

## EN BANC

[ G.R. No. 185668, December 13, 2011 ]

### PHILIPPINE AMUSEMENT AND GAMING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND MIA MANAHAN, RESPONDENTS.

#### DECISION

##### REYES, J.:

Before us is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the 1997 Rules of Civil Procedure which assails the following decision and resolution of public respondent Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 100908, entitled *Philippine Amusement & Gaming Corporation v. Mia Manahan*:

(a) the Decision<sup>[2]</sup> dated October 2, 2008 which denied herein petitioner's Petition for Review and affirmed *in toto* the Resolutions dated July 10, 2007 and September 10, 2007 of the Civil Service Commission on the issue of PAGCOR's dismissal from the service of herein private respondent; and

(b) the Resolution<sup>[3]</sup> dated November 27, 2008 which denied the petitioner's Motion for Reconsideration of the Decision of October 2, 2008.

#### The Facts

Private respondent Mia Manahan (Manahan) was a Treasury Officer of petitioner Philippine Amusement and Gaming Corporation (PAGCOR) assigned in Casino Filipino-Manila Pavilion (CF-Pavilion). Among her functions as Treasury Officer was the handling of fund transfer requests received by CF-Pavilion and the supervision of the office's Vault-in-Charge and Senior Cashier.

On April 14, 2004, at around 1:30 in the afternoon, Manahan received from the fax machine of CF-Pavilion's SVIP-Treasury a document that appeared to be a Request for Fund Transfer<sup>[4]</sup> coming from Casino Filipino-Laoag (CF-Laoag). The request was for Four Million Two Hundred Thousand Pesos (P4,200,000.00) to be released by CF-Pavilion to "Arnulfo Fuentabella or David Fuentabella."

About 30 minutes from Manahan's receipt of the fax document, a person who represented himself to be "David Fuentabella" claimed from CF-Pavilion the amount of P4,200,000.00. Said "David Fuentabella" presented an SSS Identification Card<sup>[5]</sup> to prove his identity, duly accepted by the respondent, who as the Treasury Officer then on duty, also approved the release of the money and chips to the claimant. P2,000,000.00 was released in cash, and P2,200,000.00 was released in the form of chips.

At around 7:30 in the evening of April 15, 2004, the Treasury Officer of CF-Pavilion then on duty, Jennifer Bagtas, informed CF-Laoag through phone that the fund transfer for P4,200,000.00 had already been paid by CF-Pavilion to Mr. Fuentabella. However, CF-Laoag's Vault-in-Charge Norman Santiago and Treasury Head Joselito Ricafort denied that such fund transfer had been made by CF-Laoag to CF-Pavilion. Close to midnight of the same day, Manahan was called by PAGCOR's Assistant Chief Security Officer asking her to report immediately to CF-Pavilion, where she was informed of CF-Laoag's claim that it sent no fund transfer for P4,200,000.00 in favor of "Arnulfo or David Fuentabella." Manahan was interrogated by PAGCOR's Casino Operations Manager, Branch Manager and Senior Chief Security Officer on what transpired on April 14, 2004.

A notice of preventive suspension dated April 15, 2004 and signed by Dan N. Dia, Senior Branch Manager of CF-Pavilion, was received by Manahan on April 16, 2004. The pertinent portions of the notice read:

You are hereby informed of the charge against you of **SERIOUS PROCEDURAL DEVIATION/GROSS NEGLIGENCE**, arising from the anomalous fund transfer transaction in the amount of [P]4.2 million, consummated at the VIP Booth last April 14, 2004 wherein you were on the 6-2PM duty.

Pending result of the investigation of the case, please be informed that you are hereby placed under preventive suspension effective immediately.<sup>[6]</sup>

From April 16 to 17, 2004, Manahan was instructed to report to the Corporate Office of PAGCOR where she was again questioned regarding the fund transfer incident. On April 21, 2004, she received a Notice to Appear and Explain of even date, signed by Atty. Noel Ostrea, Assistant Head of PAGCOR's Corporate Investigation Unit (CIU), and which reads in part:

The Corporate Investigation Unit is tasked to conduct a fact-finding inquiry into the performance by several Treasury officers and personnel of different casino branches, including yourself, of their duties and responsibilities in relation to the untoward events of 14 April 2004, and all circumstances pertinent thereto. We have invited you through CF-Pavilion to appear before us today. However, you failed to appear. In this regard, may we again invite you to appear before this Unit on Friday, 23 April 2004 at around 2:00 pm. Should you fail to do so, this will be deemed a waiver of your right to be heard, without further recourse.<sup>[7]</sup>

On April 26, 2004, Manahan filed with the CIU a Written Statement<sup>[8]</sup> giving her account of the events that transpired in relation to the disputed fund transfer. The Statement was filed in lieu of her oral testimony, after the CIU allegedly did not allow her to be assisted by counsel during the April 23, 2004 meeting and instead granted her the option to submit a written statement.<sup>[9]</sup>

Particularly on the matter of her failure to avert the release of P4.2 million under a spurious request for fund transfer, Manahan explained in her Written Statement that per actual practice, she was not required to confirm the fund transfer from CF-Laoag, it being sufficient that "David Fuentabella" was a regular player of CF-Pavilion and the request document she received was complete with pertinent information and the required signatures. Manahan also claimed that immediately after the release of the amount of P4.2 million to the claimant, she confirmed this fact by fax to CF-Laoag.

On June 2, 2004, Manahan finally received from PAGCOR's Human Resource Department (HRD) Senior Managing Head, Visitacion F. Mendoza, a letter of even date informing her of the PAGCOR Board of Directors' (BOD) decision to dismiss her from the service. The pertinent portions of the letter read:

Please be informed that the Board of Directors in its meeting on June 1, 2004, resolved to dismiss you from the service effective April 16, 2004 due to the following offense:

"Gross neglect of duty; Violations of company rules and regulations; Conduct prejudicial to the best interests of the corporation; and Loss of trust and confidence; Failure to comply with Treasury rules and regulations which resulted in payment of a spurious Fund Transfer amounting to [P]4.2 million last April 14, 2004."<sup>[10]</sup>

Manahan filed a Motion for Reconsideration<sup>[11]</sup> of the PAGCOR BOD's decision to dismiss her from the service, giving the following grounds in support thereof: (1) she was deprived of her constitutional right to due process of law when the PAGCOR BOD outrightly dismissed her from service without informing her of the formal charges and apprising her of the documentary evidence against her; (2) she was not guilty of gross neglect of duty in allowing the spurious fund transfer considering that when she handled the fund transfer request, she did what was required of her per common practice in the Treasury Offices of PAGCOR; (3) she was not a confidential employee and thus could not have been dismissed on the ground of loss of trust and confidence; and, (4) even assuming that she committed an act of negligence, the loss incurred by PAGCOR was directly caused by a scheme employed by perpetrators who clearly knew of the lax internal controls observed by PAGCOR, making the penalty of dismissal too harsh and excessive as it was not commensurate to the act attributed to her. The motion was denied by the PAGCOR BOD for lack of merit, as disclosed in a letter<sup>[12]</sup> dated July 7, 2004 addressed to Manahan and also signed by HRD Senior Managing Head Mendoza.

Feeling aggrieved, Manahan appealed from the PAGCOR's rulings to the Civil Service Commission (CSC).

### **The Ruling of the CSC**

On July 10, 2007, the CSC issued Resolution No. 071264<sup>[13]</sup> granting herein respondent Manahan's appeal from the decisions of PAGCOR. After a finding of

violation of Manahan's right to due process, the Commission remanded the case to PAGCOR for the issuance of a formal charge, if warranted, then a formal investigation pursuant to the Uniform Rules on Administrative Cases in the Civil Service. It declared the preventive suspension of Manahan null and void for having been issued by virtue of an invalid charge and for its failure to specify the duration of preventive suspension. Further, the CSC noted that the order of dismissal served upon Manahan was a mere notice issued by the HRD Senior Managing Head informing her of the PAGCOR BOD's decision to dismiss her from the service, instead of a copy of the BOD Resolution on the order of dismissal.

Thus, the dispositive portion of the CSC Resolution reads:

**WHEREFORE**, the appeal of Mia B. Manahan, Treasury Officer, Philippine Amusement and Gaming Corporation (PAGCOR), Roxas Boulevard, Ermita, Metro Manila, is hereby **GRANTED**. Accordingly, the instant case is remanded to the PAGCOR for the issuance of the required formal charge, if the evidence so warrants, and thereafter to proceed with the formal investigation of the case. The formal investigation should be completed within three (3) calendar months from the date of receipt of the records of the case from the Commission. Within fifteen (15) days from the termination of the investigation, the disciplining authority shall render its decision; otherwise, the Commission shall vacate and set aside the appealed decision and declare respondent exonerated from the charge(s) against her, pursuant to Section 48, Rule III, Uniform Rules on Administrative Cases in the Civil Service.

The order of preventive suspension issued to Manahan is hereby declared **NULL AND VOID**. Thus, she should be paid the salaries and other benefits that should have accrued to her during the period of her preventive suspension.

The Director IV of the Civil Service Commission-National Capital Region (CSC-NCR) is hereby directed to monitor the implementation of this Resolution and submit a report to the Commission.<sup>[14]</sup>

PAGCOR's Motion for Reconsideration<sup>[15]</sup> was denied by the CSC via its Resolution No. 071779<sup>[16]</sup> dated September 10, 2007, prompting PAGCOR to file with public respondent CA a Petition for Review<sup>[17]</sup> under Rule 43 of the 1997 Rules of Civil Procedure with the following arguments: (1) the decision of the CSC was not supported by the evidence on record; and (2) the errors of law or irregularities attributed to the CSC were prejudicial to the interest of PAGCOR.

### **The Ruling of the CA**

On October 2, 2008, the CA rendered the assailed Decision<sup>[18]</sup> affirming *in toto* the Resolutions of the CSC. The dispositive portion of the decision reads:

**IN LIGHT OF ALL THE FOREGOING**, the petition is **DENIED**. The assailed Resolutions of the Civil Service Commission dated 10 July 2007

and 10 September 2007 are **AFFIRMED *in toto***.

**SO ORDERED.**<sup>[19]</sup>

PAGCOR's Motion for Reconsideration<sup>[20]</sup> was denied by the CA *via* its Resolution<sup>[21]</sup> dated November 27, 2008.

### **The Present Petition**

PAGCOR then filed the present Petition for *Certiorari* under Rule 65, assailing the rulings of the CA on the ground of grave abuse of discretion. The following arguments are presented to support the petition:

- A. Public respondent CA acted with grave abuse of discretion in ruling contrary to its own precedent jurisprudence enunciated in the case of *Philippine Amusement and Gaming Corporation vs. Joaquin*,<sup>[22]</sup> wherein the validity of a Notice of Charges issued by a Senior Branch Manager of PAGCOR was upheld by the CA despite deficiencies in requirements under CSC rules;
- B. The public respondent acted with grave abuse of discretion in ignoring that respondent Manahan was given the right to be heard; and
- C. The public respondent acted with grave abuse of discretion in overlooking the undisputed facts supporting the petitioner's decision to dismiss respondent Manahan.

### **This Court's Ruling**

After due study, this Court finds the petition bereft of merit.

**Before a party can resort to Rule 65 of the Rules of Court, there must be no other plain, speedy, and adequate remedy that is available to question the assailed ruling.**

At the outset, we rule that the petitioner availed of the wrong remedy to question the rulings of public respondent CA considering that it had the opportunity to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Section 1 thereof provides:

#### **Section 1. Filing of Petition with Supreme Court.**

**A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*.** The petition shall raise only questions of law which must be distinctly set forth. (emphasis supplied)