

EN BANC

[G.R. No. 191940, April 12, 2011]

**PHILIPPINE CHARITY SWEEPSTAKES OFFICE BOARD OF DIRECTORS
AND REYNALDO P. MARTIN, PETITIONERS, VS. MARIE JEAN C.
LAPID, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Court filed by petitioners Philippine Charity Sweepstakes Office Board of Directors (*PCSO*) and Reynaldo P. Martin against respondent Marie Jean C. Lapid (*Lapid*). The petition challenges: **(1)** the November 18, 2009 Decision^[1] of the Court of Appeals (*CA*) granting the petition and ordering the reinstatement and retention of the respondent in the service until the expiration of her casual employment, unless she had been earlier dismissed for cause in another case; and **(2)** the April 13, 2010 Resolution^[2] denying the Motion for Reconsideration of petitioners.

THE FACTUAL ANTECEDENTS

(as recited by the Civil Service Commission and adopted by the CA):

Marie Jean C. Lapid [*`Lapid'*], Casual Clerk (Teller), Philippine Charity Sweepstakes Office (*PCSO*), Bataan Provincial District Office, Balanga, Bataan, **appeals** the Decision of the *PCSO*, embodied in Board Resolution No. 340, Series of 2005, dated October 12, 2005, through the *PCSO* Board of Directors, which **found her guilty of Discourtesy** in the Course of Official Duties and **Grave Misconduct** and imposed on her the **penalty of Dismissal from the Service**.

The appealed Decision reads, in part, as follows:

RESOLVED, that the Board of Directors confirms, as it hereby confirms, the recommendation of the Assistant General Managers for On Line Lottery and Administration, and OIC Manager for Northern and Central Luzon, On Line Lottery Sector, the termination of Marie Jean Lapid, as Casual-Teller assigned at the Bataan Provincial District Office for Discourtesy in the Course of Official Duties and Grave Misconduct effective immediately subject to compliance with applicable Civil Service rules and regulations.

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Records show that the present case is rooted on the Sworn Statement executed by Mr. Lolito O. Guemo, Chief Lottery Operations Officer, Philippine Charity Sweepstakes Office (*PCSO*) Bataan Provincial District on June 23,

2005. Said Sworn Statement documented an incident which allegedly occurred on June 17, 2005, wherein respondent-appellant Marie Jean C. Lapid, Casual Clerk (Acting Teller), confronted, badmouthed and shouted invectives at Mr. Guemo, in the presence of other employees and patients seeking assistance from the PCSO-Bataan Provincial District Office. The same document also included the filing of an administrative complaint against appellant, which read, as follows:

'8. That in view of the foregoing, I am filing an administrative charge against Ms. Marie Jean C. Lapid, designated Casual Teller for violation of civil service rules and regulations for Misconduct; Discourtesy of official function (sic);'

Guemo's declaration in his sworn statement was also documented in the Memorandum sent by the former to Josefina Sarsonas, then OIC Manager of the PCSO Northern and Central Luzon Department, dated June 20, 2005. The said Memorandum informed Sarsonas of the incident which occurred in the PCSO-Bataan Provincial District Office on June 17, 2005. Pertinent portions of Guemo's Incident Report, are as follows:

'The facts of the case are as follows: Ms. Jean Lapid was heard crying for unknown reason. Minutes later, she confronted me at the table of Mr. Manuel Arazas, SLOO Accountant while we are discussing about the report to be submitted to the Commission on (sic) Audit. 'I asked Ms. Lapid if she had a problem.' Right then and there, she shouted at me with patients around who were seeking medical assistance. I told her to please calm down and asked her to discuss her problem in front of my table. I tried to give her a seat but she remained standing and again shouting at me and saying something like these (sic), 'Tawagin ninyo na ako sir na bastos wala akong pakialam at talagang bastos ako at magkakabastusan na tayo dito. Inaamin ko na ako ay bastos.' Pero mas bastos ka sa akin dahil tinanggalan ninyo ako ng telepono at iniusog ninyo ang mga lotto supplies malapit sa teller booth para si Tracy Anne ay hindi makagtrabaho (sic) doon. Pinapagamit ninyo sa kanya ang maliit na office table na ayaw naman niya. Then she continued saying with high tone without due respect to the undersigned and shouting bastos ka, bastos ka, while she was finger pointing at me.'

The foregoing incident report was also signed by six (6) employees of the PCSO-Bataan Provincial District Office, as witnesses. The information contained in the Incident Report and Sworn Statement of Guemo was also echoed in the incident report of Security Guard Jayson M. Enriquez, who was assigned to the PCSO-Bataan Provincial District Office at the time of the incident.

On **June 20, 2005**, Guemo sent a Memorandum to respondent-appellant Lapid, requiring her to explain in writing within seventy two (72) hours why no administrative charges should be filed against her as a result of the June 17, 2005 incident. Lapid was also furnished with a copy of the incident

report. On June 24, 2005, respondent-appellant submitted her reply to Guemo's June 20, 2005 Memorandum. In respondent-appellant's reply she denied the events, as stated in Guemo's incident report, and gave her own version of the incident. Lapid also alluded to the filing of a case against Guemo with this Commission for harassment, insulting behavior, discourtesy and oppression.

The PCSO Legal Department, through Investigating Officer Atty. Victor M. Manlapaz, sent a Memorandum to Lapid on **June 27, 2005**, asking the latter to respond to the Affidavit-Complaint of Guemo. Respondent-appellant submitted her 'Answer, with Comment and Motion and Motion to Dismiss' on **July 19, 2005**. In her Answer, Lapid stated that Guemo's complaint against her must be dismissed on the ground that the said complaint does not conform to the essential requisites prescribed by Section 8 of the Uniform Rules in Administrative Cases in the Civil Service. She also asserted that the administrative offense of 'Discourtesy of Official Function' does not exist under Civil Service Rules. Complainant Guemo filed his reply to the Answer of respondent-appellant on July 29, 2005.

On **August 11, 2005**, the Legal Department of the PCSO submitted its recommendation to the PCSO General Manager and Board of Directors for the issuance of the Formal Charge against respondent-appellant for Discourtesy in the Course of Official Duties and Grave Misconduct. x x x.

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The PCSO also submitted a copy of the Resolution of the Legal Department signed by Atty. Victor M. Manlapaz, Investigating Officer, on the issuance of the Formal Charge, as well as an unsigned copy of the Formal Charge, with PCSO General Manager Rosario Uriarte as signatory. Both documents are dated **August 11, 2005**.

On August 31, 2005, Guemo, again, sent a Memorandum to Sarsonas, to report an incident which occurred on August 31, 2005 involving respondent-appellant. In the Incident Report, Guemo stated that on said date, between 4:10 to 4:20 in the afternoon, respondent-appellant, for no apparent reason or provocation, painted over her name, the name of Tracy Anne Ventura and that of Rolando S. Manlapid in the Organizational Chart of the PCSO-Bataan Provincial District Office. During the said incident, respondent-appellant shouted within the hearing of those present that Guemo ordered her to paint over the name of Manlapid. She also shouted threats and invectives against Guemo. Another incident involving respondent-appellant took place on October 6, 2005, where the latter caused a scene in the office. The incident was again witnessed by her co-employees and some of them also signed as witnesses in the Incident Report that Guemo wrote to PCSO General Manager Rosario C. Uriarte.

In **Resolution No. 340, Series of 2005 dated October 12, 2005**, the PCSO Board of Directors **resolved to confirm the recommendation to terminate** the services of Marie Jean Lapid due to **Discourtesy in the Course of Official Duties and Grave Misconduct**. Respondent-appellant received her Notice of Termination from Reynaldo P. Martin, OIC-Regional Operations Manager of the PCSO on October 17, 2005 with a copy of the PCSO Board Resolution which contained the board decision to terminate her

services. Respondent-appellant moved for reconsideration of the said decision of the PCSO Board on October 20, 2005. The same was denied on January 6, 2006.^[3]

Lapid appealed to the Civil Service Commission (CSC). The CSC, in its Resolution No. 070396 dated March 6, 2007, ^[4] dismissed respondent's appeal. Thus:

Records clearly show that respondent-appellant was never formally charged for the administrative offense of Discourtesy in the Course of Official Duties and Grave Misconduct, for which she was dismissed from service. PCSO's vain attempt to remedy their lapse with the submission of the copy of the unsigned Formal Charge with their Comment must be censured. However, PCSO's failure to observe due process is irrelevant in this present case and the real issue for the Commission's determination is the termination of Lapid's casual employment.

Based on the status of Lapid's employment [as] a casual employee, this Commission finds this present appeal moot and academic and all proceedings conducted pursuant to the aforementioned incidents, bereft of any legal effects.

The **Revised Omnibus Rules on Appointments and Other Personnel Actions** which is implemented in **CSC Memorandum Circular No., 40 (sic), s. 1998** provides a definition of a casual employment in **Rule III, Section 2(f)**, to wit:

'f. Casual - issued only for essential and necessary services where there are not enough regular staff to meet the demands of the service.'

Further, the fact that Lapid was employed by the PCSO as a casual employee, means that she does not enjoy security of tenure. Lapid's services are terminable anytime, there being no need to show cause. **Lapid's allegations that there is no substantial evidence** to sustain the finding of her guilt for Grave Misconduct and her dismissal from the service **is irrelevant** in the present case **as she is a casual employee, without any security of tenure**. Hence, she may be separated from service at any time (**Erasmio vs. Home Insurance and Guaranty Corporation, 38 SCRA 122**).

This Commission, in **RODRIGO, Filma A., CSC Resolution No. 011947 dated September 10, 2001**, cited in **LECCIO, Nemia E., CSC Resolution No. 030858 dated August 8, 2003**, ruled as follows:

'The fact that she was in the employ of the municipal government as a casual employee, which she admitted in her appeal, means that she enjoys no tenurial security granted by the Constitution. Her services are terminable anytime, there being no need to show cause. Her invocation of alleged political motivation or color underlying her ouster cannot afford her any relief for the same does not alter the fact that hers was a casual employment, devoid

of security of tenure.'

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WHEREFORE, the present administrative case against Marie Jean C. Lapid is hereby declared **MOOT AND ACADEMIC**. The appeal is hereby **DISMISSED** for lack of merit. [Emphases Supplied]

Respondent Lapid moved for a reconsideration. Her motion was, however, denied by the CSC in its Resolution No. 071401 dated July 24, 2007.^[5]

Aggrieved, Lapid filed a petition for review (under Rule 43) before the CA presenting the sole issue of:

WHETHER OR NOT THE CIVIL SERVICE COMMISSION IS CORRECT IN RULING INSTEAD ON THE STATUS OF THE APPELLANT'S CASUAL EMPLOYMENT AND NOT ON THE ISSUE OF NON-OBSERVANCE OF DUE PROCESS IN THE TERMINATION OF APPELLANT'S SERVICES. ^[6]

Lapid claimed that the CSC erred in denying her appeal on the ground that she was a casual employee who was "without any security of tenure x x x and may be separated from service at any time." She argued that the CSC should have decided her appeal on the merits and resolved the issue of whether or not her termination from service was executed with due process. She further averred that "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process."^[7]

The CA agreed with Lapid. The CA ruled that while it was *previously* held that casual employees were not protected by security of tenure as they may be removed from the service with or without cause, a recent case decided by the Court held otherwise. In the said case, entitled, *Re: Vehicular Accident Involving SC Shuttle Bus No. 3 with Plate No. SEG-357 driven by Gerry B. Moral, Driver II-Casual*,^[8] the Court ruled that since there was no evidence supporting the charge against the respondent therein, it could not sustain his recommended dismissal on the mere ground that he was a casual employee, "for `even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws."^[9] Absent, therefore, a proven cause to dismiss, the CA held that Lapid was dismissed without cause as contemplated in law.

Regarding the question of "due process," Lapid argued that she was denied her right thereto because the charges against her were not duly proven. The supposed Formal Charge was unsigned and, worse, it was not served on her. No formal investigation was ever conducted on her case.^[10]

The CA again ruled for Lapid and held that she was denied due process. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is **GRANTED**. Petitioner is ordered **REINSTATED** and **RETAINED** in the service until the