

## **NINTH DIVISION**

**[ CA-G.R. SP NO. 121552, November 21, 2014 ]**

### **EVELYN GARCIA-CANTRE, PETITIONER, VS. SOCIAL SECURITY SYSTEM AND CIVIL SERVICE COMMISSION, RESPONDENTS.**

#### **D E C I S I O N**

**PERALTA, JR., E. B., J.:**

When the Civil Service Commission agreed<sup>[1]</sup> with Social Security System (SSS) President Corazon S. Dela Paz-Bernardo's disposition to drop petitioner from the rolls of employee on account of incurred absences *sans an* approved leave, petitioner resorted to the current Petition for Review.<sup>[2]</sup>

Elemental backdrop of the controversy disclosed that petitioner Evelyn Garcia-Cantre was a former Senior Technical Assistant of the Social Security System-National Capital Region-Central Cluster Legal Unit.

To accompany petitioner's sick mother to Australia for a medical check-up and to renew ties with relatives, petitioner requested for a 6 month no pay vacation leave to take effect on October 12, 2006.<sup>[3]</sup>

Per a Memorandum<sup>[4]</sup> dated October 6, 2006, petitioner's request for 6 month vacation leave without pay was approved subject to these conditions: (1) submission of clearance from money and property accountabilities; (2) the prospect of recall anytime if the exigency of service so requires; (3) there shall be no extension; (4) a commitment to return upon expiration of the leave, subject to an administrative case against her for violation of office rules and regulations; and (5) no government fund shall be used for the purpose.

On the basis thereof, petitioner went on a 6-month leave of absence from October 12, 2006 to April 11, 2007.

Trouble ensued when petitioner did not return to work after the expiration of her 6 month vacation leave or after April 11, 2007. However, as advocated by petitioner, she wrote a letter<sup>[5]</sup> dated March 31, 2007 to urge an extension of four months leave or until July 31, 2007 which was allegedly sent by mail. Apparently, the letter-request did not reach the intended recipient nor was there was any proof that the letter dated March 31, 2007 was indeed sent through the postal service.

On May 3, 2007, petitioner's husband handed two resignation letters<sup>[6]</sup> to the personnel department of SSS but as borne out by the record, these resignation letters were not indorsed to the Office of the SSS President since these letters were not supported by the requisite documentation.

In the meantime, when petitioner came to know that her March 31, 2007 letter was not received by the other party, through her representative, the letter was delivered to the SSS, through the Office of the President, on June 8, 2007. Thereafter, no action was made on petitioner's letter dated March 31, 2007.

Petitioner then returned to the Philippines on June 21, 2007. Four days thereafter, or on June 25, 2007, petitioner informed<sup>[7]</sup> the SSS administrative body that pending her request for extension of leave, she opted to return for work on even date. She then performed office tasks in the form of several court hearings and investigation of SSS matters.

On June 28, 2007, the Cluster Legal Support Division of the SSS issued a Memorandum<sup>[8]</sup> for petitioner to refrain from attending case hearings and performing work responsibilities pending resolution of petitioner's status as an SSS employee following the inability to report for work after the authorized leave for six months.

On July 18, 2007, petitioner wrote a letter addressed to the SSS President to reiterate that she withdrew her letter of resignation which was previously received by the SSS and that she reported for work starting June 25, 2007. As such, petitioner likewise requested for her salary reckoned from June 25, 2007.

By July 20, 2007, petitioner ceased to report for work and eventually, on July 27, 2007, she filed a Complaint for non-payment of salaries and illegal constructive dismissal against SSS before the CSC-NCR.

Pending resolution of petitioner's Complaint before the CSC-NCR, the SSS issued an Office Order No. 298-P<sup>[9]</sup> dated September 6, 2007, which dropped petitioner from the rolls, effective May 25, 2007, due to her failure to report for work after expiration of her approved vacation leave.

Petitioner's letter dated November 15, 2007 manifested that her Complaint for illegal dismissal should be treated as an appeal from the directive to drop her name from the rolls of service.

While the CSC-NCR did not treat petitioner's Complaint for illegal dismissal as an appeal, petitioner's subsequent letter dated November 15, 2007 was considered by the CSC-NCR as petitioner's appeal from being dropped from the rolls of service. Although the letter dated November 15, 2007 was filed on November 23, 2007, or beyond the 15 day reglementary period to file an appeal, the CSC-NCR went beyond technical rules in the interest of substantial justice.

On July 29, 2009, the CSC-NCR dismissed petitioner's appeal and agreed with the SSS President and CEO Corazon S. Dela Paz-Bernardo's disposition to drop petitioner from the rolls of service. Later, the CSC Proper was far from persuaded by petitioner's advocacy.<sup>[10]</sup>

In the resolution of petitioner's redress before Us *via* Rule 43, which revolved on the due process clause and the aspect of the so-called abandonment of work, it is fitting to retell that petitioner requested for, and was granted, a 6 month leave without pay starting October 12, 2006 with preconditions therefor.

Thereafter, petitioner's letter dated March 31, 2007 applied for another 4 month extension of leave without pay, which communication was received by private respondent only on June 8, 2007.

Based on the foregoing alpha, reckoned from October 12, 2006, petitioner's 6 month leave without pay lapsed on April 11, 2007 but petitioner did not return to work thereafter. Consequently, petitioner's absences from April 12, 2007 and the succeeding days can hardly be justified even as it would appear that she applied for an extension of 4 months leave *via* a letter dated March 31, 2007 inasmuch as the application was received only by private respondent on June 8, 2007. At that time, petitioner already incurred absences without official leave (AWOL) for more than 30 days.

Along this line, Section 63 of Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular 13, Series of 2007 assumes legal resonance:

*Effect of absences without approved leave. - An official or an employee who is continuously absent **without approved leave** for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. However, when it is clear under the obtaining circumstances that the official or employee concerned has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days three times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.*

*If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served to him 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.(Emphasis and underscoring supplied).*

Moreover, from the language of the rule, no prior notice is required to drop an employee from the rolls who is continuously absent without approved leave for at least thirty (30) calendar days.<sup>[11]</sup> Furthermore, the notice contemplated by the *proviso* is not jurisdictional in nature and failure to give such notice by the appropriate government office does not prevent the dropping of the employee concerned from the government service. Staying away from one's regular employment in the government or remaining on leave without proper approval is something that an employee can hardly be unaware of.<sup>[12]</sup>

Verily, petitioner's own representation<sup>[13]</sup> that she only returned to work on June 25, 2007 was sufficient enough to prove that from April 12, 2007 up to June 24, 2007, she did not report to her post and there was no showing that there was an approved leave during the relevant period.