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[G.R. No. 163683, June 08, 2007]

ELENITA S. BINAY, IN HER CAPACITY AS MAYOR OF THE CITY OF MAKATI, MARIO RODRIGUEZ AND PRISCILLA FERROLINO, PETITIONERS, VS. EMERITA ODEÑA, RESPONDENT.

D E C I S I O N

NACHURA, J:

This Petition for Review on Certiorari assails the May 14, 2004 Decision of the Court of Appeals (CA) in CA-G.R. Sp No. 74411[1] affirming

with modification Civil Service Commission (CSC) Resolution No. 010962 dated May 29, 2001[2] and CSC Resolution No. 021491 dated November 18, 2002.[3] The questioned CSC resolutions set aside the Memorandum of petitioner, former Mayor Elenita S. Binay (petitioner Binay), dated June 8, 2000, dropping respondent Emerita Odeña[4] (respondent) from the roll of employees of the City Government of Makati.[5]

The Facts

On January 16, 1980, respondent was employed as a teacher in the Makati Nursery School. She was a contractual employee up to July 30, 1992, and a casual employee from July 1992 until November 1996. Sometime in 1996, respondent held the position of Clerk 1 and was detailed at the Library Department of the Makati High School.

On June 1, 2000, petitioner Priscilla Ferrolino (petitioner Ferrolino), as education consultant, called respondent to her office to explain her (respondent) failure to report for work starting in November 1999. Respondent denied her alleged absence and presented the employee's log book as proof of attendance. However, petitioner Ferrolino disregarded her explanation.[6]

On June 2, 2000, Feliciana A. Rodriguez, Officer-In-Charge (OIC) of the Timekeeper Section wrote petitioner Mario R. Rodriguez, former City Personnel Officer, that respondent had not been reporting for duty since November 10, 1999 with a recommendation that immediate and appropriate action be taken against respondent.[7]

On June 8, 2000, petitioner Binay issued a memorandum informing respondent that, effective at the close of the office hours of May 15, 2000, the latter is considered dropped from the roll of employees in view of her absences without official leave (AWOL) from November 10, 1999. Respondent moved for reconsideration but the

same was denied. Aggrieved, respondent appealed to the CSC.

The CSC's Ruling

On May 29, 2001, the CSC, in Resolution No. 010962 held that the dropping of respondent from the rolls is not supported by evidence. The CSC found that respondent actually reported for work from November 1999 to May 2000, noting that while she incurred absences during such period, the same is not equivalent to a continuous absence of at least thirty (30) working days. The CSC further held that the attendance sheet[8] of respondent duly complied with CSC Memorandum Circular No. 21, Series of 1991, since it indicated respondent's name and signature, her time of arrival and departure

and the same was verified by her immediate supervisor, Mrs. Norma Geronimo. The CSC also opined that these factual circumstances only proved that such manner of recording the attendance was allowed in said office, supplementing Civil Service Form No. 48, or the Daily Time Record (DTR). Lastly, the CSC postulated that respondent could not have received her corresponding salary for the said period if she was indeed absent. Thus:

> WHEREFORE, the appeal of Emerita B. Odena is hereby GRANTED. The Memorandum of Mayor Elenita S. Binay dated June 8, 2000 dropping her from the rolls is hereby set aside. Accordingly, Odena is hereby reinstated to her former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, she should be paid her salaries from the time of her separation up to her actual reinstatement. However, this is without prejudice to whatever disciplinary case which may be commenced against her.[9]

Petitioners moved for reconsideration. However, on November 18, 2002, the CSC in, Resolution No. 021491, denied the same and affirmed Resolution No. 010962. The CSC brushed aside petitioners' claim that respondent incurred four hundred (400) unauthorized and unapproved absences[10] from November 1999 to May 2000, since said period of time consists only of about six (6) months.

Petitioners appealed to the CA and the appeal was docketed as CA-G.R. SP No. 74411.[11]

The Ruling of the Court of Appeals

On May 14, 2004, the CA, in its Decision, denied petitioners' appeal for lack of merit and affirmed with modification the assailed CSC resolutions. The CA held:

> However, as regards the CSC's order to pay Emerita Odena's 'salaries from the time of her separation up to her actual reinstatement,' the Court deems it appropriate to modify the same. It is settled that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, not full back salaries from her illegal dismissal up to her reinstatement (*Marohombsar vs. Court of Appeals,* 326 SCRA 62 [2000]). Hence, considering that Emerita Odena was dropped from the rolls effective at the close of office hours of May 15,

2000, her back salaries shall be computed from May 16, 2000 up to the date of reinstatement, but not to exceed five (5) years.[12]

Thus, the CA disposed:

> WHEREFORE, the petition is DISMISSED for lack of merit. CSC Resolution No. 010962 dated May 29, 2001 and CSC Resolution No. 021491 dated November 18, 2002 are affirmed, without prejudice to the filing of whatever appropriate disciplinary case against Emerita Odena, and subject to the modification that payment of her back salaries shall be computed from date of dismissal up to date of reinstatement, but in no case to exceed five (5) years.
>
> SO ORDERED.[13]

Hence, this petition based on the sole ground that

> THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE CIVIL SERVICE COMMISSION'S FINDING THAT THE CITY GOVERNMENT OF MAKATI HAS NO BASIS IN DROPPING RESPONDENT EMERITA ODEÑA FROM THE ROLLS.[14]

Petitioners contend that

> 1) the CSC erred in recognizing the self-serving, unofficial, and inadmissible personal attendance sheet of respondent as the official record of the City Government of Makati since it has an official Time Sheet;[15]
>
> 2) the CSC erred in giving credence to the certifications issued by respondent's immediate supervisor, Mrs. Norma Geronimo, because the latter retracted said certifications in her subsequent letter dated July 11, 2000[16] stating that she did not personally know respondent as she was merely referred to her for application; and,
>
> 3) the CSC and CA erred in not considering the uncontroverted fact that respondent was taking up a two-year Advertising course at the Philippine Women's University (PWU) at that time.[17]

Moreover, petitioners submit that the instant petition raises questions of law as it assails the CSC's and CA's acts giving credence to respondent's personal attendance sheet; the undue weight afforded to the same over the official DTR prescribed by the City Government of Makati; and the finding that said personal attendance sheet complied with CSC Memorandum Circular No. 21, Series of 1991; hence, said petition is within this Court's jurisdiction.[18]

On the other hand, respondent contends that

> 1) petitioners failed to prove that respondent had continuously been absent for at least (30) days without approved leave;
>
> 2) respondent could not have received her salaries for the period of November 1999 to May 2000 if she was indeed absent at that time;

> 3) petitioners' evidence consisting of the timekeeper's letter dated June 2, 2000 and the personnel officer's certification dated June 18, 2001 were merely concocted to justify respondent's summary dismissal from work on June 8, 2000 since the same were not presented as evidence before the CSC; and
>
> 4) the use of the attendance sheet as a record of employee's attendance had been accepted as a standard operating procedure in the Makati High School and that it is in compliance with CSC Memorandum Circular No. 21, Series of 1991.

Finally, respondent submits that the instant petition seeks to review, alter, and reverse the factual findings of the CSC and the CA which are outside the ambit of Rule 45 of the Rules of Civil Procedure.[19]

In the same vein, the CSC, through the Office of the Solicitor General (OSG),[20] asseverates that the instant petition, in assailing the weight accorded by the CSC to respondent's personal attendance sheet, raises a question of fact inappropriate under Rule 45 of the Rules of Civil Procedure and outside the jurisdiction of this Court. As such, re-evaluation of said evidence would be necessary. The OSG also posits that, in cases of dismissal of an employee, the burden of proof rests upon the employer to show that said dismissal is for a just cause, which the petitioners failed to substantiate in this case. Moreover, the OSG argues that the fact that respondent received her corresponding salary during the contested period strongly militates against petitioners' claim that respondent incurred a continuous absence of at least thirty (30) working days. Thus, the OSG concludes that the respondent's dismissal is without factual and legal basis.[21]

The Court's Ruling

The petition is bereft of merit.

First. It is a well-established doctrine that in petitions for review on certiorari under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. In the case of *Erlinda R. Velayo-Fong, vs. Spouses Raymond and Maria Hedy Velayo,*[22] this Court defined a question of law as distinguished from a question of fact, to wit:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.