

## EN BANC

[ G.R. No. 174321, October 22, 2013 ]

**ROLANDO GANZON, PETITIONER, VS. FERNANDO ARLOS,  
RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

A government employee who is found guilty of grave misconduct may be dismissed from the service even upon the first offense.

#### The Case

Petitioner Rolando Ganzon, an employee of the Department of Interior and Local Government (DILG), seeks the reversal of his dismissal from the service and the accessory penalties on the ground of grave misconduct.

#### Antecedents

The DILG Regional Office in Port San Pedro, Iloilo City held its Christmas party on December 17, 1999 at the office parking lot. When the Christmas party was about to end at 7:30 in the evening, respondent Fernando Arlos (Arlos), then the OIC Provincial Director of DILG, left to get some documents from the Office of the Operations Division located at the second floor of the building. While Arlos was making his way to the stairs, Ganzon suddenly approached and pulled out a short firearm of unknown caliber from his waist and with no provocation pointed the firearm at Arlos, angrily shouting in Ilongo: *Nanding, hulat anay. Diin ang boss mo? Nga-a nga wala man nya ako guin-patawag?*<sup>[1]</sup> Arlos responded: *Ato ti sir Orendez sa may program. May kuhaon lang ako sa ibabaw.*<sup>[2]</sup> Arlos parried Ganzon's firearm-wielding hand and tried to proceed towards the stairs, but Ganzon blocked his path, pushed him back, and again pointed the firearm at Arlos' chest. Sensing that Ganzon would shoot him then, Arlos quickly warded off Ganzon's firearm-wielding hand. At that instant, the firearm exploded and the bullet hit the floor. Ganzon again aimed the firearm at Arlos, prompting the latter to run away as fast as he could. Ganzon followed Arlos, and when they got to the gate of the building, Ganzon once more pushed him back and pointed the firearm at him, saying: *Patay ka!*<sup>[3]</sup> Ganzon held the firearm close to his waistline to conceal it from the view of the other people present at the time.

At around 9:45 in the morning of December 21, 1999, Arlos went to the DILG office to see the Regional Director upon the latter's instruction. Ganzon, who was then standing near the entrance to the building, shouted upon seeing Arlos enter the gate: *O, ti ano?*<sup>[4]</sup> obviously still referring to the incident of December 17, 1999. Arlos answered: *Ang kadto ko diri indi away, kundi makigkita ako sa kay Director.*

<sup>[5]</sup>

The incidents of December 17, 1999 and December 21, 1999 impelled Arlos to administratively charge Ganzon with grave misconduct.

On his part, Ganzon denied the charge and elected to undergo a formal investigation. During the formal investigation conducted by Regional Office No. 6 of the Civil Service Commission (CSC Regional Office), the parties agreed that in order to dispense with the presentation of witnesses and other evidence, they would just adopt the evidence presented in the pending criminal prosecution for attempted homicide (Criminal Case No. 648-2000 entitled *People v. Ganzon*) in the Municipal Circuit Trial Court (Branch 1) in Iloilo City arising from the same incident.<sup>[6]</sup> Accordingly, Arlos was directed to submit the complete transcripts of stenographic notes of the proceedings in Criminal Case No. 648-2000.

The witnesses for the Prosecution in Criminal Case No. 648-2000 were Arlos, DILG employee Nestor Sayno, DILG Provincial Director Eliseo Orendez, and Fernando Totesora, Jr., the security guard then assigned at the DILG Regional Office. They attested to what had transpired in the evening of December 17, 1999, specifically, that Ganzon had threatened and aimed a firearm at Arlos.<sup>[7]</sup>

In his turn, Ganzon presented himself and two others, namely, Bobby Pepino, also an employee of the DILG Regional Office, and Voltaire Guides.<sup>[8]</sup> They described a different version of the incident, to wit:

ROLANDO GANZON testified that he is presently assigned with the Planning Unit of DILG. He has been connected with the DILG for twenty-five (25) years. From 1994 to 1999 he was assigned as DILG Officer of the Municipality of Barotac Viejo, Iloilo. In September 1999, he transferred to the Regional Office. On December 17, 1999, about 7:30 in the evening, he was with Bobby Pepino and Voltaire Guides waiting for the drinks to be served to guests in their Christmas Party. Fernando Arlos arrived and asked them what they were doing at the lobby. He answered that they were waiting for the drinks to be served.

Fernando said that they should be getting better performance ratings. He immediately responded that sometimes performance ratings are disregarded or even changed. Fernando got angry, and in order to avoid further discussion, Rolando stood up. At that time, guests were starting to arrive. Fernando pushed his body against Rolando at the same time raising his right hand. Rolando held his hand; Fernando raised his left but again Rolando held it. They then pushed and shoved each other to the gate.

At the gate, Fernando immediately left. Rolando went back to the administrative office to take his dinner. After eating, he went to the quadrangle to watch the program. At the quadrangle, he saw Provincial Director Orendez, Regional Director Reyes, and Presidential Consultant Jonathan Sanico. He stayed there up to 2 o'clock in the morning. During that time no policeman came to arrest him.

He further testified that before the incident he had no grudge or ill feeling against Fernando Arlos. He also testified about the hole located at the lobby of the Regional Office. He said that no shell or slug was recovered in connection with the subject incident. He testified about the change made on his performance rating and that he would often meet Fernando Arlos and no altercation or heated argument transpired between them.<sup>[9]</sup>

### **Ruling of CSC Regional Office**

On February 7, 2002, the CSC Regional Office rendered its decision finding Ganzon guilty of grave misconduct, ruling thusly:

WHEREFORE, Rolando Ganzon is hereby found guilty of Grave Misconduct and meted out the penalty of dismissal from the service with all its accessory penalties.

Let copies of this Decision be furnished Fernando Arlos, Rolando Ganzon, Atty. Virgilio Teruel, Atty. Rey Padilla, Director Rexdito Reyes of DILG Regional Office No. 6, Iloilo City, the GSIS Branch Manager in Iloilo City and Director Purita H. Escobia of CSC Iloilo Provincial Office at their known addresses.<sup>[10]</sup>

### **Ruling of CSC Main**

Ganzon appealed to the Civil Service Commission Main Office (CSC), which affirmed the contested ruling of the CSC Regional Office on January 27, 2004, to wit:

**WHEREFORE**, the instant appeal is hereby **DISMISSED**. The decision of the Civil Service Regional Office No. VI finding Rolando Ganzon guilty of grave misconduct and penalizing him with dismissal from the service, is affirmed in all aspects. It should be understood that the penalty of dismissal as imposed in this case carries with it such accessory penalties as forfeiture of retirement benefits, and disqualification from public employment.<sup>[11]</sup>

Ganzon moved for a reconsideration, but his motion to that effect was denied through the resolution dated November 9, 2004.

### **Ruling of the Court of Appeals**

Ganzon appealed by petition for review in the Court of Appeals (CA), submitting the following issues, namely:

1. WHETHER OR NOT THE ACT ALLEGEDLY COMMITTED BY THE PETITIONER WAS ESSENTIALLY CONNECTED WITH THE PERFORMANCE OF HIS OFFICIAL DUTIES.

2. WHETHER OR NOT THE OFFENSE CHARGED CAN BE CONSIDERED AS SERVICE CONNECTED DESPITE THE FACT THAT IT IS NOT ESSENTIALLY CONNECTED WITH THE OFFICE OF THE PETITIONER AND WAS NOT PERPETRATED WHILE IN PERFORMANCE OF HIS OFFICIAL FUNCTION.

3. WHETHER OR NOT THE CIVIL SERVICE COMMISSION CAN HOLD LIABLE THE PETITIONER FOR GRAVE MISCONDUCT DESPITE HIS ACQUITTAL IN THE CRIMINAL CASE FILED AGAINST HIM.

4. WHETHER OR NOT THE PENALTY OF DISMISSAL IS UNJUST AND EXCESSIVE.<sup>[12]</sup>

On February 15, 2006, the CA promulgated its assailed decision affirming the ruling of the CSC,<sup>[13]</sup> thus:

**WHEREFORE**, finding no merit in the present petition, the same is hereby **DISMISSED** and the assailed judgments **AFFIRMED in toto**. Costs against petitioner.

**SO ORDERED.**

On August 3, 2006, the CA denied Ganzon's motion for reconsideration.<sup>[14]</sup>

### **Issues**

Hence, Ganzon has appealed to the Court upon the following issues:

I.

WHETHER OR NOT ATTENDING A CHRISTMAS PARTY AS REQUIRED BY THE OFFICE IS AN OFFICIAL FUNCTION AND THAT ANY UNTOWARD INCIDENT COMMITTED DURING SUCH CHRISTMAS PARTY IS AUTOMATICALLY CONSIDERED SERVICE RELATED AND THAT THE OFFENDER COULD BE LIABLE FOR GRAVE MISCONDUCT?

II.

WHETHER OR NOT THE ALLEGED ACT COMMITTED BY THE PETITIONER WAS INTIMATELY RELATED TO HIS OFFICE IN ORDER TO CONSIDER IT AS GRAVE MISCONDUCT IN THE CONTEMPLATION OF THE LAW.

III.

WHETHER OR NOT THE PENALTY OF DISMISSAL IS UNJUST AND EXCESSIVE.<sup>[15]</sup>

### **Ruling of the Court**

The appeal has no merit.

Misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.<sup>[16]</sup>

In accordance with Section 46 of Subtitle A, Title I, Book V of the *Administrative Code of 1987* (Executive Order No. 292), misconduct is among the grounds for disciplinary action, but no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. It is cogent to mention that the *Revised Uniform Rules on Administrative Cases in the Civil Service*, which governs the conduct of disciplinary and non-disciplinary proceedings in administrative cases, classifies grave misconduct as a grave administrative offense.<sup>[17]</sup>

Did Ganzon's act of aiming his loaded firearm at Arlos and menacing him with it constitute grave misconduct in the context of the foregoing provisions?

Undoubtedly it did. Drawing and pointing the loaded firearm at Arlos evinced the intent on the part of Ganzon to cause some harm upon Arlos on whom he vented his resentment of the poor performance rating he received. Considering that Ganzon pointed his loaded firearm at Arlos not only once, but four times, Ganzon's menacing acts engendered in the mind of Arlos the well-founded belief that Arlos' life could be in imminent danger. That the firearm exploded when Arlos parried Ganzon's firearm-wielding hand did not help dissipate the belief.

Nonetheless, Ganzon projects that his acts did not constitute grave misconduct in the contemplation of the law because they were not committed in relation to his performance of duty; and that the Christmas party was not an official function as to render any untoward incident committed on the occasion thereof a misconduct. He posits that his offense could exist without the office; and that the holding of the office was not a constituent element of his offense.

We disagree.

The Court stressed in *Largo v. Court of Appeals*<sup>[18]</sup> the criteria that an act, to constitute a misconduct, must not be committed in his private capacity and should bear a direct relation to and be connected with the performance of his official duties.

Ganzon's acts met the criteria in *Largo v. Court of Appeals*. To begin with, he was not acting in a private capacity when he acted menacingly towards Arlos, it being clear that his resentment of his poor performance rating, surely a matter that concerned his performance of duty, motivated his confronting the latter. Moreover, it did not matter that his acts were committed outside of office hours, because they were intimately connected to the office of the offender. An act is intimately connected to the office of the offender if it is committed as the consequence of the performance of the office by him, or if it cannot exist without the office even if