

## FIRST DIVISION

[ G.R. No. 172448, February 22, 2012 ]

**THE BOARD OF REGENTS OF THE MINDANAO STATE UNIVERSITY  
REPRESENTED BY ITS CHAIRMAN, PETITIONER, VS. ABEDIN  
LIMPAO OSOP, RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This Petition for Review under Rule 45 of the Rules of Court assails the Decision<sup>[1]</sup> dated March 14, 2006 of the Court of Appeals in CA-G.R. SP No. 82052. The Court of Appeals dismissed the Petition for *Certiorari* filed by therein petitioner Dr. Macapado A. Muslim (Muslim) and declared the Motion for Intervention of the Board of Regents of the Mindanao State University (MSU) as a stray pleading proscribed by Rule 19, Section 2 of the Rules of Court.

The instant controversy arose from the following factual background:

Herein respondent Abedin Limpao Osop (Osop) is the former Chancellor of the Mindanao State University-General Santos City (MSU-GSC) campus. Osop retired in 1987 under the Early Retirement Law, but several years after his retirement, he was appointed by Moner M. Bajunaid, then MSU-GSC Chancellor, as a substitute for another professor of the Electrical Engineering Department, College of Engineering, of MSU-GSC, who was on study leave. Osop's appointment took effect on July 1, 1994.<sup>[2]</sup>

In 1997, Muslim, the succeeding Chancellor of MSU-GSC, renewed Osop's appointment as Assistant Professor IV, effective January 1, 1997 until December 31, 1997. His appointment was duly noted by the MSU Board of Regents during its 166th Meeting held at DECS Conference Room, U.L. Complex, Meralco Avenue, Pasig City, on February 19, 1997.<sup>[3]</sup>

Muslim allowed Osop to continue teaching at MSU-GSC even after December 31, 1997. On April 17, 1998, Muslim issued Special Order No. 144-98C designating Osop as Chairperson of the Electrical Engineering Department, College of Engineering, of MSU-GSC, with a term of office from April 18, 1998 to April 17, 1999, unless revoked or amended by competent authority.<sup>[4]</sup>

However, on July 15, 1998, Muslim caused to be served upon the College of Engineering and other offices of MSU-GSC a letter<sup>[5]</sup> dated July 14, 1998 addressed to Osop that reads in full:

Dear Prof. Osop:

In view of the return to the campus of Prof. Danilo Dadula for whom you have been serving as substitute since July 1, 1994, and considering the expiration of your temporary appointment last December 31, 1997, I regret to inform you that your services with the university will have to end. And since I am not renewing your appointment, you are hereby advised to cease from reporting to duty effective immediately. Moreover, you should clear yourself from monetary and other official accountabilities with the university.

On behalf of MSU-GSC, we thank you for your services.

Very truly yours,

(signed)  
MACAPADO A. MUSLIM,  
Ph. D.  
Chancellor

Muslim also issued Memorandum Order No. 010-98C<sup>[6]</sup> dated July 14, 1998, addressed to Virgilio Ramos (Ramos), Dean of the College of Engineering of MSU-GSC, concerning the expiration and non-renewal of Osop's appointment and directing Ramos to already distribute Osop's teaching load to the remaining faculty members of the College. In the same Memorandum Order, Muslim asked Ramos to explain the latter's failure to include Osop in the list of substitute faculty members which he submitted to the Office of the Chancellor before the start of the 1st semester of 1998.

In compliance with Memorandum Order No. 010-98C, Ramos explained in his letter dated July 16, 1998 that there was no request for the appointment of a substitute for Prof. Danilo Dadula (Dadula) when the latter went on a study leave. He explained:

Basing on our records, there was no request for substitute of Engr. Danilo P. Dadula when he went on study leave in June 1994.

On 17 June 1994, Engr. Noel S. Gunay, then the Chairman of the Electrical Engineering Department, recommended the hiring of Prof. Abedin Limpao Osop in view of the study leave of Julito G. Fuerzas, PEE. Chancellor Moner M. Bajunaid, in his letter dated 30 June 1994, informed Dean Carlos B. Cuanan of the approval of the higher management to hire Prof. Abedin Limpao Osop as substitute of Engr. Julito G. Fuerzas effective 1 July 1994. After more than a semester, Engr. Fuerzas stopped schooling but did not return to this campus. Since then, Prof. Abedin Limpao Osop went on teaching with the College of Engineering and his appointment was renewable yearly as those on probationary status.

Per DBM Plantilla of Personnel, page 336 of 444 pages, Prof. Abedin Limpao Osop has an item. For this, I presumed Prof. A.L. Osop was not a contractual or substitute faculty of the college.

x x x x

Regarding the distribution of Prof. A. L. Osop's teaching load to appropriate faculty members at this time poses some problems. He is handling major courses in electrical engineering and the electrical engineers have excessive overload.

x x x x

It has been noted and experienced that real excessive overload is more on the number of preparations than on overload teaching units. For the interest of our students and with much concern on the efficient delivery of instruction, the faculty of the Electrical Engineering Department could not absorb the load of Prof. A. L. Osop. Since his load are major EE courses, the same could not be handled by any of the faculty in the other departments.

In view thereof, may we request for the reconsideration of your decision to terminate the services of Prof. Abedin Limpao Osop.<sup>[7]</sup>

Muslim responded by issuing handwritten Memorandum Order No. 012-98C<sup>[8]</sup> dated July 17, 1998, in which he reiterated his earlier order to Ramos to already distribute Osop's teaching load.

On July 21, 1998, Osop filed before the Regional Trial Court (RTC) of General Santos City, Branch 22, a Complaint for Injunction with Prayer for Writ of Preliminary Injunction/Temporary Restraining Order (TRO), Damages and Attorney's Fees against Muslim and Ramos. The Complaint was docketed as Civil Case No. 6381.<sup>[9]</sup>

Osop filed two days later, on July 23, 1998, an Urgent Motion for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order. At the hearing held the very next day, on July 24, 1998, the RTC issued an Order in which it noted the absence of Muslim, and to give chance for the possibility of an amicable settlement, it reset the hearing for the issuance of a TRO to July 27, 1998. Nevertheless, in the same Order, the RTC already directed Osop to submit a bond of P20,000.00 to answer for damages that Muslim and Ramos might suffer if it turns out that Osop was not entitled to an injunction/TRO. Osop filed his injunction/TRO bond on July 27, 1998.

At the hearing of Osop's application for the issuance of a TRO on July 27, 1998, the RTC issued an Order,<sup>[10]</sup> whereby, in consideration of the principle of exhaustion of administrative remedies, it suggested that Osop first write Muslim to seek reconsideration of Muslim's letter and Memorandum Order No. 010-98C both dated July 14, 1998. Osop accordingly wrote Muslim such a letter dated July 27, 1998.<sup>[11]</sup>

Muslim endorsed Osop's letter dated July 27, 1998 to Emily Marohombsar (Marohombsar), then MSU President. In a letter<sup>[12]</sup> dated August 7, 1998, Marohombsar wrote:

Based on the meticulous study made, the management is not legally nor morally under obligation to retain Prof. Osop in the service or liable for the non-renewal of his appointment the nature of which was temporary and contingent on the return of Prof. Danilo Dadula. With the return of Prof. Dadula, the renewal of the appointment of Prof. Osop would have been an unjustifiable superfluity.

This Office, concurring with the opinion of Director Imam, upholds your position on the case of Prof. Osop.

Marohombsar's aforequoted decision was based on the Brief from the MSU Human Resources Development Office dated August 6, 1998, signed by Director Lomala O. Imam, stating that "[t]he issue is not one of termination or dismissal but an expiration of an appointment which is not permanent in nature" and that "[t]he renewal or non-renewal of a temporary or probationary appointment is a management prerogative."<sup>[13]</sup>

On August 6, 1998, Muslim and Ramos filed before the RTC a Motion to Dismiss Civil Case No. 6381 citing the following grounds: (1) lack of cause of action due to non-exhaustion of administrative remedies and non-inclusion of indispensable parties; (2) appointment in a temporary character; (3) presumption of regularity; and (4) forum shopping.<sup>[14]</sup>

The RTC issued an Omnibus Order on September 10, 1998, dismissing Civil Case No. 6381, for the following reasons:

The complaint is essentially one for illegal dismissal filed by [herein respondent] Abedin Limpao Osop, a faculty member of the Mindanao State University (MSU), against defendant Macapagal A. Muslim, Chancellor of the MSU, and Virgilio Ramos, Dean of the College of Engineering of the same university. A party aggrieved by a decision, ruling, order or action of an agency of the government involving termination of services may appeal to the Civil Service Commission. Regional Trial Courts have no jurisdiction to entertain cases involving dismissal of officers and employees covered by the Civil Service Law. (Mateo v. C.A., 247 SCRA 284). The Civil Service Commission is the sole arbiter of all controversies pertaining to the Civil Service. (Dario v. Mison, 176 SCRA 84).<sup>[15]</sup>

Thus, the RTC decreed:

WHEREFORE, in view of the foregoing, the instant complaint is hereby DISMISSED for lack of jurisdiction. Accordingly, [Osop's] application for preliminary injunction, being merely ancillary to the principal action is also hereby dismissed without prejudice. The injunction bond is cancelled *ipso facto*.<sup>[16]</sup>

The RTC denied Osop's Motion for Reconsideration in an Order<sup>[17]</sup> dated September 25, 1998, prompting him to file with the Court of Appeals a Petition for *Certiorari* and *Mandamus*, <sup>[18]</sup> under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 49966, in which he argued, *inter alia*, that:

2) The issue of removal from office of [Osop], who is faculty member of a state university, is beyond the jurisdiction of the Civil Service Commission;

x x x x

4) In Civil Case No. 6381 [Osop] is suing [Muslim and Ramos] also for damages, a subject matter that is beyond the jurisdiction of the Civil Service Commission.<sup>[19]</sup>

In the meantime, concerned students of MSU-GSC filed before the Civil Service Commission (CSC) Regional Office No. 11 a Complaint for the illegal termination of Osop by Muslim. CSC Regional Office No. 11 issued an Order dated November 27, 1998 finding that Osop's termination was in order given that his appointment as a substitute was good only until the return of the person being substituted.<sup>[20]</sup>

Eventually, on June 7, 1999, the Court of Appeals rendered a Decision<sup>[21]</sup> in CA-G.R. SP No. 49966, granting Osop's Petition for Certiorari, based on the following ratiocination:

Anent the order of the Civil Service Commission Regional Office dated November 27, 1998 holding the termination of [Osop] as legal, we agree with [Osop] that this finding should not be legally binding upon him because he is not a party to the complaint apparently initiated by alleged concerned students of MSU-GSC.

Secondly, [Osop's] side of the issue was never heard because only Muslim was allowed to adduce evidence hence a denial of due process on the part of [Osop].

Coming now to the issue of whether or not [Osop's] complaint was correctly dismissed by the trial court for having failed to exhaust administrative remedies and that consequently this case falls with the Civil Service Commission, we answer in the negative.

[Osop] cites Sections 4, 5 and 6(e)(h) of the MSU charter R.A. 1387 as amended by R.A. Nos. 1893, 3791, 3868, to wit:

Sec. 4. The government of said University is vested in a board of regents to be known as the Board of Regents of the Mindanao State University. (R.A. 1893)