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FIRST DIVISION

[G.R. No. 165223, January 11, 2016]

WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER, VS. MARIO I. MOLINA, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

For review is the decision promulgated on April 29, 2004,[1] whereby the Court of Appeals (CA) nullified the Memorandum dated September 8, 2003 by which the petitioner, in his capacity as the President of the Government Service Insurance System (GSIS), had charged the respondent, an Attorney V in the Litigation Department of the Legal Service Group of the GSIS, with grave misconduct and preventively suspended him for 60 days.

Antecedents

In his affidavit, Elino F. Caretero pointed to the respondent as the person who had handed to him on August 26, 2003 the letter entitled *Is It* True supposedly written by one R. Ibasco containing "scurrilous and libellous statements" against petitioner.[2] Considering that Ibasco denied authorship of the letter, the finger of suspicion came to point at the respondent, who was consequently administratively investigated for grave misconduct. After the investigation, the Investigation Unit transmitted its Memorandum dated September 1, 2003 to the respondent to require him to explain the circulation and publication of the letter, and to show cause why no administrative sanction should be imposed on him for doing so.[3] In response, he denied the imputed act.[4]

Thereafter, the petitioner issued Memorandum dated September 8, 2003 to formally charge the respondent with grave misconduct, and to preventively suspend him for 60 days effective upon receipt.[5]

The respondent sought the dismissal of the charge on the ground of its being baseless; and requested the conduct of a formal investigation by an impartial body.[6]

The respondent also instituted in the CA a special civil action for *certiorari* to challenge the legality of the Memorandum dated September 8, 2003.[7]

On April 29, 2004, the CA promulgated its assailed decision,[8] the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is **GRANTED** and the assailed Memorandum, dated September 8, 2003, issued by GSIS President and General Manager Winston Garcia formally charging petitioner with grave misconduct and preventively suspending him for a period of 60-days is hereby **NULLIFIED**. Petitioner is entitled to his backwages during the period of his preventive suspension.

SO ORDERED.[9]

The petitioner moved for reconsideration, but the CA denied his motion on September 6, 2004.[10]

Hence, this appeal by petition for review on *certiorari,* with the petitioner contending that the CA gravely erred:

a. x x x in holding that the filing of the Formal Charge and the Order of Preventive Suspension was arbitrary and uncalled for;

b. x x x in nullifying the Formal Charge of Grave Misconduct against the respondent for the reason that it has "no factual or legal basis";

c. x x x in granting the petition for certiorari in complete disregard of the power of the petitioner to impose discipline against employees of the GSIS;

d. x x x in nullifying the Order of Preventive Suspension;

e. x x x in failing to appreciate and apply the principle of Exhaustion of Administrative Remedies in giving due course to the petition of the petitioner; and

f. x x x in granting the petition of the respondent for backwages during the period of preventive suspension.[11]

The petitioner argues that it was in his power as the President and General Manager of the GSIS to impose disciplinary action on the respondent, pursuant to Section 47 of the *Administrative Code of 1987*; that the characterization of the respondent's act as grave misconduct was not arbitrary because the latter had intentionally passed on or caused the circulation of the malicious letter, thereby transgressing "some established and definite rule of action" that sufficiently established a *prima facie* case for an administrative charge; that the respondent had thereby violated his solemn duty to defend and assist the petitioner in disregard of his "legal, moral or social duty" to stop or at discourage the publication or circulation of the letter.[12] He submits that the respondent's preventive suspension was done in accordance with the Civil Service Uniform Rules on Administrative Cases, and upon an evaluation of the evidence on record.[13]

In contrast, the respondent denies that his acts constituted grave misconduct.[14]

Issue

Did the CA commit reversible error in annulling the petitioner's Memorandum dated September 8, 2003?

Ruling of the Court

The appeal is partly meritorious.

There is no question about the power of the petitioner as the President and General Manager of the GSIS to remove, suspend or otherwise discipline for cause erring GSIS personnel like the respondent. Section 45 of Republic Act No. 8291 *(GSIS Act of 1997)* explicitly provides such authority, *viz*.:

> Section 45. Powers and Duties of the President and General Manager, x x x The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations x x x.

The issue now is whether or not the petitioner, in the exercise of such authority, had sufficient basis to formally charge the respondent with grave misconduct and impose preventive suspension as a consequence. To resolve this issue, we need to ascertain if the respondent's act of handing over the letter to Caretero constituted grave misconduct.

The CA concluded that the act of the respondent of handing over the letter to Caretero did not constitute grave misconduct because the act did not show or indicate the elements of corruption, or the clear intent to violate the law, or flagrant disregard of established rule.[15]

The Court concurs with the CA.

Misconduct in office, by uniform legal definition, is such misconduct that affects his performance of his duties as an officer and not such only as affects his character as a private individual.[16] To warrant removal from office, it must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[17] Moreover, it is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[18] It becomes 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."[19]

The record contains nothing to show that the respondent's act constituted misconduct. The passing of the letter to Caretero did not equate to any "transgression" or "unlawful behavior," for it was an innocuous act that did not

breach any standard, norm or rule pertinent to his office. Neither could it be regarded as "circulation" of the letter inasmuch as the letter was handed only to a single individual who just happened to be curious about the paper the respondent was then holding in his hands. The handing of the letter occurred in ostensibly innocent circumstances on board the elevator in which other employees or passengers were on board. If the motive of the respondent was to pass the letter in order to publicize its contents, he should have made more copies of the letter. But that was not so, considering that Caretero categorically affirmed in his affidavit about asking the respondent what he had wanted to do with the letter, to wit: *Do you want me to photocopy the document Sir*?, but the respondent had simply replied: *HINDI NA SA IYO NA LANG YAN*.[20] It is plain, then, that intent to cause the widespread dissemination of the letter in order to libel the petitioner could not be justifiably inferred.

To be sure, the respondent's act could not be classified as pertaining to or having a direct connection to the performance of his official duties as a litigation lawyer of the GSIS. The connection was essential to a finding of misconduct, for without the connection the conduct would not be sanctioned as an administrative offense. In *Villanueva v. Court of Appeals,* [21] for instance, the Court reversed the conclusion of the CA that the petitioner's offense related to his official functions by virtue of the offense having been made possible precisely by his official functions; that his position had enabled the petitioner to have free rein inside the building even after office hours; and that he had used his office to commit the misconduct for which he was being charged, with the Court pointing out that the alleged offense was in no way connected with the performance of his functions and duties as a public officer.

Nonetheless, the Court cannot join the CA in its ruling that the respondent was entitled to backwages during the time that he was under preventive suspension.

In *Gloria v. Court Appeals*,[22] the Court has distinguished the two types of preventive suspension of civil service employees charged with offenses punishable by removal or suspension, to wit: (1) preventive suspension pending investigation; [23] and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated.[24]

The respondent's preventive suspension was done pending investigation. In this regard, an employee who is placed under preventive suspension pending investigation is not entitled to compensation because such suspension is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation.[25]

The fact that the charge against the respondent was subsequently declared to lack factual and legal bases did not, *ipso facto*, render the preventive suspension without legal basis. Civil Service Commission (CSC) Resolution No. 030502 issued on May 5, 2003 provides, in part, that:

> 4. The imposition of preventive suspension shall be confined to the well-defined instances set forth under the pertinent provisions of the Administrative Code of 1987 and the Local Government Code of 1991.