

THIRD DIVISION

[G.R. No. 135003, January 21, 2002]

**PHILIPPINE COCONUT AUTHORITY, PETITIONER, VS.
BIENVENIDO GARRIDO, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari^[1] assailing the Decision^[2] of the Court of Appeals dated March 31, 1998 in CA G.R.-SP No. 41319, "Bienvenido R. Garrido vs. Civil Service Commission, et al.," declaring the separation of respondent Bienvenido R. Garrido from the service illegal and ordering his reinstatement to his former position as Deputy Administrator of the Philippine Coconut Authority (PCA) and payment of his backwages and/or salaries and benefits to which he is entitled.

The facts, as summarized by the Court of Appeals in its Decision, are:

"Sometime in July, 1993, petitioner (now respondent) Bienvenido R. Garrido, then employed as Deputy Administrator of the PCA for Corporate Services Branch, verbally sought permission from respondent (PCA) Administrator Virgilio M. David to take, more or less, five (5)-month vacation leave in connection with his intention to accept a job offer in Sierra Leone, West Africa, as consultant of a private firm. Not knowing at the moment the full detail and justification of petitioner's request, respondent Administrator David advised petitioner to see to it that his request is sanctioned by the Civil Service Rules and to prepare the necessary documents for his vacation leave.

"On July 21, 1993, petitioner filed his application for leave for ninety-eight (98) days, or from July 28, 1993 to December 17, 1993, with the Human Resources Development Department (HRDD).

"On July 28, 1993, petitioner commenced his vacation leave and departed for Sierra Leone, West Africa.

"Meanwhile, on September 15, 1993, or about two (2) months after the filing of petitioner's application for leave, respondent PCA Administrator David issued a Memorandum to petitioner Garrido disapproving the latter's application for leave, thus:

'In view of legal impediment to your application for leave, please be advised that your application cannot be favorably considered.'

"On December 18, 1993, (or after 4 months and 20 days) petitioner arrived in the Philippines. Two (2) days thereafter, or on December 20,

1993, he reported back to his office and found the said letter of disapproval of his leave dated September 15, 1993 which was allegedly received by his office on September 21, 1993.

"On December 21, 1993, petitioner was rushed and confined at the Philippine Heart Center for *Falcifarum Malaria and Multiple Organ Dysfunction* until his discharge on January 2, 1994.

"Shortly after his (discharge) from the hospital and upon gaining sufficient strength, petitioner on January 11, 1994 re-filed another vacation leave covering the period from July 28, 1993 to December 17, 1993 and incorporating therewith his application for sick leave for December 20, 1993 to February 28, 1994.

"On February 4, 1994, petitioner received a letter dated January 27, 1994 from respondent David informing him that he has been **dropped from the rolls effective December 26, 1993** for being **absent without official leave for more than thirty (30) days pursuant to Civil Service Memorandum No. 38, Series of 1993 (CSC MC No. 38, s. 1993)**.

"On February 18, 1994, petitioner appealed from respondent David's act of dropping him from the rolls with the respondent Civil Service Commission (CSC).

"On September 5, 1995, respondent CSC rendered the questioned Resolution No. 955443 dismissing petitioner's appeal. Petitioner moved for the reconsideration of the aforesaid resolution but the same was denied per Resolution dated March 12, 1996."^[3]

Aggrieved by the CSC Resolutions, Garrido filed with the Court of Appeals a petition for review which was granted in its challenged Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is granted and the Resolutions subject of this petition is REVERSED and SET ASIDE. The PCA Administrator is hereby ordered to reinstate petitioner BIENVENIDO R. GARRIDO to his position as Deputy Administrator or its equivalent, without loss of any right or privilege accorded him by the service, and to pay petitioner his back wages and/or salaries and benefits to which he is entitled but has not received as a consequence of his illegal separation from the service.

"SO ORDERED."^[4]

The Court of Appeals, in reversing the CSC Resolutions, held that the dropping of respondent Garrido from the rolls without prior notice, as required by Sec. 35, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292, is illegal. Petitioner erroneously relied on CSC Memorandum Circular No. 38, Series of 1993 which does not require prior notice. This Circular, amending said Section 35, became effective on October 21, 1993. Considering that the disapproval of respondent's application took place on September 15, 1993, or prior to the effectivity of CSC MC No. 38, petitioner should have applied said Sec. 35 by giving