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# EN BANC

# [ G.R. No. 131392, February 06, 2002 ]

## CITY GOVERNMENT OF MAKATI CITY REPRESENTED HEREIN BY JEJOMAR C. BINAY IN HIS CAPACITY AS MAYOR OF MAKATI CITY, PETITIONER, VS. CIVIL SERVICE COMMISSION AND EUSEBIA R. GALZOTE, RESPONDENTS.

## D E C I S I O N

**BELLOSILLO, J.:**

Is a government employee who has been ordered arrested and detained for a non-bailable offense and for which he was suspended for his inability to report for work until the termination of his case, still required to file a formal application for leave of absence to ensure his reinstatement upon his acquittal and thus protect his security of tenure? Concomitantly, will his prolonged absence from office for more than one (1) year automatically justify his being dropped from the rolls without prior notice despite his being already placed under suspension by his employer until the termination of his case, which finally resulted in his acquittal for lack of evidence?

EUSEBIA R. GALZOTE was employed as a lowly clerk in the service of the City Government of Makati City. With her meager income she was the lone provider for her children. But her simple life was disrupted abruptly when she was arrested without warrant and detained for more than three (3) years for a crime she did not commit. Throughout her ordeal in detention she trusted the city government that the suspension imposed on her was only until the final disposition of her case. As she drew near her vindication she never did expect the worst to come to her. On the third year of her detention the city government lifted her suspension, dropped her from the rolls without prior notice and without her knowledge, much less gave her an opportunity to forthwith correct the omission of an application for leave of absence belatedly laid on her.

Upon her acquittal for lack of evidence and her release from detention she was denied reinstatement to her position. She was forced to seek recourse in the Civil Service Commission which ordered her immediate reinstatement with back wages from 19 October 1994, the date when she presented herself for reassumption of duties but was turned back by the city government, up to the time of her actual reinstatement.

Petitioner went to the Court of Appeals, but private respondent was sustained and the petition was dismissed. In other words, in both the Civil Service Commission[1] and the Court of Appeals,[2] private respondent obtained favorable relief.

Plainly, the case of petitioner City Government of Makati City revolves around a *rotunda* of doubt, a dilemma concerning the legal status and implication of its suspension of private respondent Eusebia R. Galzote and the *automatic* leave of

absence espoused by the Civil Service Commission. Against this concern is the punctilious adherence to technicality, the requirement that private respondent should have filed an application for leave of absence in proper form. The instant case is therefore a dispute between, at its worst, private respondent despite her detention, of which petitioner had actual notice, and the suspension order couched in simple language that she was being suspended until the final disposition of her criminal case.

The meaning of her suspension until the final disposition of her case is that should her case be dismissed she should be reinstated to her position with payment of back wages. She did not have to apply for leave of absence since she was already suspended by her employer until her case would be terminated. We have done justice to the workingman in the past; today we will do no less by resolving all doubts in favor of the humble employee in faithful obeisance to the constitutional mandate to afford full protection to labor.[3]

What follows is the pathetic story of private respondent Eusebia R. Galzote as recorded by the Civil Service Commission, adopted and sustained by the Court of Appeals: Private respondent was employed as a clerk in the Department of Engineering and Public Works of Makati City.[4] On 6 September 1991 she was arrested without warrant and detained allegedly for kidnapping for ransom with physical injuries, and thereafter subjected to inquest proceedings[5] with the criminal case eventually docketed as Crim. Case No. 88357 of the Regional Trial Court of Pasig, Metro Manila.[6] Incarcerated from then on, she could not report for work as a result of which she was suspended from office by petitioner City Government starting 9 September 1991 until the final disposition of her case.[7] Unfortunately, however, the City Government thereafter changed its policy. Without informing private respondent who was then already detained at the Rizal Provincial Jail,[8] and even as her trial for the criminal case was going on, she was dropped from the rolls of municipal employees effective 21 January 1993 for having been absent from work for more than one (1) year without official leave.[9]

Three (3) years later, or on 22 September 1994, private respondent Galzote was acquitted of the crime charged. The trial court strongly noted the failure of the prosecution to prove any act establishing her complicity in the crime, and thus ordered her immediate release from detention.[10]

On 19 October 1994 she requested the Municipal Personnel Officer as well as Mayor Jejomar Binay, both of petitioner city government, for the lifting of her suspension and for her reinstatement to her position in accordance with the 9 September 1991 memorandum.[11] On 4 August 1995, or nearly a year after she made her request for reinstatement from petitioner City Government and no action was taken thereon, private respondent filed a letter-request with the CSC for the same cause.[12] Consequently, in *Resolution No. 960153* the CSC found merit in her submissions and ordered her immediate reinstatement to the position of Clerk III with back wages from 19 October 1994, which was the day she presented herself as reporting for work after her detention, until her actual resumption of duty.[13]

The City Government of Makati City filed a Petition for Review of the *Resolution* of the CSC but the same was denied by the Court of Appeals, thus sustaining the

assailed Resolution of the CSC.

As may be gleaned from the pleadings of the parties, the issues are: (a) whether private respondent Eusebia R. Galzote may be considered absent without leave; (b) whether due process had been observed before she was dropped from the rolls; and, (c) whether she may be deemed to have abandoned her position, hence, not entitled to reinstatement with back salaries for not having filed a formal application for leave. Encapsulated, the issues may be reduced to whether private respondent may be considered absent without leave or whether she abandoned her job as to justify being dropped from the service for not filing a formal application for leave.

Petitioner would have private respondent declared on AWOL and faults her for failing to file an application for leave of absence under Secs. 20[14] and 35[15] of the CSC Rules and rejects the CSC's ruling of an "automatic leave of absence for the period of her detention" since the "current *Civil Service Law and Rules* do not contain any specific provision on *automatic* leave of absence."

The Court believes that private respondent cannot be faulted for failing to file prior to her detention an application for leave and obtain approval thereof. The records clearly show that she had been advised three (3) days after her arrest, or on 9 September 1991, that petitioner City Government of Makati City had placed her under suspension until the final disposition of her criminal case.[16] This act of petitioner indubitably recognized private respondent's predicament and thus allowed her to forego reporting for work during the pendency of her criminal case without the needless exercise of strict formalities. At the very least, this official communication should be taken as an equivalent of a prior approved leave of absence since it was her employer itself which placed her under suspension and thus excused her from further formalities in applying for such leave. Moreover, the arrangement bound the City Government to allow private respondent to return to her work after the termination of her case, i.e., if acquitted of the criminal charge. This pledge sufficiently served as legitimate reason for her to altogether dispense with the formal application for leave; there was no reason to, as in fact it was not required, since she was for all practical purposes incapacitated or disabled to do so.

Indeed, private respondent did not have the least intention to go on AWOL from her post as Clerk III of petitioner, for AWOL means the employee leaving or abandoning his post without justifiable reason and without notifying his employer. In the instant case, private respondent had a valid reason for failing to report for work as she was detained without bail. Hence, right after her release from detention, and when finally able to do so, she presented herself to the Municipal Personnel Officer of petitioner City Government to report for work. Certainly, had she been told that it was still necessary for her to file an application for leave despite the 9 September 1991 assurance from petitioner, private respondent would have lost no time in filing such piece of document. But the situation momentarily suspending her from work persisted: petitioner City Government did not alter the *modus vivendi* with private respondent and lulled her into believing that its commitment that her suspension was only until the termination of her case was true and reliable. Under the circumstances private respondent was in, prudence would have dictated petitioner, more particularly the incumbent city executive, *in patria potestas*, to advise her that it was still necessary - although indeed unnecessary and a useless ceremony - to file such application despite the suspension order, before depriving her of her legitimate

right to return to her position. *Patria potestas in pietate debet, non in atrocitate, consistere*. Paternal power should consist or be exercised in affection, not in atrocity.

It is clear from the records that private respondent Galzote was arrested and detained without a warrant on 6 September 1991 for which reason she and her co-accused were subjected immediately to inquest proceedings. This fact is evident from the instant petition itself[17] and its attachments, namely, the *Information* filed against them on 17 September 1991 as well as the *Decision* of the trial court acquitting private respondent of kidnapping and physical injuries. Hence, her ordeal in jail began on 6 September 1991 and ended only after her acquittal, thus leaving her no time to to attend to the formality of filing a leave application.

But petitioner City Government would unceremoniously set aside its 9 September 1991 suspension order claiming that it was superseded three (3) years later by a memorandum dropping her from the rolls effective 21 January 1993 for absence "for more than one (1) year without official leave."[18] Hence, the suspension order was void since there was no pending administrative charge against private respondent so that she was not excused from filing an application for leave.

We do not agree. In placing private respondent under suspension until the final disposition of her criminal case, the Municipal Personnel Officer acted with competence, so he presumably knew that his order of suspension was not akin to either suspension as penalty or preventive suspension since there was no administrative case against private respondent. As competence on the part of the MPO is presumed, any error on his part should not prejudice private respondent, and that what he had in mind was to consider her as being on leave of absence without pay and their employer-employee relationship being merely deemed suspended, not severed, in the meanwhile. This construction of the order of suspension is actually more consistent with logic as well as fairness and kindness to its author, the MPO. Significantly, the idea of a *suspended employer-employee relationship* is widely accepted in labor law to account for situations wherein laborers would have no work to perform for causes not attributable to them.[19] We find no basis for denying the application of this principle to the instant case which also involves a lowly worker in the public service.

Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof. [20] Consequently, the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached.[21] It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.

At any rate, statements are, or should be, construed against the one responsible for the confusion; otherwise stated, petitioner must assume full responsibility for the consequences of its own act, hence, should be made to answer for the mix-up of private respondent as regards the leave application. At the very least, it should be considered estopped from claiming that its order of suspension is void or that it did

not excuse private respondent from filing an application for leave on account of her incarceration. It is a fact that she relied upon this order, issued barely three (3) days from the date of her arrest, and assumed that when the criminal case would be settled she could return to work without need of any other prior act.[22] In *Laurel v. Civil Service Commission* we held -

> The sole ground invoked by him for exemption from the rule on nepotism is, as above indicated: the rule does not apply to designation - only to appointment. He changed his mind only after the public respondent, in its Resolution No. 83-358, ruled that the "prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly" and, more specifically, only when he filed his motion to reconsider said resolution. Strictly speaking, estoppel has bound petitioner to his prior admission. Per Article 1431 of the Civil Code, through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[23]

If it is true that the City Government of Makati City wanted to change its stance and consider the suspension memorandum as an error, it should have required private respondent to file an application for leave as it was its obligation to inform her of such requirement. In particular, the subsequent memorandum dropping Galzote from the rolls effective 21 January 1993 should have been sent to her at the Rizal Provincial Jail where she had been detained and where she could have received it. This Court will not confer validity upon the later memorandum which violates due process. As we ruled in *Gonzales v. Civil Service Commission*[24] -

> It is the ruling of the respondent Civil Service Commission that the sending of the said notice to the residence of petitioner constitutes "substantial" compliance with the demands of due process. The ruling would have some allure if the address of petitioner in the United States was not known to the officials of ATI and if his Philippine address was his last known address. But as stressed above, they knew of petitioner's exact address in the United States and there appears no impediment for them to send the notice in this correct address x x x x The disputed ruling cuts too deeply on petitioner's right to continue his employment in the government and unduly dilutes the protection of due process. x x x x Nothing less than strict compliance with the demands of due process should have been demanded by the respondent Commission from the officials of ATI in light of the equities of the case. Nor can we give our concurrence to the further ruling of the respondent Commission that the denial of due process to the petitioner was cured by the publication of said notice in three (3) issues of the Philippine Journal. Notice by publication might have been proper if the address of petitioner were unknown. Since the officials of ATI knew the whereabouts of petitioner, they have no legal warrant to notify him thru the newspapers.

We find no relevance to the reference of petitioner City Government to the presumption of regularity in the performance of duties as regards the service of the memorandum upon private respondent which dropped her from the rolls. In the first place, the presumption would only cover the proposition that the City Government did serve the memorandum at the house of private respondent. It