

EN BANC

[G.R. No. 157383, August 18, 2010]

**WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND
GENERAL MANAGER OF GSIS, PETITIONER, VS. MARIO I.
MOLINA AND ALBERT M. VELASCO, RESPONDENTS.**

[G.R. No. 174137]

**WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND
GENERAL MANAGER OF THE GOVERNMENT SERVICE INSURANCE
SYSTEM, PETITIONER, VS. MARIO I. MOLINA AND ALBERT M.
VELASCO, RESPONDENTS.**

DECISION

NACHURA, J.:

Before the Court are two consolidated petitions filed by Winston F. Garcia (petitioner) in his capacity as President and General Manager of the Government Service Insurance System, or GSIS, against respondents Mario I. Molina (Molina) and Albert M. Velasco (Velasco). In G.R. No. 157383, petitioner assails the Court of Appeals (CA) Decision^[1] dated January 2, 2003 and Resolution^[2] dated March 5, 2003 in CA-G.R. SP No. 73170. In G.R. No. 174137, petitioner assails the CA Decision^[3] dated December 7, 2005 and Resolution^[4] dated August 10, 2006 in CA-G.R. SP No. 75973.

The factual and procedural antecedents of the case are as follows:

Respondents Molina and Velasco, both Attorney V of the GSIS, received two separate Memoranda^[5] dated May 23, 2002 from petitioner charging them with grave misconduct. Specifically, Molina was charged for allegedly committing the following acts: 1) directly and continuously helping some alleged disgruntled employees to conduct concerted protest actions and/or illegal assemblies against the management and the GSIS President and General Manager; 2) leading the concerted protest activities held in the morning of May 22, 2002 during office hours within the GSIS compound; and 3) continuously performing said activities despite warning from his immediate superiors. ^[6] In addition to the charge for grave misconduct for performing the same acts as Molina, Velasco was accused of performing acts in violation of the Rules on Office Decorum for leaving his office without informing his supervisor of his whereabouts; and gross insubordination for persistently disregarding petitioner's instructions that Velasco should report to the petitioner's office.^[7] These acts, according to petitioner, were committed in open betrayal of the confidential nature of their positions and in outright defiance of the Rules and Regulations on Public Sector Unionism. In the same Memoranda, petitioner required respondents to submit their verified answer within seventy two

(72) hours. Considering the gravity of the charges against them, petitioner ordered the preventive suspension of respondents for ninety (90) days without pay, effective immediately.^[8] The following day, a committee was constituted to investigate the charges against respondents.

In their Answer^[9] dated May 27, 2002, respondents denied the charges against them. Instead, they averred that petitioner was motivated by vindictiveness and bad faith in charging them falsely. They likewise opposed their preventive suspension for lack of factual and legal basis. They strongly expressed their opposition to petitioner acting as complainant, prosecutor and judge.

On May 28, 2002, respondents filed with the Civil Service Commission (CSC) an Urgent Petition to Lift Preventive Suspension Order.^[10] They contended that the acts they allegedly committed were arbitrarily characterized as grave misconduct. Consistent with their stand that petitioner could not act as the complainant, prosecutor and judge at the same time, respondents filed with the CSC a Petition to Transfer Investigation to This Commission.^[11]

Meanwhile, the GSIS hearing officer directed petitioners to submit to the jurisdiction of the investigating committee and required them to appear at the scheduled hearing.^[12]

Despite their urgent motions, the CSC failed to resolve respondents' motions to lift preventive suspension order and to transfer the case from the GSIS to the CSC.

On October 10, 2002, respondents filed with the CA a special civil action for *certiotari* and prohibition with prayer for Temporary Restraining Order (TRO).^[13] The case was docketed as CA-G.R. SP No. 73170. Respondents sought the annulment and setting aside of petitioner's order directing the former to submit to the jurisdiction of the committee created to hear and investigate the administrative case filed against them. They likewise prayed that petitioner (and the committee) be prohibited from conducting the scheduled hearing and from taking any action on the aforesaid administrative case against respondents.

On January 2, 2003, the CA rendered a decision^[14] in favor of respondents, the dispositive portion of which 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 for (sic) by law.

SO ORDERED.^[15]

The CA treated the petition as one raising an issue of gnawing fear, and thus agreed with respondents that the investigation be made not by the GSIS but by the CSC to ensure that the hearing is conducted before an impartial and disinterested tribunal.

Aggrieved, petitioner comes before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE PETITIONERS ABUSED THEIR AUTHORITY AND HAVE BEEN PARTIAL IN REGARD TO THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS; AND IN PERPETUALLY RESTRAINING THE PETITIONERS FROM HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES FILED AGAINST THE RESPONDENTS - SOLELY ON THE BASIS OF THE TOTALLY UNFOUNDED ALLEGATIONS OF THE RESPONDENTS THAT THE PETITIONERS ARE PARTIAL AGAINST THEM.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPRECIATE AND APPLY THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND THE RULE ON NON FORUM SHOPPING IN PERPETUALLY RESTRAINING THE PETITIONERS FROM HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RENDERING A DECISION WHICH IS CONTRARY TO AND COMPLETELY DISREGARDS APPLICABLE JURISPRUDENCE AND WHICH, IN VIOLATION OF THE RULES OF COURT, DOES NOT CLEARLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.^[16]

In the meantime, on February 27, 2003, the CSC resolved respondents' Petition to Lift Order of Preventive Suspension and Petition to Transfer Investigation to the Commission through Resolution No. 03-0278,^[17] the dispositive portion of which reads:

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.^[18]

As to the lifting of the order of preventive suspension, the CSC considered the issue moot and academic considering that the period had lapsed and respondents had been allowed to resume their specific functions. This notwithstanding, the CSC opted to discuss the matter by way of *obiter dictum*. Without making a definitive conclusion as to the effect thereof in the case against respondents, the CSC declared that a preliminary investigation is a pre-requisite condition to the issuance of a formal charge.^[19]

On the requested transfer of the investigation from the GSIS to the CSC, the latter denied the same for lack of merit. The Commission concluded that the fact that the GSIS acted as the complainant and prosecutor and eventually the judge does not mean that impartiality in the resolution of the case will no longer be served.^[20]

Aggrieved, respondents appealed to the CA through a Petition for Review under Rule 43 of the Rules of Court.^[21] The case was docketed as CA-G.R. SP NO. 75973.

On December 7, 2005, the CA rendered a Decision^[22] in favor of respondents, the dispositive portion of which 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. No pronouncement as to costs.

SO ORDERED.^[23]

The CA declared null and void respondents' formal charges for lack of the requisite preliminary investigation. In view thereof, the CA disagreed with the CSC that the question on the propriety of the preventive suspension order had become moot and academic. Rather, it concluded that the same is likewise void having emanated from the void formal charges. Consequently, the CA found that respondents were entitled to back salaries during the time of their illegal preventive suspension.

Hence, the present petition raising the following issues:

I.

WHETHER THE RESPONDENTS WERE FULLY ACCORDED THE REQUISITE OPPORTUNITY TO BE HEARD, WERE IN FACT HEARD AND BEING HEARD, AND WHETHER THE CONDUCT OF PRELIMINARY INVESTIGATION IN ADMINISTRATIVE PROCEEDINGS IS AN ESSENTIAL REQUISITE TO THE CONDUCT OF ADJUDICATION.

II.

WHETHER THE RESPONDENTS WAIVED THEIR RIGHT TO PRELIMINARY INVESTIGATION.

III.

WHETHER PRELIMINARY INVESTIGATION IS REQUIRED IN INDICTMENTS *IN FLAGRANTI*, AS HERE.

IV.

WHETHER THE HONORABLE COURT OF APPEALS LACKED JURISDICTION, AS THE ALLEGED LACK OF PRELIMINARY INVESTIGATION SHOULD HAVE BEEN RAISED BEFORE THE GSIS AND, THEREAFTER, BEFORE THE CIVIL SERVICE COMMISSION, UNDER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE GSIS HAVING ACQUIRED JURISDICTION OVER THE PERSONS OF THE RESPONDENTS, TO THE EXCLUSION OF ALL OTHERS.

V.

WHETHER THE ALLEGED LACK OF PRELIMINARY INVESTIGATION IS A NON-ISSUE.

VI.

WHETHER THE PREVENTIVE SUSPENSION ORDERS ISSUED AGAINST RESPONDENTS MOLINA AND VELASCO ARE VALID, WELL-FOUNDED AND DULY RECOGNIZED BY LAW.

VII.

WHETHER PREVENTIVE SUSPENSION IS A PENALTY AND, THUS, MAY NOT BE IMPOSED WITHOUT BEING PRECEDED BY A HEARING.

VIII.

WHETHER THE RESPONDENTS ARE ENTITLED TO PAYMENT OF BACK SALARIES PERTAINING TO THE PERIOD OF THEIR PREVENTIVE SUSPENSION.

IX.

WHETHER THE INSTITUTION OF THE RESPONDENTS' PETITION BEFORE THE CIVIL SERVICE COMMISSION WAS ENTIRELY PREMATURE.

X.

WHETHER THE MISAPPREHENSIONS OF THE RESPONDENTS AS REGARDS THE PARTIALITY OF THE GSIS COMMITTEE INVESTIGATING