

FIRST DIVISION

[G.R. No. 218534, September 17, 2018]

POLICE DIRECTOR GENERAL RICARDO C. MARQUEZ, IN HIS CAPACITY AS THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP) (IN LIEU OF FORMER PNP OFFICER-IN-CHARGE, POLICE DEPUTY DIRECTOR GENERAL LEONARDO A. ESPINA), PETITIONER, VS. PO2 ARNOLD P. MAYO, RESPONDENT.

DECISION

TIJAM, J.:

The pivotal question to be resolved in this case is, whether the penalty of dismissal from the service against a police officer imposed by the Chief of the PNP is immediately executory, even when an appeal has been seasonably filed.

Before Us is a Petition for Review on *Certiorari*^[1] (With Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order), under Rule 45 of the Rules of Court filed by Police Director General Ricardo C. Marquez, as the Chief of the Philippine National Police (PNP), assailing the Decision^[2] dated March 18, 2015 and the Order^[3] dated June 1, 2015 of the Regional Trial Court (RTC), Branch 32 of the City of Manila, in Civil Case No. 15-132998. The said Decision granted herein respondent PO2 Arnold P. Mayo's (PO2 Mayo) petition for injunction and declared as void Special Order (S.O.) No. 9999 of the PNP dismissing him from the service, effective October 11, 2013 for grave misconduct.

Factual Antecedents

The present controversy stemmed from a complaint filed by Annaliza F. Daguio (Annaliza) before the Office of the Chief, PNP, against the respondent for grave misconduct, docketed as NHQ-AC-363-011413 (DIDM-ADM-13-04). The complaint alleged that on January 25, 2012, at about 9:00 a.m., respondent PO2 Mayo, together with SPO3 Menalyn Turalba (SPO3 Turalba) who was in civilian attire, PO3 Jose Turalba (PO3 Jose), SPO3 Turalba's husband, and PO1 Elizalde Visaya (PO1 Visaya),

went to Annaliza's iron workshop at No. 4 Daisy Street, Purok 6-C, Lower Bicutan, Taguig City, where they tried to dismantle a bomb wrapped in red cloth with the use of a pipe wrench, but failed to do so. SPO3 Turalba and Annaliza told respondent PO2 Mayo and the other officers to discontinue as it could cause the bomb to explode. The police officers then left but came back around 2:00 p.m. At this juncture, the police officers requested Cruzaldo Daguio (Cruzaldo), Annaliza's husband, to spot the bomb with a welding torch. Cruzaldo refused, saying that the bomb might explode, but the police officers persuaded him stating that it will not explode considering they are bomb experts. While Cruzaldo was spotting the tip of the bomb, it suddenly exploded, killing Cruzaldo and PO1 Visaya on the spot and

wounding nine (9) civilians.^[4] Respondent PO2 Mayo, PO3 Jose, and Liza Q. Grimaldo (Grimaldo) were rushed to the hospital but PO3 Jose and Grimaldo were pronounced dead on arrival. Furthermore, various properties were destroyed.^[5]

Respondent PO2 Mayo failed to file his answer or counter-affidavit despite having been served with summons and Notices of Pre-Hearing Conference at his office at the PNP Special Action Force (SAF).

In a Decision^[6] dated October 11, 2013, Police Director General Alan La Madrid Purisima, then Chief of the PNP, found respondent PO2 Mayo guilty of grave misconduct and imposed the extreme penalty of dismissal from the PNP service, aggravated by taking advantage of his official position as a member of the Explosive Ordnance Disposal of the SAF, and that the incident happened during office hours.

Respondent PO2 Mayo filed a Motion for Reconsideration on January 2, 2014, arguing that: he was denied due process and was not given an opportunity to present his evidence; he was not given a chance to answer the accusations hurled against him; and to have a fair trial. He also argued that the Chief of the PNP had no jurisdiction over the case under the "Principle of Exclusivity", as the first disciplinary authority to acquire jurisdiction was the Internal Affairs Service (IAS) of the SAF.^[7]

In a Resolution^[8] dated November 26, 2014, respondent's motion for reconsideration was denied. The Office of the Chief, PNP, found no merit in the allegation of denial of due process, stating that respondent was duly notified of the proceedings as he was served with summons and notices, but still failed to file his answer or counter-affidavit. Furthermore, the "Principle of Exclusivity" does not apply in this case as the IAS is not a disciplinary authority.^[9] Undaunted, respondent lodged an appeal before the National Police Commission (NAPOLCOM) National Appellate Board on January 27, 2015, seeking the reversal of the Decision and the Resolution of the Office of the Chief, PNP.^[10]

Meanwhile, pursuant to the Decision dated October 11, 2013 and the Resolution dated November 26, 2014, the PNP issued S.O. No. 9999^[11] dated December 29, 2014, dismissing respondent PO2 Mayo from the service effective October 11, 2013. Respondent PO2 Mayo alleged that he only became aware of the said SO on January 30, 2015 when he was not allowed to have his PNP identification card renewed, due to problems with the administrative case against him.^[12] As the said SO was about to be implemented, respondent PO2 Mayo filed a Petition^[13] for Injunction with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction before the RTC of the City of Manila. The case was raffled to Branch 32 and was docketed as Civil Case No. 15-132998.

Respondent PO2 Mayo argued that the SO was void as the Decision dated October 11, 2013 was not yet final and executory and he has still a pending appeal before the NAPOLCOM National Appellate Board. He further argued that it was in violation of the provisions of NAPOLCOM Memorandum Circular No. 2007-001 (NMC No. 2007-001) which provides that the filing of a motion for reconsideration or an appeal shall stay the execution of the disciplinary action sought to be reconsidered.

^[14]

The RTC issued an Order^[15] dated February 9, 2015, granting respondent PO2 Mayo's application for the issuance of a temporary restraining order (TRO) pending resolution of the main action for injunction. The PNP, through the Office of the Solicitor General (OSG), then filed a Motion for Reconsideration of the RTC Order, which was denied by the RTC in its Order^[16] dated March 3, 2015. Subsequently, the RTC rendered its Decision in the main case dated March 18, 2015, granting respondent's petition for injunction and declaring S.O. No. 9999 void. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered granting the instant petition for injunction and declaring Special Order No. 9999 as void.

SO ORDERED.^[17]

In its Decision in favor of herein respondent, the RTC ruled in this wise:

At this juncture, this court finds it apt to quote Section 45 of the Republic Act No. 6975 cited by the respondents to bolster their claims, thus:

*Section 45. Finality of Disciplinary Action. - The disciplinary action imposed upon a member of the PNP shall be final and executory; Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the Regional Appellate Board within ten (10) days from receipt of the copy of the notice of decision; Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof; Provided, furthermore, That the Regional or National Appellate Board, as the case may be, shall decide the appeal within sixty days from receipt of the notice of appeal: Provided, finally, **That failure of the Regional Appellate Board to act on the appeal within the said period shall render the decision final and executory, without prejudice,** however, to the filing of an appeal by either party with the Secretary. (underscoring and emphasis supplied)*

It is true that the initial provision of the foregoing rule indicates that disciplinary action involving demotion or dismissal imposed upon a member of the PNP shall be final and executory. However, it is crystal clear from its provisos that the final and executory nature of the decision/order/resolution assumes a different character when an appeal is filed with the appellate board. This interpretation can reasonably be inferred from the provision that failure of the appellate board to act on the appeal within the period sixty (60) days from receipt of the notice of appeal shall render the decision final and executory.

If the meaning ascribed by the respondents to the rules is to be taken, this question begs answer [sic]: why is there a need

for a declaration in the law that the disciplinary action shall become final and executory if the appellate board failed to act on the appeal within the given period if, in the first place, the same (decision) is already final and executory [sic].

Palpably, the disciplinary action involving demotion or dismissal embodied in the decision/order/resolution shall not be immediately executory by the mere fact of its rendition because it shall only be so if no motion for reconsideration or appeal is filed AND if appeal was taken and it was not acted upon within the given period.

Thus, an appeal with the appellate board, under the foregoing rule, should stay execution of the assailed decision/order/resolution unless it was not acted upon by the appellate board within the period of sixty (60) days.

Further, while it is also true that under the provision of Section 23, Rule 17, Part II of Napolcom Memorandum Circular (NMC) 2007-001 it is provided that "the filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered", this provision, by its very wordings and taken in the light of the other provisions of this law, does not give exclusivity to the filing of motion for reconsideration as the only mode by which the assailed decision could be stayed.

To give emphasis, it is apropos to quote Section 23, Rule 17, Part II of NMC 2007-001, viz:

Section 23. Motion for Reconsideration. - The party adversely affected may file a motion for reconsideration from the decision rendered by the disciplinary authority within ten (10) days from receipt of a copy of the decision on the following grounds:

x x x x

The filing of a motion for reconsideration shall stay the execution of disciplinary action sought to be reconsidered. Only one (1) motion for reconsideration shall be allowed and the same shall be considered and decided by the disciplinary authority within fifteen (15) days from receipt thereof.

Notable in the aforementioned rule is the absence of limiting words or terms which would consider the filing of a motion for reconsideration as the only remedy which could stay the execution of the disciplinary action.

It is also important to give emphasis to the following provisions of NMC 2007-001 to unearth the real intendment of the rules:

1. Section 1 (e) - There is finality of Decision when upon the lapse of ten (10) days from receipt, or notice of such decision, no motion for reconsideration or APPEAL has been filed in accordance with these Rules;

II. Section 24, Certificate of Finality. - The disciplinary authority or appellate body shall issue a certificate of finality of the decision or resolution finally disposing of the case when no motion for reconsideration or APPEAL is filed within the prescribed period.

Verily, to ascribe merit to respondents' contention that the disciplinary action involving demotion or dismissal to a member of the PNP is final and executory will definitely run counter to the aforementioned rules which emphatically declare that the decision shall only become final and, thus, executory, when upon the lapse of the ten (10) days from receipt, or notice of such decision, no motion for reconsideration or APPEAL has been filed.

Thus, it is fitting to enunciate, at this point, the doctrinal principle that "a law must be read in its entirety and no single provision should be interpreted in isolation with respect to the other provisions of the law."

To reiterate, this court, guided by the existing rules and jurisprudence on the matter, finds that the appeal interposed by the petitioner with the National Appellate Board stayed the decision and resolution rendered by the Chief of the PNP dismissing him from the service.

Perforce, the Special order No. 9999 issued by Police Deputy Director General Marcelo Poyaoan Garbo, Jr., PNP, dismissing the petitioner from the PNP service effective October 11, 2013 should be declared void considering that the decision of even date rendered by the Chief PNP is not yet final and executory.

[18]

The PNP sought reconsideration of the said Decision but its Motion for Reconsideration dated April 16, 2015 was denied in an Order dated June 1, 2015, finding no cogent reason for the Court to disturb or set aside its findings in its Decision.^[19] Hence, the PNP interposed the present Petition for Review on *Certiorari* before this Court raising a pure question of law.

Ruling of the Court

As aptly raised by herein petitioner, the sole issue to be resolved by this Court is, whether S.O. No. 9999, which imposes upon herein respondent the penalty of