

EN BANC

[G.R. No. 194192, June 16, 2015]

DAVAO CITY WATER DISTRICT REPRESENTED BY ITS GENERAL MANAGER, RODORA N. GAMBOA, PETITIONER, VS. RODRIGO L. ARANJUEZ, GREGORIO S. CAGULA, CELESTINO A. BONDOC, DANILO L. BUHAY, PEDRO E. ALCALA, JOSEPH A. VALDEZ, TITO V. SABANGAN, MARCELINO B. ANINO, JUANITO C. PANSACALA, JOEMARIE B. ALBA, ANTERO M. YMAS, ROLANDO L. LARGO, RENEBOY U. ESTEBAN, MANUEL B. LIBANG, ROMEORICO A. LLANOS, ARTHUR C. BACHILLER, SOCRATES V. CORCUERA, ALEJANDRO C. PICHON, GRACIANO A. MONCADA, ROLANDO K. ESCORIAL, NOEL A. DAGALE, EMILIO S. MOLINA, SHERWIN S. SOLAMO, FULGENCIO I. DYGUAZO, GUALBERTO S. PAGATPAT, JOSEPH B. ARTAJO, FELIXBERTO Q. OBENZA, FLORANTE A. FERRAREN, ELSA A. ELORDE, CARLOS P. MORRE, JAMES AQUILINO M. COLOMA, JOAQUIN O. CADORNA, JR., LORNA M. MAXINO, ROMULO A. REYES, NOEL G. LEGASPI, ELEANOR R. LAMOSTE, WELMER E. CRASCO, DELIO T. OLAER, VICENTE R. MASUCOL, IRENEO A. CUBAL, EDWIN A. DELA PENA, JIMMY A. TROCIO, WILFREDO L. TORREON, ALEJANDRITO M. ALO, RAUL S. SAGA, JOSELITO P. RICONALLA, TRISEBAL Q. AGUILAR, ARMAN N. LORENZO, SR. AND PEDRO C. GUNTING, RESPONDENTS.

RESOLUTION

PEREZ, J.:

This is a Petition for Review on *Certiorari*^[1] of the Decision^[2] of the Twenty Third Division of the Court of Appeals in CA-G.R. SP No. 02793-MIN dated 7 October 2010, affirming the 14 January 2009 Resolution No. 09-0047 rendered by the Civil Service Commission (CSC).

The Facts

Petitioner Davao City Water District (DCWD) is a government-owned and controlled corporation in Davao City represented by its General Manager Engr. Rodora N. Gamboa (GM Gamboa).

The private respondents, namely, Rodrigo L. Aranjuez, Gregorio S. Cagula, Celestino A. Bondoc, Danilo L. Buhay, Pedro E. Alcala, Joseph A. Valdez, Tito V. Sabangan, Marcelino B. Anino, Juanito C. Pansacala, Joemarie B. Alba, Antero M. Ymas, Rolando L. Largo, Reneboy U. Esteban, Manuel B. Libang, Romeorico A. Llanos, Arthur C. Bachiller, Socrates V. Corcuera, Alejandro C. Pichon, Graciano A. Moncada, Rolando K. Escorial, Noel A. Dagale, Emilio S. Molina, Sherwin S. Solamo, Fulgencio I. Dyguazo, Gualberto S. Pagatpat, Joseph B. Artajo, Felixberto Q. Obenza, Florante A. Ferraren, Elsa A. Elorde, Carlos P. Morre, James Aquilino M. Coloma, Joaquin O.

Cadorna, Jr., Lorna M. Maxino, Romulo A. Reyes, Noel G. Legaspi, Eleanor R. Lamoste, Welmer E. Crasco, Delio T. Olaer, Vicente R. Masucol, Ireneo A. Cubal, Edwin A. dela Pena, Jimmy A. Trocio, Wilfredo L. Torreon, Alejandrito M. Alo, Raul S. Saga, Joselito P. Riconalla, Trisebal Q. Aguilar, Arman N. Lorenzo, Sr. and Pedro C. Gunting (Aranjuez, *et al.*) are officers and members of *Nagkahiusang Mamumuo sa Davao City Water District* (NAMADACWAD). They were charged with several administrative cases due to acts committed during the anniversary celebration of DCWD such as wearing of t-shirts with inscriptions and posting of bond papers outside the designated places. The inscriptions and postings bore employees' grievances.

The records show that as early as 16 May 2007, the members and officers of NAMADACWAD have been staging pickets in front of the DCWD Office during their lunch breaks to air their grievances about the non-payment of their Collective Negotiation Agreement (CNA) incentives and their opposition to DCWD's privatization and proposed One Hundred Million Peso Loan.

On 31 October 2007, GM Gamboa issued an Office Memorandum addressed to all department managers concerning the different activities that would take place during DCWD's then upcoming anniversary celebration. The Memorandum reads:

Please be informed that the opening activities of our 34th anniversary this coming 09 November 2007 are the motorcade and the fun run. The assembly area will be at the Victoria Plaza Mall parking, in front of Cynthia's Lechon Hauz, 6:00 o'clock in the morning.

In view of this, everybody is expected to be there except only those who are assigned as a skeletal force. All carpool vehicles are also enjoined to proceed at the said area. The participants are free to wear any sports attire. Further, you are advised to sign in the attendance sheet provided by the HRD.^[3]

On 8 November 2007, the officers and members of NAMADACWAD held an Emergency General Assembly and they agreed to wear NAMADACWAD t-shirts with inscriptions stating, "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na!*" on the day of the anniversary.^[4]

Came the anniversary, officers and members sported t-shirts with inscriptions "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na!*" at the beginning of the Fun Run at Victoria Plaza at around 6:30 in the morning and continued to wear the same inside the premises of the DCWD office during the office hours. Also, one of the members of the Board of Directors of NAMADACWAD Gregorio S. Cagula (Cagula), with the help of some of its members, attached similar inscriptions and posters of employees' grievances to a post in the motor pool area, an area not among the officially designated places^[5] for posting of grievances as prescribed by DCWD's Office Memorandum^[6] dated 8 February 1996 and pursuant to CSC Memorandum Circular No. 33,^[7] Series of 1994 (MC No. 33).^[8]

As a consequence of their actions, GM Gamboa sent a Memorandum dated 14 November 2007 addressed to the officers and members of NAMADACWAD, requiring them to explain the reasons for the attire they wore during the anniversary

celebration. Through a collective letter dated 19 November 2007, the officers and members explained that the Memorandum only required the employees to wear any sports attire, though theirs were with additional inscriptions containing grievances. They countered that the inscriptions were but manifestations of their constitutional rights of free speech and freedom of expression.^[9]

On 23 November 2007, another Memorandum was sent to the officers of NAMADACWAD requiring them to explain within 72-hours why they should not be held liable for the actions committed by Cagula.^[10]

Finding *prima facie* case against them, GM Gamboa filed formal charges against the officers and members of NAMADACWAD as follow:

1. For DCWD Administrative Case No. 34-2007 against the officials of NAMADACWAD for violation of Existing Civil Service Law and Rules of Serious Nature defined under Section 46 [12], Book V of Executive Order No. 292,^[11] in relation to Rule IV, Section 52 B [4] of the Civil Service Resolution No. 991936^[12] dated August 31, 1999 and Civil Service Resolution No. 021316^[13] dated October 11, 2002 and MC No. 33 dated October 21, 1994.^[14]
2. For DCWD Administrative Case Nos. 11-2007 to 33-2007 and 35-2007 to 44-2007 involving the individual members of NAMADACWAD for violation of Existing Civil Service Law and Rules of Serious Nature defined under Section 46 [12], Book V of Executive Order No. 292,^[15] in relation to Rule IV, Section 52 B [4] of the Civil Service Resolution No. 991936 dated August 31, 1999 and Civil Service Resolution No. 021316 dated October 11, 2002.

After giving those concerned the opportunity to explain through several hearings and submission of additional evidence, the Hearing Committee, through the authority given by DCWD to hear the administrative charges, filed on 14 March 2008 its Consolidated Resolution and Recommendation finding the officers and members of the NAMADACWAD guilty as charged with penalties ranging from suspension to dismissal from service with all accessory penalties under the CSC Law and Rules.^[16]

On 19 March 2008, GM Gamboa issued several Orders^[17] adopting the recommendation submitted by the Hearing Committee but modifying some of the corresponding penalties in view of mitigating circumstances such as *first infraction* and *substantial justice*. However, three officials namely Rodrigo L. Aranjuez, Cagula and Celestino A. Bondoc were penalized with dismissal from the service for the reason that the infraction was the second administrative offense of serious nature.^[18]

Aggrieved, Aranjuez, *et al.*, filed an Urgent Motion for Reconsideration^[19] with Prayer to Suspend the Immediate Execution of the Orders dated 19 March 2008. The Motion for Reconsideration was thereafter submitted for resolution after the Hearing Committee waived the filing of a Comment. On 17 April 2008, the Motion was denied by DCWD.

On 2 May 2008, Aranjuez, *et al.*, filed an appeal before the CSC bringing up, among other issues, the violation of their constitutional rights to assemble and petition for

redress of grievances.^[20]

In its Comment, DCWD defended the Orders on the basis of Section 6 of CSC Resolution No. 021316^[21] which provides that the concerted activity like the participation of the officers and employees during the fun run wearing t-shirts with inscriptions was prohibited because it was done during office hours; Moreover, the act of Cagula in posting papers with grievances outside the designated areas was a clear violation of MC No. 33 in relation to 8 February 1996 Office Memorandum. It was submitted that due to Cagula's membership in the Board of Directors of NAMADACWAD, the other officers were solidarity responsible for his actions.^[22]

CSC Resolution

On 14 January 2009, CSC issued a Resolution^[23] partly granting the consolidated appeal and held that the collective act of respondents in wearing t-shirts with grievance inscriptions during office hours was not within the ambit of the definition of prohibited mass action punishable under CSC Resolution 021316 since there was no intent to cause work stoppage. However, though not prohibited under the Resolution, the act was considered as an offense punishable under "Violation of Reasonable Office Rules and Regulations." CSC further ruled that Cagula's act of posting of grievances outside the designated areas was a clear violation of MC No. 33. By reason of Cagula's position, the other officers of NAMADACWAD were considered as having agreed and conspired to commit the said act and as such are as liable as Cagula.

On the other hand, and contrary to the assertions of DCWD, the violations committed by the private respondents are not serious in nature due to the lack of any abusive, vulgar, defamatory or libelous language. The dispositive portion reads:

WHEREFORE, the Consolidated Appeal filed by Rodrigo L. Aranjuez, *et al.* is PARTLY GRANTED. The Orders dated March 19, 2008 issued by the General Manager Rodora N. Gamboa finding appellants guilty of Violation of Existing Civil Service Law and Rules of Serious Nature (Section 46 [12] Book V of Executive Order No. 292, in relation to Rule IV, Section 52 B [4] of the CSC Resolution No. 991936 dated August 31, 1999 and CSC Resolution No. 021316 dated October 11, 2002 and CSC MC No. 33 dated October 21, 1994), are hereby MODIFIED. Accordingly, appellants are hereby found liable for Violation of Reasonable Office Rules and Regulations and are meted the following penalties, to wit:

1. As to members Danilo Buhay, Pedro E. Alcala, Joseph A. Valdez, Tito V. Sabangan, Marcelino B. Anino, Juanito C. Pansacala, Joemarie B. Alba, Antero M. Ymas, Rolando L. Largo, Reneboy U. Esteban, Manuel B. Libang, Romeorico A. Llanos, Arthur C. Bachiller, Socrates V. Corcuera, Alejandro C. Pichon, Graciano A. Moncada, Rolando Escorial, Noel A. Dagale, Emilio S. Molina, Sherwin S. Solano, Danilo L. Buhay and Fulgencio I. Dyguazo, the penalty of reprimand;
2. As to officers Gualberta S. Pagatpat, Joseph A. Artalo, Felixberto Q. Obenza, Florante A. Ferraren, Elsa A. Horde, Carlos P. Morre, James Aquilino M. Coloma, Joacquin O. Cadorna, Jr., Lorna M. Maximo,

Romulo A. Reyes, Noel G. Legazpi, Eleanor R. Lamoste, Welmer E. Crasco, Delio T. Olaer, Vicente R. Masucol, Ireneo Cubal, Rodrigo L. Aranjuez, Gregorio S. Cagula and Celestino A. Bondoc, the penalty of reprimand and strong warning that a repetition of the same shall be dealt with severely.

3. As to members Edwin A. dela Pena, Jummy A. Trocio, Wilfredo A. Torreon, Alejandrito M. Alo, Raul S. Saga, Joselito P. Riconalla, Trisebal Q. Aguilar, Arman L. Lorenzo, Sr. and Pedro C. Gunting, they are likewise found guilty of the offense of Violation of Reasonable Office Rules and Regulations but are not meted a penalty considering that they are casual employees whose renewal of appointments were held in abeyance.^[24]

Aggrieved, DCWD filed a Petition for Review under Rules 43 before the Court of Appeals alleging procedural and substantive infirmities of the CSC Resolution.

The Court of Appeals' Decision

In its decision, the Court of Appeals affirmed *in toto*^[25] the resolution of CSC.

The appellate court disagreed with the contention of DCWD that there was a violation of any provision of Resolution No. 021316 in this wise:

As correctly observed by the *Civil Service Commission*, the act of respondents in sporting a t-shirt with the inscription "CNA INCENTIVE IHATAG NA, DIRECTOR BRAGANZA, PAHAWA NA!" during the fun run and even inside the office premises hardly qualifies as a prohibited concerted mass action under *CSC Resolution No. 021316*.

x x x x

To say the least, Section 5 of Resolution No. 01316 provides a specific guideline as to what constitutes a prohibited concerted activity. A prohibited concerted activity must be one undertaken by government employees, by themselves or through their association, with the intent of effecting work stoppage or service disruption, in order to realize their demands or force concessions. In the case at hand, we can readily observe that respondent's participation in the fun run, as well as their behavior inside the premises of DCWD office during the regular working hours of that day indicate a complete absence of any intention on their part to effect a work stoppage or disturbance. In fact, as attested by both parties, all the respondents participated with the planned activities and festivities on that day.^[26]

The appellate court was likewise in agreement with the CSC which considered as simple violation of office rules the posting of banners outside the designated posting areas by Cagula. Also like the CSC, it ruled that such offense is not punishable with the penalty of dismissal.

The DCWD is now before us still with its basic arguments, though rephrased: