

THIRD DIVISION

[G.R. NO. 155477, March 18, 2005]

**MUNICIPALITY OF LA LIBERTAD, NEGROS ORIENTAL,
REPRESENTED BY THE MUNICIPAL MAYOR LAWRENCE D.
LIMKAICHONG, JR., PETITIONER, VS. JUDITH C. PENAFLOR,
RESPONDENT.**

DECISION

CARPIO-MORALES, J.:

Being assailed in the present Petition for Review on *Certiorari* is the May 13, 2002 Decision of the Court of Appeals (CA) affirming the Resolution of the Civil Service Commission (CSC) which granted the motion of Judith Penaflor (respondent) praying for the payment by the Municipality of La Libertad, Negros Oriental (petitioner) of backwages from the time of her termination from, up to her reinstatement to her former position as Rural Health Midwife.

Before November 13, 1995, respondent, Rural Health Midwife who had been in the employ of the office of petitioner for about twenty years,^[1] filed an application for a 15-day leave of absence effective said date. At that time respondent had an accumulated unused leave credits of more than one year. The application for leave was recommended for approval by her superior.

On November 13, 1995, unaware if her application for leave had been approved, respondent began availing of it.

Subsequently, by Memorandum dated December 1, 1995, the then Municipal Mayor Napoleon N. Camero notified respondent that she had been terminated effective November 13, 1995.

*Records of this Office show that you have not been reporting to duty as Rural Health Midwife of this municipality since November 13, 1995 until this date of writing **without approved** leave of absence.*

In view thereof, you are hereby notified that effective November 13, 1995, you have been terminated from service.^[2] (Italics in the original; emphasis and underscoring supplied)

Respondent appealed for a reconsideration of Mayor Camero's notice of termination but the same was denied.

Respondent thus appealed to the CSC which, by Resolution No. 980207^[3] promulgated on February 3, 1998, set aside Mayor Camero's decision to "drop her from the rolls."

In setting aside Mayor Camero's order dropping respondent from the rolls, the CSC found that, contrary to the injunction of paragraph 2.1(b) of CSC Memorandum Circular No. 12, s. 1994 reading:

2.1 Absence without approved leave

a. x x x

b. If the number of unauthorized absences incurred is less than thirty (30) calendar days, written Return-to-Work-Order shall be served on the official or employee at his last known address on record. Failure on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.^[4] (Italics supplied by the CSC; underscoring supplied),

no prior Return-to-Work Order was given respondent who had not reported for work for less than 30 days or from November 13, 1995 to December 1, 1995, which prior order is a pre-condition to the validity of an employee's separation from the service under that mode.

Accordingly, by Resolution No. 980207 dated February 3, 1998,^[5] the CSC ordered respondent's reinstatement or restoration to her position. Then Mayor Camero filed a motion for reconsideration of the CSC Resolution which was, however, denied.

On appeal by then Mayor Camero and herein petitioner, the CA, by Decision of February 23, 2000,^[6] affirmed the CSC Resolution.^[7]

The CA decision became final and executory.

On May 15, 2000, respondent was reinstated to her former position as Rural Health Midwife by Mayor Lawrence D. Limkaichong, Jr. who had in the meantime been elected in the recently concluded local elections.

As despite repeated pleas for the payment of her back salaries due her at the time she was dismissed up to the time of her reinstatement, the same remained unacted, respondent petitioned the CSC to direct petitioner to pay her back salaries.

By Resolution of 002737 dated December 8, 2000,^[8] the CSC directed petitioner to pay respondent back salaries and other monetary benefits from the time she was illegally dismissed up to her actual reinstatement. Petitioner filed a Motion for Reconsideration of this Resolution but it was denied by the CSC by Resolution No. 01080^[9] dated April 20, 2001. Petitioner thereupon elevated these CSC Resolutions to the CA.

In its Petition^[10] before the CA, petitioner proffered that the CSC erred in ordering it to pay the back salaries and other monetary benefits of respondent. It argued that former Mayor Camero alone should be held liable since he acted beyond the scope of his legal duty and authority, he having acted arbitrarily and without any legal justification in terminating the services of respondent, for he dropped her from the rolls out of personal spite.

In support of its thesis, petitioner cited *Salcedo v. Rama*, 81 SCRA 408 (1978) which held:

The municipal mayor alone may be held liable for back salaries of, or damages to a dismissed municipal employees, to the exclusion of the municipality, if the mayor not only arbitrarily dismissed the employee but also refused to reinstate him in defiance of the order of the Civil Service Commission, or if the mayor dismissed the employee without justifiable cause and without any administrative investigation. (Underscoring supplied)

Petitioner also cited *Correa v. CFI of Bulacan*, 92 SCRA 312 (1979) which held:

A public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his duty, is not protected by his office and is personally liable therefor like any private individual (*Palma vs. Graciano*, 99 Phil. 72). This principle of personal liability has been applied to cases where a public officer removes another officer or discharges an employee wrongfully, **the reported cases saying that by reason of non-compliance with the requirements of law in respect to removal from office, the officials were acting outside their official authority**. (Emphasis supplied by petitioner; underscoring supplied)

Petitioner further proffered that to hold the municipality liable for respondent's back salaries and other benefits would subject the poor municipality that it is to economic hardship and grave injustice to its citizenry.

By the assailed Decision of May 13, 2002,^[11] the CA, while acknowledging that a public official may be liable in his personal capacity for whatever damage may have been caused by his act if done with malice or in bad faith or beyond the scope of his authority or jurisdiction, held that absent any proof thereof as in the case at bar where petitioner merely proffered allegations, petitioner is liable to pay respondent's back salaries.

That the CSC reversed then Mayor Camero's decision to drop respondent from the rolls as well as ordered her reinstatement does not, the CA further held, prove that he acted arbitrarily or in bad faith.

In fine, since the CA found that petitioner failed to discharge the onus of proving by substantial evidence its allegation that then Mayor Camero acted in bad faith or with malice, it had no reason to disturb the CSC Resolution.

The Motion for Reconsideration of the CA decision having been denied, the present Petition for Review was filed, petitioner insisting that it should be former Mayor Camero who should be liable to pay the backwages of respondent, it reiterating that he acted arbitrarily and without any legal justification, compounded by the fact that he refused to reinstate her.

Petitioner, positing that "there is no law allowing a mayor to violate the [CSC] law," his functions being defined by law and, therefore, his act of illegally dismissing respondent is beyond his power and authority, cites what to it are pertinent powers of the Municipal Mayor under Section 444 of the Local Government Code, to wit: