

EN BANC

[G.R. No. 178021, January 25, 2012]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE CIVIL
SERVICE COMMISSION, PETITIONER, VS. MINERVA M.P.
PACHEO, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines, represented by the Office of the Solicitor General (*OSG*), which assails the February 22, 2007 Decision^[1] and the May 15, 2007 Resolution^[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 93781. The *CA* reversed the November 21, 2005 Resolution of the Civil Service Commission (*CSC*) declaring the re-assignment of respondent Minerva M.P. Pacheco (*Pacheco*) not valid and ordering her reinstatement to her original station but without backwages under the principle of "no work, no pay."

The Facts

Pacheco was a Revenue Attorney IV, Assistant Chief of the Legal Division of the Bureau of Internal Revenue (*BIR*) in Revenue Region No. 7 (*RR7*), Quezon City.

On May 7, 2002, the *BIR* issued Revenue Travel Assignment Order (*RTAO*) No. 25-2002,^[3] ordering the reassignment of Pacheco as Assistant Chief, Legal Division from *RR7* in Quezon City to *RR4* in San Fernando, Pampanga. The *BIR* cited exigencies of the revenue service as basis for the issuance of the said *RTAO*.

Pacheco questioned the reassignment through her Letter dated May 9, 2002^[4] addressed to Rene G. Banez, then Commissioner of Internal Revenue (*CIR*). She complained that the transfer would mean economic dislocation since she would have to spend ₱200.00 on daily travel expenses or approximately ₱4,000.00 a month. It would also mean physical burden on her part as she would be compelled to wake up early in the morning for her daily travel from Quezon City to San Fernando, Pampanga, and to return home late at night from San Fernando, Pampanga to Quezon City. She was of the view that that her reassignment was merely intended to harass and force her out of the *BIR* in the guise of exigencies of the revenue service. In sum, she considered her transfer from Quezon City to Pampanga as amounting to a constructive dismissal.

Due to the then inaction of the *BIR*, Pacheco filed a complaint^[5] dated May 30, 2002, before the *CSC*- National Capital Region (*CSC-NCR*), praying for the nullification of *RTAO* No. 25-2002. In its July 22, 2002 Order,^[6] the *CSC-NCR* treated Pacheco's Complaint as an appeal and dismissed the same, without prejudice, for failure to

comply with Sections 73 and 74 of Rule V(b) of the Uniform Rules on Administrative Cases in the Civil Service.^[7]

In its Letter-reply^[8] dated September 13, 2002, the BIR, through its Deputy Commissioner for Legal and Inspection Group, Edmundo P. Guevara (*Guevara*), denied Pacheco's protest for lack of merit. It contended that her reassignment could not be considered constructive dismissal as she maintained her position as Revenue Attorney IV and was designated as Assistant Chief of Legal Division. It emphasized that her appointment to the position of Revenue Attorney IV was without a specific station. Consequently, she could properly be reassigned from one organizational unit to another within the BIR. Lastly, she could not validly claim a vested right to any specific station, or a violation of her right to security of tenure.

Not in conformity with the ruling of the BIR, Pacheco appealed her case before the CSC.

On November 21, 2005, the CSC issued **Resolution No. 051697**^[9] granting Pacheco's appeal, the dispositive portion of which reads:

WHEREFORE, the instant appeal of Minerva M.P. Pacheco is hereby **GRANTED**. The Bureau of Internal Revenue Revenue Travel Assignment Order No. 25-2002 dated May 7, 2002, on the reassignment of Pacheco to the Legal Division Revenue Region No. 4 San Fernando, Pampanga, is hereby declared **NOT VALID**. ACCORDINGLY, Pacheco should now be recalled to her original station. This Commission, however rules and so holds that the withholding by the BIR of Pacheco's salary for the period she did not report to work is justified.

The CSCRO No. III is directed to monitor the implementation of this Resolution.

In granting Pacheco's appeal, the CSC explained:

On the second issue, this Commission finds merit in appellant's contention that her reassignment is not valid.

Of pertinent application thereto is **Rule III, Section 6 of CSC Memorandum Circular No. 40, series of 1998, dated December 14, 1998**, which provides:

Section 6. Other Personnel Movements. The following personnel movements which will not require issuance of an appointment shall nevertheless require an office order by duly authorized official.

a. Reassignment - Movement of an employee from one organizational unit to another in the same department or agency which does not involve reduction in rank, status or

salary. If reassignment is done without consent of the employee being reassigned it shall be allowed for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or it constitutes constructive dismissal.

No assignment shall be undertaken if done indiscriminately or whimsically because the law is not intended as a convenient shield for the appointing/ disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest.

Reassignment of small salaried employee is not permissible if it causes significant financial dislocation.'

Although reassignment is a management prerogative, the same must be done in the exigency of the service without diminution in rank, status and salary on the part of the officer or employee being temporarily reassigned. Reassignment of '*small salaried*' employees, however is not allowed if it will cause significant financial dislocation to the employee reassigned. Otherwise the Commission will have to intervene.

The primary purpose of emphasizing '*small salaried employees*' in the foregoing rule is to protect the '*rank and file*' employees from possible abuse by the management in the guise of transfer/reassignment. The Supreme Court in **Alzate v. Mabutas**, (51 O.G. 2452) ruled:

' x x x [T]he protection against invalid transfer is especially needed by lower ranking employees. The Court emphasized this need when it ruled that officials in the unclassified service, presidential appointees, men in the government set up occupy positions in the higher echelon should be entitled to security of tenure, unquestionable a lesser sol[ci]tude cannot be meant for the little men, that great mass of Common underprivileged employees-thousand there are of them in the lower bracket, who generally are without connections and who pin their hopes of advancement on the merit system instituted by our civil service law.'

In other words, in order to be embraced in the term '*small-salaried employees*', the latter must belong to the '*rank and file*'; and, his/her salary would be significantly reduced by virtue of the transfer/reassignment. '*Rank and file*' was categorized as those occupying the position of Division Chief and below, pursuant to **CSC Resolution No. 1, series of 1991, dated January 28, 1991**.

The facts established on record show that Pacheo belongs to the rank and file receiving an average monthly salary of Twenty Thousand Pesos (P20,000.00) under the salary standardization law and a monthly take home pay of Fourteen Thousand Pesos (P14,000.00). She has to spend

around Four Thousand Pesos (P4,000.00) a month for her transportation expenses as a consequence of her reassignment, roughly twenty eight percent (28%) of her monthly take home pay. Clearly, Pacheco's salary shall be significantly reduced as a result of her reassignment.

In **ANORE, Ma. Theresa F.**, this Commission ruled:

'Anore, a lowly salaried employee, was reassigned to an isolated island 15 kilometers away from her original place of assignment. She has to travel by boat with only one trip a day to report to her new place of assignment in an office without any facilities, except its bare structure. Worst, the municipality did not provide her with transportation allowance. She was forced to be separated from her family, look for a boarding house where she can stay while in the island and spend for her board and lodging. The circumstances surrounding Anore's reassignment is exactly the kind of reassignment that is being frowned upon by law.'

This Commission, however, rules and so holds that the withholding by the BIR of her salaries is justified as she is not entitled thereto since she is deemed not to have performed any actual work in the government on the principle of no work no pay.

Accordingly, Pacheco should now be reinstated to her original station without any right to claim back salary as she did not report to work either at her new place of assignment or at her original station.^[10]
[Emphases in the original]

Still not satisfied, Pacheco moved for reconsideration. She argued that the CSC erred in not finding that she was constructively dismissed and, therefore, entitled to back salary.

On March 7, 2006, the CSC issued Resolution No. 060397^[11] denying Pacheco's motion for reconsideration.

Undaunted, Pacheco sought recourse before the CA *via* a petition for review.

In its February 22, 2007 Decision, the CA *reversed* the CSC Resolution and ruled in favor of Pacheco, the *fallo* of which states:

WHEREFORE, the petition is **GRANTED**. Resolution nos. 051697 and 060397 dated November 21, 2005 and March 7, 2006, respectively, of the Civil Service Commission are **REVERSED** and **SET ASIDE**. A new judgment is hereby entered finding petitioner to have been constructively dismissed and ordering her immediate reinstatement with full backwages and benefits.

SO ORDERED.^[12]

In setting aside CSC Resolution Nos. 051697 and 060397, the CA held that:

While this Court agrees that petitioner's reassignment was not valid considering that *a diminution in salary is enough to invalidate such reassignment*, We cannot agree that the latter has not been constructively dismissed as a result thereof.

It is well to remember that constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefits and privileges. For an act of clear discrimination, insensibility, or disdain by an employer may become so unbearable on the part of the employee that it could foreclose any choice by him except to forgo his continued employment.

The management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.

In this case, petitioner's reassignment will result in the reduction of her salary, not to mention the physical burden that she would suffer in waking up early in the morning to travel daily from Quezon City to San Fernando, Pampanga and in coming home late at night.

Clearly, the insensibility of the employer is deducible from the foregoing circumstances and petitioner may have no other choice but to forego her continued employment.

Moreover, it would be inconsistent to hold that the reassignment was not valid due to the significant reduction in petitioner's salary and then rule that there is no constructive dismissal just because said reduction in salary will not render petitioner penniless if she will report to her new place of assignment. It must be noted that there is constructive dismissal when the reassignment of an employee involves a diminution in pay.

Having determined that petitioner has been constructively dismissed as a result of her reassignment, We shall resolve whether or not she is entitled to backwages.

In denying petitioner's claim for backwages, the CSC held:

This Commission, however, rules and so holds that the withholding by the BIR of her salaries is justified as she is not entitled thereto since she is deemed not to have performed