

EN BANC

[G.R. No. 152457, April 30, 2008]

**RODOLFO R. MAHINAY, PETITIONER, VS. COURT OF APPEALS,
CIVIL SERVICE COMMISSION PHILIPPINE ECONOMIC ZONE
AUTHORITY, RESPONDENTS.**

DECISION

AZCUNA, J.:

This is a petition for *certiorari*^[1] alleging that the Court of Appeals (CA) acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated October 30, 2000, April 6, 2001

and March 6, 2002, dismissing petitioner's petition for *certiorari*, which in effect sustained the Decision of the Civil Service Commission (CSC) dismissing petitioner from the service.

The facts are as follows:

On June 10, 1998, the Philippine Economic Zone Authority (PEZA), through Officer-in-charge Jesus S. Sirios, charged its employee, petitioner Rodolfo R. Mahinay, for receiving unofficial fees from FRITZ Logistics Phils. Inc. by reason of his office and in consideration of the latter's rendering escort service to FRITZ' trucks from Baguio City to Manila and vice-versa. The formal charge reads:

That from 1996 to receipt by the BCEZ Police Station Command of P/Major JOSE C. PANOPIO's February 19, 1998 directive prohibiting all BCEZ Policemen from accepting unofficial fees from FRITZ Logistics Phils. Inc., respondent P/Capt. RODOLDO R. MAHINAY of the BCEZ Station Command received unofficial fees from FRITZ Logistics Phils. Inc. by reason of his office and in consideration of the latter's rendering escort service to FRITZ' trucks . . . from Baguio City to Manila and vice-versa, and whose presence during such escort service is to help lessen delay in the scheduled trip of FRITZ' cargo by police checkpoints and unscrupulous traffic enforcers encountered along the way, particularly during implementation of the truck ban policy in Metro Manila.^[2]

The said conduct of petitioner was alleged to be in violation of Sec. 46 (b) (9), Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987 in relation to Sec. 22 (i), Rule XIV of the Omnibus Civil Service Rules and Regulations.^[3]

In his Answer, petitioner admitted receiving the fees from Fritz Logistics Phils., Inc., thus:

3. That respondent hereby states that the very purpose on why he, or any other special PEZA Police Officer for that matter, is escorting freight trucks from Baguio City to their point of destination is to ensure that the goods will be intact and safely and completely delivered to their destinations; that it would therefore be inaccurate to state that their rendering escort duty is purposely to "lessen delay in the scheduled trip xxx by police checkpoints and unscrupulous traffic enforcers encountered along the way, particularly during the implementation of the truck ban policy in Metro Manila," that the latter act would just be incidental and relative to their main task above-mentioned;
4. That anent the charge, respondent hereby admits that before the directive by SPL. P/MAJOR JOSE C. PANOPIO dated February 19, 1998, ALL police officers stationed at the Baguio City Economic Zone (BCEZ) were receiving an amount of P300 VOLUNTARILY GIVEN by the FRITZ LOGISTICS PHILS., INC. (FRITZ, for brevity) as and by way of traveling and meal allowance of an escort in proceeding back to Baguio City after coming from NAIA; that hereto attached and made an integral part hereof as Annex "I" is a copy of a confirmation letter by JERRY H. STEHMEIER, Managing Director of FRITZ;
5. That herein respondent declares that his, as well as the other police officers' receipt of the aforesaid amount of PhP 300.00 was done in all good faith with no intention whatsoever of enriching themselves therefrom;
6. That, concededly, there is remitted by FRITZ to the BCEZ an amount of P500 for the escorts as escort fee resulting into receipt by the escort in the amount of P400 NET; that is, however, indisputable that the same will be received by the particular police officer who went on escort duty after he shall have arrived from Manila and upon presentation of the Certificate of Appearance secured from the Security Services Department of the Philippine Economic Zone Authority x x x;
7. That, at first, there was no such thing as additional allowance from FRITZ but after the transportation fare from Manila/Pasay City to Baguio City increased substantially by half, as well as the costs of other incidental expenses ballooned, FRITZ voluntarily offered the additional allowance after understanding very well that the P400 escort fee is not reasonably sufficient; simple mathematics applied;
8. That, without being repetitive, it must be straightened for the record, that the giving of the P300 by FRITZ was on its own volition without any demand from the escorts;
9. That after receipt of the DIRECTIVE from SPL. P/MAJOR PANOPIO, herein respondent no longer received the P300.00 tendered by FRITZ through its drivers whenever he does escort duty, that in fact, herein respondent directed all his men to stop receiving the

P300 allowance from FRITZ in compliance with the directive of their superior, SPL. P/MAJOR PANOPIO;

10. That, like himself, respondent could very well say that all of the other Police Officers in the BCEZ Force never received the additional allowance from FRITZ thereafter, that almost every after an escort duty by a Police Officer, he silently complains that the P400 escort duty received from the Financial Services Division as remitted officially by FRITZ to BCEZ was not sufficient in covering all the incidental expenses he incurred in escorting;
11. That it would not be amiss to state even that considering that these FRITZ closed trucks being escorted leave Baguio City at 2:00 o'clock in the morning, more or less; that considering the time, the escorts could not make cash advances for their expenses and really have to shell out their personal money in the meantime to be reimbursed only after the duty;
12. That on another point, herein respondent feels that this charge against him was only maliciously hurled by some officers who take in slight the prudent and conscientious acts of the respondent in protecting foremost the interest of PEZA;
13. That more particularly, BCEZ Officer-in-Charge Digna D. Torres maliciously imputed these things to malign my reputation and personality after having learned that herein respondent filed several criminal charges against her before the Office of the City Prosecutor, Baguio City solely for the purpose of redressing a wrong committed against his person and honor by Mrs. Torres.^[4]

At the hearing of September 30, 1998, petitioner appeared with two counsels who manifested that they were reiterating the defenses stated in petitioner's Answer. The Hearing Committee required petitioner to put the manifestation in writing because it was, in effect, a waiver of his right to be present and to be heard. Petitioner and his counsels left after submitting the written waiver.

Thereafter, the Special Prosecutor presented his lone witness, Mr. Jerry H. Stehmeier, managing director of FRITZ, who affirmed the contents

of his Affidavit^[5] dated September 9, 1998. He testified that the "extra amount" of P300 was in fact actually received by petitioner, who exacted the same from FRITZ, for escorting their "trucks all the way to the airport or all the way to our FRITZ office in Manila." The testimony was a recantation of his earlier statement contained in a letter dated February 10, 1998 that the extra amount was voluntarily given by FRITZ.

On January 8, 1999, the PEZA rendered a decision finding petitioner guilty of the offense charged. The dispositive portion of the Decision reads:

VIEWED IN THE LIGHT OF THE FOREGOING, the Authority finds the Respondent guilty of the offense as charged and is hereby meted out the penalty of forced resignation without prejudice to the grant of monetary

and other fringe benefits, as allowed by existing law and the Civil Service Rules and Regulations.^[6]

The PEZA held that all the elements of the offense charged were present in the case. The testimony of Jerry H. Stehmeier proved that the amount of P300 per escort was received by petitioner, and that the receipt of the money was done in the course of official duties. Petitioner's receipt of P300 per escort from FRITZ was over and above what was officially paid by PEZA to petitioner for escort services rendered.

Petitioner's motion for reconsideration was denied by the PEZA in a Resolution dated March 11, 1999.

Petitioner appealed to the CSC. In Resolution No. 000878 dated March 30, 2000, the CSC upheld the PEZA's decision, but modified the penalty of forced resignation to dismissal from the service in accordance with Sec. 52 (A.9), Rule IV, Uniform Rules on Administrative Cases in the Civil Service and Sec. 22 (i),^[7] Rule XIV of the Omnibus Civil Service Rules and Regulations. The dispositive portion of the CSC Decision reads:

WHEREFORE, the appeal of Rodolfo Mahinay is hereby dismissed. Accordingly, the decision dated January 8, 1999 of PEZA finding Mahinay guilty of violating Sec. 46 (b) No. 9, Book V of E.O. 292 is affirmed. However the penalty of Forced Resignation is modified to Dismissal pursuant to section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.^[8]

Petitioner's motion for reconsideration was denied by the CSC in Resolution No. 001698 dated July 21, 2000. Petitioner received a copy of the resolution on August 11, 2000.

On September 12, 2000, petitioner filed with the CA a Motion for Extension of Time to File a Petition for *Certiorari*, requesting for a period of up to November 10, 2000 within which to file his petition.

On October 30, 2000, the CA issued a Resolution denying the said motion for being the wrong mode of appeal and for being filed out of time. The CA stated that since the assailed Resolution was rendered by a quasi-judicial body, the proper mode of appeal is a petition for review under Rule 43 of the Rules of Court, which petition should be filed within 15 days from notice of the resolution.

On November 9, 2000, petitioner filed the petition for *certiorari* under Rule 65 of the Rules of Court, seeking the nullification of the CSC Resolution dismissing him from the service.

On April 6, 2001, the CA issued a Resolution stating that it had promulgated the Resolution dated October 30, 2000 dismissing the petition for *certiorari*, and that the Judicial Records Division Report showed that neither a motion for reconsideration nor a Supreme Court petition on the resolution had been filed. Consequently, the CA ordered the issuance of the corresponding entry of judgment, and noted without action the petition for *certiorari* filed on November 9, 2000.

Petitioner's motion for reconsideration was denied by the CA of Appeals in a