

FIRST DIVISION

[G.R. NO. 170021, September 08, 2006]

OFFICE OF THE PRESIDENT, PETITIONER, VS. NITA P. BUENAOBRA, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the Decision^[1] of the Court of Appeals dated May 27, 2005 in CA-G.R. SP No. 78279, which reversed and set aside petitioner's Resolutions dated April 11, 2003^[2] and June 26, 2003^[3] dismissing respondent Nita P. Buenaobra from the service. Also assailed is the Resolution^[4] dated October 3, 2005, denying petitioner's motion for reconsideration.

The following facts are undisputed:

The Office of the Ombudsman's Special Prosecution Officer filed an information against respondent Nita P. Buenaobra, Chairman of the Komisyon sa Wikang Pilipino (KWP), with the Sandiganbayan for violation of Section 3(e) of Republic Act (R.A.) No. 3019 for allegedly causing undue injury to the government through gross inexcusable negligence in connection with the unauthorized reprinting of the Diksyunaryo ng Wikang Pilipino. The case was docketed as Criminal Case No. 26918 ("the Sandiganbayan case").^[5]

Upon respondent's motion, the Sandiganbayan ordered a reinvestigation. Thereafter, then Ombudsman Simeon Marcelo approved the recommendation for the reversal of the probable cause finding and the withdrawal of the information filed against respondent. Thus, a motion to withdraw the information^[6] was filed which the Sandiganbayan granted in its Resolution dated April 30, 2003.^[7]

While reinvestigation of the Sandiganbayan case was on-going, the Presidential Anti-Graft Commission (PAGC) conducted a parallel administrative investigation ("the PAGC case") against respondent charging her with the same acts and omissions subject of the Sandiganbayan case. Respondent was charged with causing undue injury to the government and giving unwarranted benefits to Merylvyn Publishing House, Inc., through gross inexcusable negligence in not taking legal action to collect the 15% royalty fee of P3,366,250.00 approved by the KWF Board to be levied against the publisher for its unauthorized reprinting and selling of the dictionary.^[8]

Instead of filing her counter-affidavit/verified answer, respondent moved to dismiss the administrative case on grounds of *litis pendentia* and forum shopping in view of the pending Sandiganbayan case. The PAGC denied respondent's motion to dismiss

and recommended respondent's dismissal from the service, forfeiture of financial benefits, and disqualification from joining the government.

On April 11, 2003, petitioner adopted PAGC's recommendation and dismissed respondent from office.^[9] It held as inapplicable the doctrines of *litis pendentia* and forum shopping because the Sandiganbayan case was criminal, while the PAGC case was administrative, in nature. It also ruled that respondent was deemed to have admitted the material averments of PAGC's complaint when she did not specifically deny them, despite an opportunity to do so.

Respondent moved for reconsideration^[10] but was denied. Hence, she filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 78279.^[11]

The Court of Appeals granted respondent's petition in its assailed Decision dated May 27, 2005 holding that the proceedings before the PAGC were procedurally and substantially flawed because after denying respondent's motion to dismiss, the PAGC did not give respondent the opportunity to present evidence. Instead, it proceeded to rule on the merits of the case. The Court of Appeals also found no evidence to prove respondent's administrative liability in not collecting the 15% royalty fee. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed Resolutions dated April ^[11], 2003 and June 26, 2003 are SET ASIDE. The charge/complaint against petitioner Nita P. Buenaobra is hereby ordered DISMISSED for complete lack of evidence against the petitioner.

SO ORDERED.^[12]

Petitioner's motion for reconsideration was denied, hence, the instant petition.

Petitioner argues that respondent was a presidential appointee and a holder of a non-career service position, hence, she could be removed from the service at the pleasure of the President.

The petition lacks merit.

Republic Act (R.A.) No. 7104^[13] creating the Commission on the Filipino Language provides for 11 commissioners to be headed by a chairman and all appointed by the President.^[14] The chairman and two commissioners shall serve full-time for a term of seven years.

Under Section 4, Article IV, of Presidential Decree (P.D.) No. 807, or the Civil Service Decree, positions in the civil service are classified into career service and non-career service. Section 6 of same article describes a non-career service employee or officer as follows:

Sec. 6. The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) **tenure which is limited to a period specified by law**, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of

a particular project for which purpose employment was made.

The Non-Career Service shall include:

x x x x

3. Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
(Emphasis added)

x x x x

Based on the foregoing, respondent who is the Chairman of the KWP is a non-career service personnel whose tenure is limited to seven years as provided under R.A. No. 7104. Since her tenure is fixed by law, her removal from office is not at the pleasure of the appointing authority.

We have consistently ruled that non-career service personnel enjoy security of tenure. They may not be removed without just cause and non-observance of due process. Thus, in *Jocom v. Regalado*,^[15] we held:

Regardless of the classification of the position held by a government employee covered by civil service rules, be it a career or non-career position, such employee may not be removed without just cause. **An employee who belongs to the non-career service is protected from removal or suspension without just cause and non-observance of due process.**

x x x x

The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office, or expiration of the project for which the employment was extended.
(Emphasis supplied)

Moreover, there is no showing that respondent's failure to file suit to collect the royalty fee prejudiced the government. In its assailed Resolution dated June 26, 2003, petitioner held that there was a PAGC "categorical finding"^[16] of violation of Sec. 3(e) of R.A. No. 3019. However, it was a bare conclusion by the PAGC in violation of Sec. 5, Rule VII, Part III of the PAGC New Rules of Procedure,^[17] that in every case, the "Commission shall use any and all reasonable means to ascertain the facts in each case or complaint speedily and objectively and without regard to technicalities of law or procedure, in all instances observing due process."

More important, Sec. 2, Rule VIII, Part IV of the PAGC rules requires that its report and recommendation to the President "shall state, among others, the factual findings and legal conclusions, as well as the penalty recommended to be imposed or such other action that may be taken." PAGC concluded that respondent violated R.A. No. 3019, without any factual findings at all.