

FIRST DIVISION

[G.R. No. 196564, August 07, 2017]

**GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),
PETITIONER, VS. ALBERT M. VELASCO, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

A government employer must exercise its management prerogatives and its authority to discipline employees in good faith and in accordance with the principles of fair play as expected of all employers.

Shortly after having been perpetually restrained by the Court of Appeals^[1] from hearing and investigating the pending administrative cases against union president Albert M. Velasco (Velasco) and his colleague Mario I. Molina (Molina), then Government Service Insurance System (GSIS) President and General Manager Winston F. Garcia (PGM Garcia) dropped respondent Velasco from the roll of employees anyway following a new set of formal charges: the first charging him for **Gross Discourtesy** for doing his duty as president of the employee's union of asserting a contractual right under the Collective Negotiation Agreement (CNA), and second for **Insubordination** for seeking clarification with regard to two conflicting memoranda: one declaring him ineligible to remain as GSIS Attorney during his term as union president and another reassigning him as GSIS Attorney to the GSIS Zamboanga, Iligan and Cotabato field offices (where he clearly cannot perform his duties as union president). **Velasco was dropped from the roll of employees neither for the charge of Gross Discourtesy nor the charge of Insubordination but for a different basis altogether, i.e., being supposedly absent without approved leave for more than thirty (30) days despite his reporting for work in the Head Office instead of the Zamboanga, Iligan and Cotabato field offices.**

In this Petition for Review on *Certiorari*, petitioner GSIS assails the Court of Appeals Decision^[2] in CA-G.R. SP No. 86365 dated November 30, 2010. The Court of Appeals, acting on a Petition for *Certiorari* and Prohibition (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction) filed by herein respondent Velasco against the officers of petitioner GSIS, declared the following void:

- 1) GSIS OSVP Office Order No. 04-04 dated July 1, 2004 reassigning Velasco from the head office of the GSIS in Pasay City to its field offices in Zamboanga, Iligan and Cotabato;
- 2) The Formal Charge docketed as Adm. Case No. 04-010 against Velasco for Insubordination;

3) The Formal Charge docketed as Adm. Case No. 04-009 against Velasco for Gross Discourtesy in the Course of Official Duty; and

4) The dropping of Velasco from the GSIS roll of employees.

The Court of Appeals also directed the GSIS to effect the reinstatement of Velasco to his former position or, if it is no longer feasible, to another position of equivalent rank and compensation. The GSIS was likewise ordered to pay Velasco his back salaries pertaining to the period during which he was unlawfully dropped from the roll of employees.

FACTUAL AND PROCEDURAL ANTECEDENTS

(1) Our Ruling in G.R. Nos. 157383 and 174137 mentioned by the Court of Appeals in its Decision

PGM Garcia filed administrative charges against Velasco and Molina, who both held the position of Attorney V in the GSIS. Velasco and Molina allegedly committed grave misconduct for helping disgruntled employees to conduct concerted protest actions against PGM Garcia and the GSIS management. PGM Garcia ordered the immediate preventive suspension of Velasco and Molina for a period of ninety (90) days without pay. A committee was constituted to investigate the charges against Velasco and Molina.

Velasco and Molina filed with the Civil Service Commission (CSC) a "Petition to Transfer Investigation to [the] Commission, with an Urgent Motion to Lift Preventive Suspension Order."

The CSC failed to resolve Velasco and Molina's Urgent Motion, leading them to file with the Court of Appeals on October 10, 2002 a Petition for *Certiorari* and Prohibition with prayer for a Temporary Restraining Order (TRO). The Petition, docketed as **CA-G.R. SP No. 73170**, sought to set aside the order of PGM Garcia directing them to submit to the jurisdiction of the committee created to investigate the administrative cases filed against them.

On **January 2, 2003**, the Court of Appeals rendered its Decision granting Velasco and Molina's petition. The dispositive portion of the Decision reads:

ACCORDINGLY, the petition is hereby GRANTED. Public respondents are hereby PERPETUALLY RESTRAINED from hearing and investigating the administrative case against petitioners, without prejudice to pursuing the same with the Civil Service Commission or any other agency of government as may be allowed x x x by law.^[3]

PGM Garcia filed with this Court a Petition for Review on *Certiorari* assailing the Decision of the Court of Appeals. The Petition was docketed as G.R. No. 157383.

Finally, acting on Velasco and Molina's Petition to Transfer Investigation to the Commission, the CSC issued its Resolution No. 03-0278 on February 27, 2003, the dispositive portion of which states:

WHEREFORE, the Commission hereby rules that:

1. The Urgent Petition to Lift the Order of Preventive Suspension is hereby DENIED for having become moot and academic.
2. The Petition to Transfer Investigation to the Commission is likewise DENIED for lack of merit. Accordingly, GSIS President and General Manager Winston F. Garcia is directed to continue the conduct of the formal investigation of the charges against respondents-petitioners Albert Velasco and Mario I. Molina.^[4]

The CSC ruled that since the period of the preventive suspension has lapsed, the issue has become moot. The Petition to Transfer Investigation to the Commission was denied on the ground that the fact that the GSIS acted as complainant, prosecutor, and judge in the administrative cases does not necessarily mean that it will not be impartial.

Velasco and Molina assailed the CSC Resolution in a Petition for Review with the Court of Appeals, which was docketed as **CA-G.R. SP No. 75973**. On **December 7, 2005**, the Court of Appeals rendered its Decision reversing the CSC Resolution, and holding that the lack of the requisite preliminary investigation rendered the formal charges against Velasco and Molina void. The Court of Appeals likewise ruled that the propriety of the preventive suspension has *not* become moot. Since the preventive suspension emanated from void formal charges, Velasco and Molina are entitled to back salaries. The dispositive portion of the Decision reads:

PREMISES CONSIDERED, the petition is hereby **GRANTED**. The formal charges filed by the President and General Manager of the GSIS against petitioners, and necessarily, the order of preventive suspension emanating therefrom, are declared **NULL AND VOID**. The GSIS is hereby directed to pay petitioners' back salaries pertaining to the period during which they were unlawfully suspended. x x x.^[5]

PGM Garcia filed a Petition for *Certiorari* with this Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 75973. The petition was docketed as G.R. No. 174137, which was consolidated with G.R. No. 157383.

This Court rendered its Decision on the consolidated petitions on August 10, 2010. The dispositive portion of this Court's Decision reads:

WHEREFORE, premises considered, the petition in G.R. No. 157383 is DENIED while the petition in G.R. No. 174137 is DISMISSED, for lack of merit.^[6]

This Court held that although the President and General Manager of the GSIS is vested with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause, such power is not without limitations and must be exercised in accordance with Civil Service Rules, which PGM Garcia neglected to do. This Court explained:

Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three days from receipt. The use of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment *in flagrante* as claimed by petitioner.

This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a *prima facie* case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a *prima facie* case against respondents.

To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law. Not even the fact that the charges against them are serious and evidence of their guilt is — in the opinion of their superior — strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case. The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment **violated the latter's right to due process. Hence, the formal charges are void *ab initio* and**

may be assailed directly or indirectly at anytime.^[7] (Emphasis supplied; citations omitted.)

On PGM Garcia's argument that Velasco and Molina waived their right to a preliminary investigation for failure to raise the matter before the GSIS, this Court ruled that a decision held without due process is void *ab initio* and may be attacked anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked. Moreover, Velasco and Molina questioned the validity of their preventive suspension in the CSC on the ground of lack of preliminary investigation.

This Court concluded that since Velasco and Molina were preventively suspended in the same formal charges that were declared void, **their preventive suspension is likewise invalid.**

(2) Two Conflicting Memoranda

In the meantime, **after the January 2, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 73170** perpetually restraining PGM Garcia and the GSIS from hearing and investigating the administrative cases against Velasco and Molina, **but before said restraining order was affirmed by this Court on August 10, 2010**, the GSIS issued two conflicting Memoranda to Velasco:

(a) On June 29, 2004, GSIS Senior Vice-President-Administration Group Concepcion L. Madarang issued a Memorandum informing Velasco (who was elected President of the Kapisanan ng mga Manggagawa sa GSIS or KMG in May 2004) that **he could no longer hold the position of GSIS Attorney because of conflict of interest and he should either seek a transfer to another position or go on extended leave of absence for the duration of his term as union president;** and

(b) A mere two days later or on July 1, 2004, the GSIS Chief Legal Counsel issued OSVP Office Order No. 04-04, which provided:

Upon request by the SVP, FOG, as required by the exigencies of the service, and in view of the technical supervision and control of the Chief Legal Counsel over Field Operations Attorneys and Lawyers of the System, ATTY. ALBERT M. VELASCO, considering his legal expertise on the System's operations, is temporarily **assigned for a period of ninety (90) days to the Zamboanga, Iligan and Cotabato FODs to augment the legal officers in the said FODs** due to the surmounting number of legal cases therein and shall conduct legal due diligence of cases pertaining to the System's operating concerns specifically involving housing loan defaults, collection of arrearages, foreclosure proceedings, and other matters requiring legal attention.

He shall submit written reports, with proper recommendation/s, if needed, to the Field Office Manager concerned to whom he shall report directly and who shall sign his Daily Attendance Record (DAR).