

TWELFTH DIVISION

[CA-G.R. SP. No. 113914, April 23, 2014]

**MAYOR RAMON S. LEGASPI, JR., MUNICIPAL GOVERNMENT OF
MAKATO, AKLAN, PETITIONER, V. ARGLOU B. TAGALA,
RESPONDENT.**

D E C I S I O N

ELBINIAS, J.:

For disposition is a Petition for Review^[1] filed under Rule 43 of the Rules of Court. The Petition assails the Resolution No. 091045^[2] dated July 16, 2009 of the Civil Service Commission ("CSC" for brevity), which Resolution granted the appeal of respondent and consequently dismissed the administrative case against respondent for: "Dishonesty; Falsification of Official Documents; Grave misconduct; Gross Neglect of Duty; Insubordination; and Conduct Prejudicial to the Best Interest of the Service."^[3] The Petition also questions the CSC's Resolution No. 100555^[4] dated March 23, 2010, which denied petitioner's eventual Motion for Reconsideration^[5].

The antecedent facts are those as stated in the CSC's Resolution No. 091045^[6] dated July 16, 2009, as follows:

"Based on the extant documents, **the instant case arose when Municipal Agriculturist Tagala filed a complaint with the Office of the Municipal Mayor against three of his subordinates, including the appellant (*respondent here*), for Dishonesty, Gross Neglect of Duty, and Inefficiency and Incompetence in the Performance of Official Duties.**

It appears that **the complaint was referred to a grievance committee, which, after some hearings, recommended the filing of a case against the appellant (*respondent*) and her two companions. During the proceedings therein, the appellant (*respondent*) submitted her answer, which was brushed aside by the grievance committee for being a prohibited pleading.**

Thereafter, **the private complainant re-filed his complaint, with some additional allegations, where he prayed, among others, for the preventive suspension of the appellant (*respondent*).** Acting thereon, **Mayor Legaspi, Jr. (*petitioner here*) placed the appellant (*respondent*) under preventive suspension for sixty days.** This prompted the appellant, through counsel, to move for reconsideration. It is not clear what fate befell this action.

Meanwhile, **the private complainant filed an amended complaint. Thereupon, the investigating body called the case for hearing on several dates. Finally, it terminated the hearing and directed the**

parties to submit their respective memoranda, which they complied in due time.

It is noted that **on January 22, 2008, the Mayor (*petitioner*) extended the preventive suspension of Tagala for 30 days, but immediately withdrew the said extension on the same day.**

In February 2008, the investigating body submitted its report to Mayor Legaspi, where it recommended the dismissal from the service of the appellant (*respondent*) since her guilt has been substantially proven."^[7] (*Emphasis Supplied*)

On February 8, 2008, petitioner Mayor Ramon S. Legaspi, Jr., ("petitioner Mayor" or "petitioner" for brevity) issued to respondent Arglou B. Tagala ("respondent Tagala" or "respondent" for brevity) an Order of Dismissal^[8], informing respondent of the termination of her services as Agricultural Technologist of the Municipality of Makato, Aklan.^[9]

Upon respondent Tagala's appeal, the Civil Service Commission ("CSC" for brevity) issued the first assailed Resolution No. 091045^[10] dated July 16, 2009, which Resolution granted respondent's appeal, and dismissed the administrative case for: "Dishonesty; Falsification of Official Documents; Grave misconduct; Gross Neglect of Duty; Insubordination; and Conduct Prejudicial to the Best Interest of the Service"^[11] against respondent. Dismissal of the case was based on the ground that petitioner Mayor had violated respondent Tagala's right to due process. The Resolution also found the preventive suspension imposed by petitioner Mayor upon respondent Tagala to have been invalid. The dispositive portion of the Resolution stated the following:

"WHEREFORE, foregoing premises considered, the instant appeal of Arglou B. Tagala is hereby GRANTED due to violation of her right to due process. Accordingly, the administrative case against her is dismissed without prejudice to its re-filing, if the evidence so warrants. In the meantime, however, she is ordered reinstated into the service with payment of back salaries reckoned from the time of her illegal dismissal up to the date of her actual reinstatement.

Additionally, the Commission declares Tagala's preventive suspension for sixty days to be null and void on its face. Consequently, she should also be paid the back salaries corresponding to the period of her illegal preventive suspension."^[12] (*Emphasis was made in the original*)

After petitioner's Motion for Reconsideration^[13] was denied by the CSC in the other assailed Resolution No. 100555^[14] dated March 23, 2010, petitioner filed the Petition for Review at bench, praying as follows:

"WHEREFORE, Petitioner prays that the Honorable Court enter judgment against Respondent and in favor of the Petitioner and issue an order annulling the *Resolution No. 09-1045* dated 16 July 2009 and *Resolution No. 10-0555* dated March 23, 2010.

Other relief and remedies that are just and equitable under the premises are likewise prayed for."^[15] (*Italics was made in the original*)

Petitioner Mayor raised these issues:

"WHETHER OR NOT THE CSC ERRED IN RULING THAT THE RIGHT OF THE RESPONDENT TO DUE PROCESS WAS VIOLATED. WHETHER OR NOT THE CSC ERRED IN RULING THAT THE PREVENTIVE SUSPENSION OF THE RESPONDENT WAS VOID."^[16]
(*Emphasis was made in the original*)

At the outset, the Petition for Review^[17] is dismissible, because of petitioner Mayor's failure to state the grounds relied upon for the review of the CSC's Resolution No. 091045^[18] dated July 16, 2009. Such statement of grounds is required under Section 6, Rule 43 of the Rules of Court, to wit:

"SEC. 6. *Contents of the petition.*— The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) **contain a concise statement** of the facts and issues involved and **the grounds relied upon for the review**; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein." (*Italics was made in the original; Emphasis supplied*)

The absence of such statement of grounds is fatal to the instant Petition^[19], warranting the dismissal of the Petition. This is pursuant to Section 7, Rule 43 of the Rules of Court, which provides:

"SEC. 7. *Effect of failure to comply with requirements.*— **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of** and the documents which should accompany **the petition shall be sufficient ground for the dismissal thereof.**" (*Italics was made in the original; Emphasis supplied*)

Even assuming that petitioner Mayor's "Statement of Issues" could be considered as the required "Statement of Grounds," still, petitioner Mayor's positions, after a careful study of the Petition, were revealed to be unmeritorious.

Contrary to petitioner Mayor's arguments in his first *assigned issue*, the CSC properly dismissed the administrative case^[20] against respondent Tagala on ground that petitioner violated respondent Tagala's right to due process when petitioner dismissed respondent from service.

Petitioner had raised the following arguments:

7.0. The Honorable Commission admitted in its very own Resolution that Respondent never raised in her Appeal

Memorandum the issues of lack of formal charge against her. xxx
(*Emphasis Supplied*)

7.1. Petitioner submits that such supposition runs counter with doctrine enunciated by our Supreme Court in the case of Abedes vs. Court of Appeals, 536 SCRA 268 which differentiated an appeal in ordinary cases and an appeal in criminal case, thus the Supreme Court held that:

'Issues not raised in the pleadings, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, **are deemed waived or abandoned.**' (*Emphasis, underscoring and italics were made in the original*)

7.2. Applying the aforesaid doctrine, **Petitioner submits that the alleged failure to file a formal charge was deemed waived by the Respondent.**

7.3 It is a undisputed fact that **Respondent has been informed of the charge against her and that she ACTIVELY participated in the ENTIRE proceedings during the conduct of investigation by the investigating body, and she was even duly represented by counsel.**

7.4 The active participation of the Respondent in the entire proceedings as found by the Honorable Commission and stated in its Resolution xxx

7.5 **The fact alone, the Respondent submitted her memoranda without raising the issue on alleged absence of a written formal charge, is a clear manifestation that she was apprised of the formal charge against her and that she has waived the necessity of issuance of written formal charge.**

xxx

7.21 It must be set to fore that in the light of the foregoing doctrine, **the fact that Respondent was given an opportunity to be heard, and was in fact actively participated would belie the fact that she was not given notice of the formal charge. Such active participation connotes constructive notice on the charge lodged against Respondent.**

7.22 In fact, **due process was accorded to Respondent, as the complaint has initially passed the Grievance Committee prior to its referral to the Investigating Body. Such procedure gave Respondent all opportunity to present her evidence and defend herself on the allegations against her.** It is however undeniable the documents on record clearly and substantially established Respondent's guilt that warranted her dismissal.

7.23 **The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered,**

the demands of due process are sufficiently met."^[21] (*Emphasis Supplied*)

Prevailing over petitioner Mayor's arguments however, is that respondent Tagala was not issued a Formal Charge, which Formal Charge is required under Section 16 of the Uniform Rules on Administrative Cases in order for a government employee to be validly dismissed from service. The provision states:

"Section 16. *Formal Charge*. – After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of. **The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.**" (*Emphasis Supplied*)

Records revealed that after a Preliminary Investigation was conducted by the Office of the Grievance Committee^[22], no formal charge was made on respondent Tagala before petitioner Mayor issued the Suspension Order^[23] dated November 22, 2007, and before the Office of the Investigating Body conducted a Formal Investigation^[24] on respondent's case. The failure to issue such Formal Charge in turn, is in violation of the following procedure laid down by the Supreme Court in ***Winston F. Garcia, in his capacity as President and General Manager of GSIS vs. Mario I. Molina and Albert M. Velasco, G.R. No. 157383, August 10, 2010***:

"The Uniform Rules on Administrative Cases in the Civil Service lays down the procedure to be observed in issuing a formal charge against an erring employee, to wit:

First, the complaint. A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath. Except when otherwise provided for by law, an administrative complaint may be filed at anytime with the Commission, proper heads of departments, agencies, provinces, cities, municipalities and other instrumentalities.

Second, the Counter-Affidavit/Comment. Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit Counter-Affidavit/Comment under oath within three days from receipt.

Third, Preliminary Investigation. A Preliminary investigation involves the ex parte examination of records and documents submitted by the complainant and the person