

FIRST DIVISION

[G.R. No. 138756, August 01, 2002]

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION,
PETITIONER, VS. RAFAEL M. SALAS, RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

In *Civil Service Commission and PAGCOR vs. Rafael M. Salas*,^[1] we affirmed the decision dated September 14, 1995, issued by the Court of Appeals in CA-G.R. SP No. 38319,^[2] which ruled that herein respondent Rafael M. Salas, not being a confidential employee, cannot be dismissed on ground of loss of confidence. Consequently, petitioner Philippine Amusement and Gaming Corporation (PAGCOR) was ordered to reinstate respondent with full back wages, *but without prejudice to the filing of administrative charges against him if warranted*.^[3]

Now before the Court is a petition for review filed by the Office of the Solicitor General, in behalf of petitioner PAGCOR, seeking to annul the following:

- (1) Resolution dated November 9, 1998, upholding respondent's entitlement to back wages regardless of the outcome of the administrative case against him;^[4]
- (2) Resolution dated February 16, 1999, denying petitioner's Motion for Reconsideration dated December 1, 1998;^[5] and
- (3) Resolution dated May 13, 1999, denying petitioner's Motion for Reconsideration dated February 26, 1999.^[6]

all issued by the Court of Appeals in the said CA-G.R. SP No. 38319.

The facts are as follows:

Respondent Rafael M. Salas was employed as petitioner's Internal Security Staff (ISS) member and assigned to the casino at the Manila Pavilion Hotel. On December 3, 1991, petitioner's Board of Directors terminated respondent from employment for loss of confidence because he engaged in proxy betting. He appealed to the Chairman and the Board of Directors, requesting reinvestigation of the case, but was denied. Respondent appealed to the Merit and System Protection Board (MPSB), but it was denied on the ground that being a confidential employee, he was not dismissed from service but his term of office merely expired. On appeal to the Civil Service Commission (CSC), the MPSB's decision was affirmed per Resolution No. 92-1283.

Respondent filed with this Court a petition for certiorari, docketed as G. R. No. 107586, which we referred to the Court of Appeals.^[7] The appellate court set aside

the CSC resolution in its decision, dated September 14, 1995, ruling that petitioner could be removed only for cause and after due process. The dispositive portion of said decision reads:

"WHEREFORE, the petition for certiorari is **GRANTED**. The assailed Resolution No. 92-1283 of the respondent Civil Service Commission is **REVERSED** and **SET ASIDE**, and a new one entered DIRECTING the respondent PAGCOR to reinstate the petitioner to his position in the Internal Security Staff with full payment of back wages for the period he was separated from the service until his reinstatement, **without prejudice to the filing of administrative charges against him if warranted**.

"SO ORDERED."^[8] (italics supplied)

On petition for review (docketed as G.R. No. 123708) with this Court, we affirmed the decision of the appellate court per our Decision dated June 19, 1997 which became final and executory on August 25, 1997.^[9] Respondent filed a motion for execution with the CSC requesting his reinstatement with full back wages. Pending resolution of his motion by the CSC, PAGCOR effected respondent's reinstatement on November 3, 1997^[10], but imposed on him a 90-day preventive suspension pending investigation of the administrative complaint, docketed as Admin. Case No. 1-1-98, for "grave misconduct, dishonesty, violation of company rules and regulations, and conduct grossly prejudicial to the best interests of the service", PAGCOR filed against him.

In the meantime, the CSC ruled that the proper authority to issue the writ of execution is this Court. Accordingly, respondent filed a Motion for Clarification with us, praying that a resolution be issued clarifying whether or not he is entitled to payment of full back wages from the time of his separation up to his reinstatement on November 3, 1997.^[11]

A Resolution was then issued by this Court ordering the remand of the records of the case to the CSC, through the Court of Appeals, for it to conduct such hearing as may be necessary for the issuance of the writ. Respondent then filed another motion for execution with the CSC. However, before his motion can be resolved, petitioner rendered a resolution in Admin. Case No. 1-1-98 ordering respondent's dismissal from service. The dispositive portion of said Resolution reads:

"In view of all the foregoing, the Adjudication Committee is recommending, as it hereby recommends, to the Board of Directors of PAGCOR, that the dismissal of respondent RAFAEL SALAS from the service be confirmed, *said dismissal to retroact to the date of the commission of the offense*. By virtue of respondent's serious misdeeds as established in this case, the respondent is no longer entitled to backwages from June 1991 to February 1998. This is in consonance with the following well-established legal principles; one, that no equitable or legal basis exists for the payment of backwages as the respondent was not exonerated of the charges against him, and two, that he did not render any work for the period stipulated. (emphasis ours)

"Respectfully submitted."^[12] (emphasis ours)

The recommendation was approved by the Board of Directors in its meeting held on February 17, 1998.^[13] Respondent's motion for reconsideration was denied. He appealed to the CSC on March 25, 1998. On even date, respondent received a copy of the CSC's resolution of his motion for execution, which reads in part:

"x x x The Commission believes that Administrative Case No. 1-1-98 filed by PAGCOR against Salas is not an obstacle to the implementation of the decision of the Court of Appeals, as affirmed by the Supreme Court, unless said case has already been decided by PAGCOR and the decision is not in Salas' favor."^[14]

On October 1, 1998, the CSC dismissed respondent's appeal, hence, the latter filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 49704, which was denied for being insufficient in form and substance. The appellate court likewise denied PAGCOR's motion for reconsideration.

Meanwhile, the Court of Appeals in CA-G.R. SP No. 38319, resolving our referral of respondent's motion for clarification, issued the first assailed Resolution dated November 9, 1998, portions of which read:

"The Civil Service Law and Rules provide that no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and after due process. (Pls. see Sec. 36, P.D. 807 and Sec. 1, Rule XIV of the Omnibus Rules Implementing the Civil Service Law.)

"The filing of an administrative case against the petitioner is the requisite 'due process' which must precede his removal if warranted. The phrase 'after due process' is an indication that any removal or dismissal may be made only prospectively and not retrospectively. Hence, if sufficient cause is found against the petitioner for his dismissal or removal from the service, the same cannot retroact to a date before the filing of an administrative case against him.

"In view thereof, we believe and so hold that the petitioner is entitled to backwages before the effectivity of his dismissal -- even granting that the same might be upheld with finality.

"Let the parties be guided accordingly.

"SO ORDERED."^[15] (emphasis ours)

Petitioner filed a motion for reconsideration but it was denied by the appellate court per the second assailed Resolution dated February 16, 1999 for having been filed out of time.^[16]

Petitioner then filed a motion for reconsideration of the Resolution dated February 16, 1999, explaining that the tardiness in the filing of the previous motion was due to "some confusion". The motion was denied by the appellate court per the third assailed Resolution dated May 13, 1999.^[17]

Hence, herein petition for review on certiorari under Rule 45 of the Rules of Court, anchored on the following grounds: