

## EN BANC

[ G.R. No. 172623, March 13, 2010 ]

**COMMISSION ON APPOINTMENTS, REPRESENTED HEREIN BY  
ITS SECRETARY HON. ARTURO L. TIU, PETITIONER, VS. CELSO  
M. PALER,<sup>[1]</sup> RESPONDENT.**

### DECISION

#### **CORONA, J.:**

This is a petition for review under Rule 45 of the Rules of Court assailing the decision<sup>[2]</sup> dated December 20, 2005 and resolution dated April 27, 2005 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 90360.

The facts are undisputed.

Respondent Celso M. Paler was a Supervising Legislative Staff Officer II (SG-24)<sup>[3]</sup> with the Technical Support Service of the Commission on Appointments.<sup>[4]</sup> On April 8, 2003, he submitted a request for vacation leave for 74 working days - from August 1, 2003 to November 14, 2003.<sup>[5]</sup> In a memorandum dated April 22, 2003, Ramon C. Nghuatco, Director III of Technical Support Service, submitted to the Commission Secretary his comments/recommendation on Paler's application:

"1. The request to go on leave of Mr. Paler is contingent upon the completion of his various Committee assignments.

2. We have already acted favorably on his Leave Applications for 09 June 2003 - 30 July 2003, which may already cover his reasons enumerated under items 1-5.

3. Mr. Paler's Sick Leave Application shall require a medical certificate from the attending physician advising him of the need to undergo medical operation and the treatment and recuperation period therefor.

**Mr. Paler's Application for Leave may be acted upon depending on the completion of his work load and submission of the medical certificate."**<sup>[6]</sup> (Emphasis supplied)

Since he already had an approved leave from June 9 to July 30, 2003, Paler left for the United States on June 8, 2003, without verifying whether his application for leave (for August 1 - November 14, 2003) was approved or denied.

In a letter dated September 16, 2003, the Commission Chairman informed Paler that he was being dropped from the roll of employees effective said date, due to his

continuous 30-day absence without leave and in accordance with Section 63, Civil Service Commission (CSC) Memorandum Circular No. 14, s. 1999.<sup>[7]</sup> Paler's son received the letter on September 23, 2003.<sup>[8]</sup>

Paler moved for reconsideration but this was denied on February 20, 2004, on the ground that it was filed beyond the 15-day reglementary period.<sup>[9]</sup> The denial was received by Paler's son on March 18, 2004.

On appeal, the CSC reversed and set aside the Commission Chairman's decision dated September 16, 2003 per resolution 04-1214 dated November 9, 2004.<sup>[10]</sup> The dispositive portion of the resolution read:

WHEREFORE, the appeal of Celso M. Paler is hereby GRANTED. Accordingly, the decision dated September 16, 2003 of Commission on Appointments Chairman Franklin M. Drilon dropping Celso M. Paler from the rolls; and the decision dated February 20, 2004 denying his motion for reconsideration are REVERSED and SET ASIDE. It is directed that Celso M. Paler be immediately reinstated as Committee Secretary of the Commission on Appointments and shall be considered to be on leave with pay until the exhaustion of his vacation leave credits.

Quezon City, Nov. 09, 2004.<sup>[11]</sup>

The Commission filed a motion for reconsideration but this was denied by the CSC per resolution No. 050833 dated June 23, 2005.

This constrained petitioner to file with the CA a petition for review under Rule 43 of the Rules of Court.

Since Paler had in the meantime already reached the compulsory age of retirement on July 28, 2005 and was no longer entitled to reinstatement, the CA affirmed with modification CSC resolution 04-1214 dated November 9, 2004 and resolution No. 050833 dated June 23, 2005. The dispositive portion of the assailed decision dated December 20, 2005 provided:

WHEREFORE, the assailed Resolutions of the Civil Service Commission are AFFIRMED with the MODIFICATION that the order of reinstatement is DELETED. In lieu thereof, Paler should be awarded backwages, retirement benefits and other privileges that accrued to him from the time of his dismissal up to the date of his retirement.

SO ORDERED.<sup>[12]</sup>

Petitioner filed a motion for reconsideration but this was denied by the CA in the assailed resolution dated April 27, 2005.

Hence, this petition based on the following grounds:

- A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING DUE COURSE TO THE APPEAL OF RESPONDENT PALER WITH THE RESPONDENT CIVIL SERVICE COMMISSION DESPITE THE FACT THAT IT WAS FILED OUT OF TIME.
- B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE LEAVE APPLICATIONS OF RESPONDENT PALER WAS DEEMED APPROVED ON A MISTAKEN INTERPRETATION OF SEC. 49, RULE XVI OF THE OMNIBUS RULE ON LEAVE AS AMENDED.<sup>[13]</sup>

Petitioner's contentions are basically the same as those it presented to the CSC<sup>[14]</sup> and the CA,<sup>[15]</sup> viz.: (1) the CSC should not have entertained Paler's appeal since it was filed beyond the 15-day reglementary period; there were no meritorious reasons to relax the procedural rules, specially since there was bad faith and misrepresentation on Paler's part in filing staggered applications for leave; (2) the Commission Chairman's decision to drop Paler from the roll of employees was in accord with Section 63 of CSC Memorandum Circular No. 14, series of 1999 and (3) Paler's application for leave was not "deemed approved" as petitioner acted on his application by holding it in abeyance in view of the contingencies of his work and the submission of a medical certificate.<sup>[16]</sup>

In his comment, Paler, aside from arguing that the CA did not commit any error in sustaining the CSC resolutions, also assails Atty. Arturo L. Tiu's authority to file the petition and sign the verification and certification of non-forum shopping on behalf of the Commission Chairman.<sup>[17]</sup>

The CSC, represented by the Office of the Solicitor General (OSG), maintains the correctness of the CSC and CA judgments.

## **Issues**

This petition involves both procedural and substantive issues.

On the procedural aspect, Paler questions the authority of the Commission Secretary to file the petition and sign the verification and certification of non-forum shopping in behalf of the Commission Chairman. On the other hand, the Commission disputes the CSC's grant of Paler's appeal despite having been filed beyond the reglementary period.

On the substantive aspect, was Paler's application for leave "deemed approved" within the purview of Section 49, Rule XVI of the Omnibus Rules on Leave?

## **Authority to File Petition**

First, we tackle Atty. Tiu's authority to file the petition and sign the verification and certification of non-forum shopping.

The petitioner in this case is the Commission on Appointments, a government entity created by the Constitution, and headed by its Chairman.<sup>[18]</sup> There was no need for the Chairman himself to sign the verification. Its representative, **lawyer** or any

person who personally knew the truth of the facts alleged in the petition could sign the verification.<sup>[19]</sup> With regard, however, to the certification of non-forum shopping, the established rule is that it must be executed by the plaintiff or any of the principal parties and not by counsel.<sup>[20]</sup> In this case, Atty. Tiu failed to show that he was specifically authorized by the Chairman to sign the certification of non-forum shopping, much less file the petition in his behalf. There is nothing on record to prove such authority. Atty. Tiu did not even bother to controvert Paler's allegation of his lack of authority. This renders the petition dismissible.<sup>[21]</sup>

Furthermore, the petition is bereft of merit as it merely restates the arguments presented before the CSC and CA. It does not advance any cogent reason that will convince this Court to deviate from the rulings of both tribunals.

### **The Issue of Late Filing**

Section 72 of CSC Memorandum Circular No. 19, s. 1999,<sup>[22]</sup> provides for the period of appeal for non-disciplinary actions, to wit:

Section 72. *When and Where to File.* - A decision or ruling of a department or agency may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the Civil Service Regional Office and finally, to the Commission Proper within the same period.

x x x

Paler's son received the letter from the Commission Chairman denying Paler's motion for reconsideration on March 18, 2004. Thus, Paler's had until April 2, 2004 within which to file his appeal with the CSC. It was filed, however, only on April 5, 2004.<sup>[23]</sup> Nevertheless, the CSC entertained the appeal in the interest of substantial justice.<sup>[24]</sup>

We agree with the CSC. We uphold its decision to relax the procedural rules because Paler's appeal was meritorious. This is not the first time that the Court has upheld such exercise of discretion. In *Rosales, Jr. v. Mijares*<sup>[25]</sup> involving Section 49(a) of the CSC Revised Rules of Procedure, the Court ruled:

On the contention of the petitioner that the appeal of the respondent to the CSC was made beyond the period therefor under Section 49(a) of the CSC Revised Rules of Procedure, the CSC correctly ruled that:

Movant claims that Mijares' appeal was filed way beyond the reglementary period for filing appeals. He, thus, contends that the Commission should not have given due course to said appeal.

The Commission need not delve much on the dates when

Mijares was separated from the service and when he assailed his separation. **Suffice it to state that the Commission found his appeal meritorious. This being the case, procedural rules need not be strictly observed.** This principle was explained by in the case of Mauna vs. CSC, 232 SCRA 388, where the Supreme Court ruled, to wit:

"Assuming for the sake of argument that the petitioner's appeal was filed out of time, **it is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties.** As held by the Court in a number of cases:

x x x

It bears stressing that the case before the CSC involves the security of tenure of a public officer sacrosanctly protected by the Constitution. Public interest requires a resolution of the merits of the appeal instead of dismissing the same based on a strained and inordinate application of Section 49(a) of the CSC Revised Rules of Procedure.<sup>[26]</sup> (Emphasis supplied)

*Constantino-David v. Pangandaman-Gania*<sup>[27]</sup> likewise sustained the CSC when it modified an otherwise final and executory resolution and awarded backwages to the respondent, in the interest of justice and fair play. The Court stated -

No doubt, the Civil Service Commission was in the legitimate exercise of its mandate under Sec. 3, Rule I, of the *Revised Uniform Rules on Administrative Cases in the Civil Service* that "[a]dministrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." This authority is consistent with its powers and functions to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws" being the central personnel agency of the Government.

Furthermore, there are special circumstances in accordance with the tenets of justice and fair play that warrant such liberal attitude on the part of the CSC and a compassionate like-minded discernment by this Court. x x x<sup>[28]</sup>