petition for *certiorari*, thereby ruling that the CSC did not commit grave abuse of discretion when it found Miranda guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of dismissal from the service with the accessory penalties such as cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service.

As to the first issue, Miranda firmly believes that Duque should have *motu proprio* inhibited himself from the deliberation, evaluation and review by the CSC of the DOH Decision. Miranda pointed out that Duque was the former Secretary of the DOH, which was her accuser in the instant administrative complaint. After Duque's stint with the DOH, he was appointed as the chairman of the CSC, which rendered

the now assailed Decision affirming that of the DOH.

Miranda has a point. True, CSC acts as a collegial body. And as such, the chairman alone cannot issue any decisions or resolutions without consultation and deliberations with the other members of the commission. It is equally true that mere allegation of bias and partiality is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality.<sup>[16]</sup>

However, the circumstances in this case would readily show that Duque was the very person who issued the assailed DOH Decision<sup>[17]</sup> in his capacity as then Secretary of Health. Hence, it is just proper that he should have inhibited himself from taking part on the appeal proceedings in the CSC, as Chairman of the CSC. Having participated in the proceedings with the DOH and having ruled for the dismissal of Miranda, it was incumbent upon Duque to recuse himself from participating in the review of the same case during the appeal with the CSC. While it is true that he was not able to sign the Decision of the CSC as he was on official leave,<sup>[18]</sup> records show that he nonetheless signed the CSC resolution<sup>[19]</sup> denying petitioner's Motion for Reconsideration of the Decision involving the same case. This clearly shows that he still took active part in the appeal proceedings. The Court had ruled that the officer who reviews a case on appeal should not be the same person whose decision is under review.<sup>[20]</sup> Thus:

In order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no *different view* or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the *same view* since being human, he would not admit that he was mistaken in his first view of the case.<sup>[21]</sup>

A sense of proportion and consideration for the fitness of things should have deterred Duque from reviewing his own decision as the Secretary of the Department of Health.<sup>[22]</sup> At the very start, he should have inhibited himself from the case and let the other Commissioners undertake the review. Miranda was effectively denied due process when Duque reviewed his own Decision<sup>[23]</sup> by participating in resolving the motion for reconsideration of the case.

Since records show that Duque did not sign in the Decision as he was on official leave, it behooves this Court to review the said case on the merits if only to settle the controversy.

Thus, as to the second issue, Miranda maintains that there was no substantial evidence to prove the administrative charges against her. No doubt, this essentially involved question of facts. It is said time and time again that this Court is not a trier of facts.<sup>[24]</sup> It will not review factual findings of administrative agencies as they are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.<sup>[25]</sup>

However, while administrative findings of fact are accorded great respect and even

finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court will not hesitate to reverse their factual findings.<sup>[26]</sup> Factual findings of administrative agencies are not infallible and will be set aside when they are tainted by arbitrariness.<sup>[27]</sup>

In the instant case, Miranda was found guilty of grave misconduct and conduct prejudicial to the best interest of the service for failure to submit with the COA the required financial reports, particularly the Trial Balance for the period from March to December 1996, 2001, 2002 and 2003.

Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves.<sup>[28]</sup> The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.<sup>[29]</sup> Thus, in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest.<sup>[30]</sup>

In the instant case, Miranda vehemently denied that she failed to file the required financial report. But she readily admitted that there was only delay in the submission of the said reports, for reasons which must not be entirely attributed to her. She explained that the delay in the submission of the March to December 1996 financial reports was due to the fact that she was still working on the backlogs caused by her predecessor in office. I At the time Miranda assumed office on June 14, 1995, there was already a considerable backlog in the preparation and submission of the required Trial Balance and Financial Statements. Miranda explained that she cannot [just prepare the 1996 Financial Report without first working on the previous reports as all amounts and figures in the previous year will be carried over to the next - a domino effect, so to speak. The COA State Auditor Melba Cabahug (Cabahug) could attest to this:

[Q:] *So we are in agreement then that there's a [backlog] before the assumption of Mrs. Miranda, Is that correct?*

[A:] *Records show.*

[Q:] *Would this [backlog] a contributing factor to the delay in submission of the monthly trial balances and financial statement?*

[A:] *As what I have said, you cannot prepare a succeeding trial balance unless the previous months' trial balances are being prepared because the balance is carried over[.]*

[Q:] *So this has a domino effect on the succeeding trial balances?*

[A:] *Yes.*

[Q:] *Likewise in the financial statement?*