

EN BANC

[G.R. No. 160846, February 22, 2008]

**BENJAMIN B. GERONGA, Petitioner, vs. HON. EDUARDO VARELA,
as City Mayor of Cadiz City, Respondent.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

The Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Benjamin B. Geronga (petitioner) assails that portion of the October 15, 2002 Joint Decision^[1] of the Court Appeals (CA) affirming his dismissal from the service under Resolution No. 992107^[2] dated September 17, 1999 and Resolution No. 000715^[3] dated March 21, 2000 of the Civil Service Commission (CSC); as well as the October 1, 2003 CA Resolution^[4] denying his Motion for Reconsideration.

The facts are of record.

Petitioner works as Engineer IV at the General Services Department of the local government of Cadiz City. In 1996, he was involved in two administrative cases: 1) Administrative Case No. 96-04^[5] for Unjust Vexation, Contempt, Insubordination, Conduct Unbecoming a Public Officer, and Alarm and Scandal; and 2) Administrative Case No. 96-05^[6] for Grave Misconduct and Engaging in Partisan Political Activity. Impleaded with petitioner in Administrative Case No. 96-05 were Edwin Nuyad (Nuyad) and Nick Ambos (Ambos), also employees of the local government of Cadiz City.

The two administrative cases were referred by Cadiz City Mayor Eduardo Varela (respondent) to City Legal Officer Marcelo R. del Pilar (Del Pilar) for investigation. After investigation, Del Pilar issued in Administrative Case No. 96-04 a Resolution/Recommendation dated December 1, 1997 for the dismissal of petitioner for grave misconduct.^[7] In Administrative Case No. 96-05, Del Pilar issued a separate Resolution/Recommendation dated December 4, 1997, recommending the dismissal of petitioner, Nuyad and Ambos for grave misconduct and partisan politics.^[8] Respondent approved both recommendations.^[9]

Consequently, on January 8, 1998, respondent issued to petitioner Memorandum Order No. 98-V-05, addressed to petitioner, to wit:

Attached is a copy of the Resolution/Recommendation of the City Legal Officer which this office has approved in toto and considered an integral part hereof.

We find the recommendation as contained therein to be just and proper under the premises.

In view hereof, you are hereby meted a penalty of dismissal from the service as recommended effective January 09, 1998.

For strict compliance.^[10] (Emphasis supplied.)

Petitioner received copy of Memorandum Order No. 98-V-05 on January 9, 1998.^[11] Without assistance of counsel, petitioner filed with the CSC a Notice of Appeal, stating:

Appellant respectfully serves notice that he is appealing his DISMISSAL FROM SERVICE by the City Mayor of Cadiz City, Negros Occidental, Eduardo G. Varela, **contained in the latter's Memorandum Order No. 98-V-05 dated January 08, 1998.**^[12] (Emphasis supplied.)

Still without assistance of counsel, petitioner, together with Nuyad and Ambos, filed a Joint Memorandum in which he discussed Administrative Case No. 96-05 only, and completely omitted reference to Administrative Case No. 96-04.^[13]

Acting on the appeal, the CSC issued Resolution No. 990717 dated March 25, 1999, thus:

WHEREFORE, the appeal of Edwin Nuyad, Nick Ambos and [petitioner] is hereby granted. Accordingly, Mayor Eduardo G. Varela is directed to reinstate Nuyad, Ambos and [petitioner] to their former positions or, if no longer available, to comparable positions.^[14]

Respondent filed a Motion for Reconsideration,^[15] questioning the order to reinstate Nuyad, Ambos and petitioner. Respondent pointed out that petitioner cannot be reinstated anymore because the latter failed to appeal from his dismissal in Administrative Case No. 96-04, which consequently became final and executory.

The CSC partly granted the Motion for Reconsideration of respondent in Resolution No. 992107, to wit:

WHEREFORE, the Motion for Reconsideration of Mayor Eduardo G. Varela is partly granted.

His prayer for the reversal of CSC Resolution No. 990717 dated March 25, 1999 is hereby denied. **However, his request for the non-reinstatement of [petitioner] in view of the finality of the decision in Administrative Case No. 96-04, finding [petitioner] guilty of Grave Misconduct for which he was meted out the penalty of dismissal from the service is granted.**

Accordingly, CSC Resolution No. 990717 dated March 25, 1999 is hereby modified insofar as the non-reinstatement of [petitioner] is concerned. In all other matters, the said resolution stands.^[16] (Emphasis supplied.)

Both petitioner and respondent filed Motions for Reconsideration^[17] but the CSC denied the same in Resolution No. 000715.^[18] They filed with the CA separate Petitions for Review,^[19] which were later consolidated.^[20]

In the October 15, 2002 Joint Decision^[21] assailed herein, the CA dismissed both petitions and affirmed CSC Resolutions No. 992107 and No. 000715.

Only petitioner filed a Motion for Reconsideration^[22] which the CA denied in its October 1, 2003 Resolution.^[23]

Petitioner is now before this Court, seeking resolution of the following issues:

1. Whether or not the dismissal of the petitioner under Memorandum Order No. 98-V-05 constitutes a denial of his constitutional right to due process;
2. Whether or not the petitioner was denied due process under the Resolution/Recommendation of the City Legal Officer in Adm. Case No. 96-04 as adopted in toto by the City Mayor;
3. Whether or not the dismissal of the petitioner became final for failure to appeal;
4. Whether or not the Civil Service Commission acted properly and within the bounds of its own rules and regulations in entertaining the motion for reconsideration of Mayor Varela from its Resolution No. 990714 dated March 25, 1999; and
5. Whether or not the Court of Appeals erred in upholding the dismissal of the petitioner.^[24]

We shall first resolve the fourth issue – whether the CSC may entertain respondent's motion for reconsideration of its decision exonerating petitioner.

Petitioner points out that after ordering his exoneration under Resolution No. 990717, the CSC could no longer entertain a motion for reconsideration filed by respondent who is not even a proper party. He argues that in acting upon the motion for reconsideration of respondent and worse, in modifying Resolution No. 990717, the CSC violated Section 38, Rule III, in relation to Section 2(I), Rule I of Memorandum Circular No. 19, series of 1999 or the Uniform Rules on Administrative Cases in the Civil Service (URACCS); and the CA erred in affirming it.^[25]

Petitioner is mistaken.

Sections 37 (a) and 39 of Presidential Decree (P.D.) No. 807,^[26] otherwise known as The Philippine Civil Service Law, provide:

Section 37. – (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office x x x.

Section 39. – (a) Appeals, where allowable, shall be made by the **party adversely affected** by the decision within fifteen days from receipt of

the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days x x x. (Emphasis supplied.)

In addition, Section 47 of Executive Order (E.O.) No. 292 (The Administrative Code of 1987)^[27] reiterates that the CSC may entertain appeals only from (a) a penalty of suspension of more than thirty days; or (b) a fine in an amount exceeding thirty days' salary; or (c) demotion in rank or salary or transfer; or (d) removal or dismissal from office.

Interpreting the foregoing provisions, the Court has earlier held that, in an administrative case, only a decision involving the imposition of a penalty of suspension of more than 30 days, fine exceeding 30-day salary, demotion, transfer, removal or dismissal is appealable to the CSC; hence, a decision exonerating an employee cannot be appealed.^[28] Moreover, given the nature of the appealable decision, only said employee would qualify as the "party adversely affected" who is allowed to appeal; other persons, such as the appointing or disciplining authorities, cannot appeal.^[29]

Consonant with the foregoing interpretation, the CSC adopted Section 2(I), Rule I and Section 38, Rule III of the URACCS^[30] in implementation of the pertinent

provisions of P.D. No. 807 and E.O. No. 292,^[31] to wit:

Section 2. *Coverage and Definition of Terms.* x x x (I) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered.

x x x x

Section 38. *Filing of Motion for Reconsideration.* - The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the same within fifteen (15) days from receipt thereof

The present view is different. In a long line of cases,^[32] beginning with *Civil Service Commission v. Dacoycoy*,^[33] this Court has maintained that a judgment of exoneration in an administrative case is appealable, and that the CSC,^[34] as the agency mandated by the Constitution to preserve and safeguard the integrity of our civil service system, and/or the appointing authority, such as a mayor^[35] who exercises the power to discipline or remove an erring employee, qualifies as parties adversely affected by the judgment who can file an appeal. The rationale for this is explained in the concurring opinion of Associate Justice now Chief Justice Reynato S. Puno in *Civil Service Commission v. Dacoycoy*:

In truth, the doctrine barring appeal is not categorically sanctioned by the Civil Service Law. For what the law declares as "final" are decisions of heads of agencies involving suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary x x x. It is thus non sequitur to contend that since some decisions exonerating public officials from minor offenses can not be appealed, ergo, even a

decision acquitting a government official from a major offense like nepotism cannot also be appealed.^[36]

Thus, through Resolution No. 021600,^[37] the CSC amended the URACCS, by allowing the disciplining authority to appeal from a decision exonerating an erring employee, thus:

Section 2. *Coverage and Definition of Terms.* – x x x (I) PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered or to the disciplining authority in an appeal from a decision exonerating the said employee.

In fine, the exoneration of petitioner under CSC Resolution No. 990717 may be subject to a motion for reconsideration by respondent who, as the appointing and disciplining authority, is a real party in interest. The CSC acted within the rubric of *Civil Service Commission v. Dacoycoy* in allowing said motion for reconsideration.

The next question then is whether the CSC was correct in granting the motion for reconsideration of respondent, and the CA, in agreeing with it.

The CA and CSC declared as final and executory the decision of respondent in Administrative Case No. 96-04, finding petitioner guilty of grave misconduct and sentencing him with a penalty of dismissal from government service, on the sole ground that the latter failed to appeal from said decision. The CSC found:

x x x It is worthy to note that a copy of the *Decision dated December 1, 1997* in Administrative Case No. 96-04 issued by [respondent] was received by [petitioner] himself on January 9, 1998. This is very apparent on the face of the Decision. Hence, upon receipt of the same, [petitioner] had the option whether or not to bring the said decision on appeal to the Commission. Considering that he failed to appeal the said Decision within the prescribed period of fifteen (15) days from receipt hereof, the same became final and executory.^[38] (Emphasis supplied.)

The CA added that the appeal which petitioner interposed from the decision in Administrative Case No. 96-05 cannot be treated also as an appeal from the decision in Administrative Case No. 96-04 because the "Joint Memorandum before the CSC mentions only Administrative Case No. 96-05, not Administrative Case No. 96-04."^[39]

The Court does not completely agree.

The CSC is under the impression that in Administrative Case No. 96-04, respondent issued a "Decision dated December 1, 1997," and that it is said decision which petitioner should have appealed. The CA shared the notion. Both are wrong. What is dated December 1, 1997 is merely the Resolution/Recommendation issued by Del Pilar in Administrative Case No. 96-04. The formal decision of respondent is Memorandum Order No. 98-V-05 dated January 8, 1998.

There is a material difference between a mere recommendation to dismiss an employee and an administrative decision/resolution sentencing him with dismissal.