

SECOND DIVISION

[G.R. No. 157607, July 07, 2009]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. ROWENA O. PADEN, RESPONDENT.

D E C I S I O N

BRION, J.:

Before us is the Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court filed by the Land Bank of the Philippines (*petitioner*). It seeks to set aside:

(a) the Decision^[2] of the Court of Appeals (CA) dated November 27, 2002 which affirmed Resolution No. 000896^[3] and Resolution No. 00-1995,^[4] both issued by the Civil Service Commission (CSC) ordering the reinstatement of Rowena O. Paden (*respondent*) to her former position as Executive Assistant I.

(b) the Resolution of the CA dated March 11, 2003^[5] which denied the motion for reconsideration that the petitioner subsequently filed.

THE FACTUAL ANTECEDENTS

On March 13, 1995, the petitioner hired the respondent as Contractual Secretary III in its Bansalan Branch in Davao del Sur. On **September 1, 1997**, prior to her regularization, the respondent assumed the position of Executive Assistant I as a **probationary employee** pending receipt of the background investigation on her. As a requirement to her assumption of the position of Executive Assistant I, the respondent executed an *Affidavit with Waiver of Rights*^[6] dated August 7, 1997, whose relevant portions provide:

1. That I will be appointed as Executive Assistant I pursuant to Board Resolution No. 09-009 dated 02/16/90;
2. That on September 1, 1997, I will assume the duties of the position pending receipt of my GSIS Medical Evaluation, NBI Clearance, Reference Check and other requested clearances;
3. That should there be derogatory information against me as later determined in my GSIS Medical Evaluation, NBI Clearance, Reference Check and other required clearances, I hereby waive my right to the aforementioned position as well as to all the benefits and privileges appurtenant thereto except for compensation for services rendered (actual number of days) by me;
4. That this affidavit is being executed for purpose of assuming the position and reporting for work pending receipt of corporate

requirements for new hires.

In the documents that she submitted to support her application, the respondent indicated that she had no children and designated one Cyril Rose O. Paden (*Cyril Rose*) as her sister.^[7] A subsequent background investigation revealed that Cyril Rose is not the respondent's sister but is really her daughter. Shortly thereafter, the respondent, in an *Affidavit*^[8] dated October 20, 1997, sought to explain the discrepancy by stating the following:

1. I am an employee of the Land Bank of the Philippines assigned in Bansalan, Davao del Sur;
2. I have been employed with Land Bank (DBPSC Contractual) as secretary since March 13, 1995. I assumed my present position, Executive Assistant I, on September 1, 1997;
3. On August 22, 1997, I submitted my bio-data sheet to the Personnel Department of Land Bank. In said bio-data sheet, I included the name of one Cyril Rose Paden as one of my sister [sic];
4. This Cyril Rose Paden was actually my daughter out of wedlock. Since her birth and until now however, it was my mother who stood as mother to Cyril Rose Paden. Shortly after giving birth to her (Cyril Rose), I left Bansalan, my hometown and worked in Davao City. I seldom went home to Bansalan;
5. The following Monday, after realizing my mistake, I immediately called up Personnel Department and was able to talk with Ms. Jojo Amarillo. I told her that Cyril Rose was actually my daughter;
6. It was my mother who made it appear in our community that Cyril Rose Paden is her own daughter and unwittingly, I also considered Cyril Rose as a sister;
7. It was my mother who caused the registration of the Birth of Cyril Rose with the Office of the Local Civil Registrar;

Based on this affidavit, the petitioner gave notice to the respondent on February 25, 1998 that she would be dropped from the rolls effective March 1, 1998.^[9] The notice states in full:

Dear Ms. Paden:

Please be informed that you will be dropped from the rolls of the Bank effective March 1, 1998 - the expiration of your probationary period.

For your information.

Very truly yours,

ETHEL B.
BALAALDIA
Assistant Vice
President
Personnel
Department

The respondent received this notice on February 27, 1998 from Alfredo G. Cabiguin, the Branch Manager of the petitioner's Bansalan branch where the respondent was based.

In a letter^[10] dated March 2, 1998 sent by fax, the petitioner informed the respondent that she had been officially dropped from the rolls effective March 1, 1998. The pertinent portions of the letter are quoted herein as follows:

Dear Ms. Paden:

Please be informed that you have been officially dropped from the rolls of the Bank effective March 1, 1998 - the expiration of your probationary period.

For your information.

Very truly yours,

ETHEL B.
BALAALDIA
Assistant Vice
President
Personnel
Department

The respondent sought reconsideration, but the petitioner denied her request on May 20, 1998. Three months after she received a copy of the petitioner's denial of her motion for reconsideration, the respondent filed an appeal with the CSC. The CSC dismissed the appeal outright through Resolution No. 983104^[11] for having been filed beyond the reglementary period, and for failure to pay the appeal fee.^[12] The respondent filed a motion for reconsideration arguing that the filing of the appeal beyond the reglementary period and the nonpayment of the appeal fee are light omissions when compared to the grave offense committed against her by the petitioner for illegally dismissing her without the benefit of any information or supporting papers informing her of the cause for her dismissal; the respondent argued that the petitioner failed to accord her due process.

The CSC, through Resolution No. 992039^[13] dated September 15, 1999, resolved to grant the respondent's motion for reconsideration and to give due course to the appeal.

In its *Comment* submitted to the CSC, the petitioner argued that the respondent was dropped from the rolls based on the findings of the background investigation conducted on the respondent; the investigation revealed that the respondent misrepresented Cyril Rose as her sister, when in fact, Cyril Rose was her daughter.

[14] The petitioner also stated that the respondent's misrepresentation also led her to make false entries in official and public documents; it was only after a thorough and painstaking discussion among the members of its selection board that it was decided that the respondent should be dropped from the rolls effective March 1, 1998, the expiration of her probationary period. The petitioner cited *Section 2, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Revised Administrative Code of 1987)* as its basis in dropping the respondent from its rolls; the section states:

All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.

The petitioner went even further to argue that since the respondent "acknowledges that her appointment as Executive Assistant I had to undergo a six-month probationary period, **her status as such divests her of the constitutional security of tenure against removal without cause during the said period of time.**" [15] Lastly, the petitioner emphasized that the respondent was informed of her being dropped from the service on February 25, 1998, which was before the expiration of her probationary period.

In her *Answer* to the petitioner's *Comment*, the respondent reiterated that her termination from the service was illegal, since it was done without due process for failure of the petitioner to inform her of the reason why she was being terminated from the service; the notice merely stated that she was being dropped from the rolls effective March 1, 1998. [16] The respondent also asserted that her appointment was deemed permanent on March 1, 1998 by reason of the lapse of the six months probationary period.

The CSC Ruling

The CSC, through Resolution No. 000896 [17] dated March 30, 2000, resolved the appeal in favor of the respondent and ordered her reinstatement to her former position as Executive Assistant I under permanent status, without prejudice to the proper administrative charges that may be filed against her. The CSC held:

The issue in this case is whether or not there is a ground for dropping from the rolls/dismissal from the service while undergoing probationary period.

Section 2(a), Rule VII of the Revised Omnibus Rules Implementing Book V of Executive Order No. 292 provides that:

"All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period."

Clearly, an employee undergoing probationary period of six (6) months may be dropped from the service anytime before the expiration of the probationary period on two grounds, to wit: 1) unsatisfactory conduct and (2) want of capacity.

Records show that Land Bank of the Philippines dropped Paden from the service on the ground of unsatisfactory conduct, that is, for having a child borne out of wedlock which was later admitted under oath by Paden.

The Commission, however, does not agree with the ground upon which the termination was based. **The ground relied upon by the Land Bank of the Philippines is misplaced. The unsatisfactory conduct must be related to the conduct exhibited by Paden during her probationary period. Needless to say, the same should not refer to her conduct before entering the civil service.**

Records further show that Paden was informed of her termination only on March 1, 1998 and the same was effective on the same date. It can be recalled that Paden was proposed for regularization and assumed the position of Executive Assistant on September 1, 1997 as probationary employee. Paden has six (6) months or until February 28, 1998 to serve her probationary period.

The Omnibus Rules provides, *viz*:

However, if no notice of termination or unsatisfactory conduct is given by the appointing authority to the employee before the expiration of the six-month probationary period, the appointment automatically becomes permanent.

Records clearly reveal that Paden was informed only after the expiration of her probationary period, March 1, 1998. Consequently, Paden's appointment automatically becomes regular.

The submission by the LBP that Paden was actually informed of the denial of the "proposal to consider her for permanent status" on February 25, 1998 as recommended by Alfred G. Cabiguin, Acting Head, LBP Bansalan Branch, is immaterial to the instant case. The same does not amount to a notice of termination of service nor a notice of unsatisfactory conduct. Further, it is not the form of notice contemplated by law.

Clear also is the admission by the LBP in its Comment that it is immaterial to inform Paden of her being dropped from the service for any way the unsatisfactory conduct is already existing. This contention, however, is an open and blatant denial of due process of law.

Such being the case, the appointment of Paden as Executive Assistant I becomes permanent after six (6) months.

It may be pertinent to stress that the least offense that could be charged against Paden is that of Disgraceful, Immoral, or Dishonest Conduct Prior