

SECOND DIVISION

[G.R. No. 146053, April 30, 2008]

**DIOSCORO F. BACSIN, PETITIONER, VS. EDUARDO O. WAHIMAN,
RESPONDENT.**

DECISION

In this Petition for Review on Certiorari, petitioner Dioscoro F. Bacsin questions the Decision^[1] dated August 23, 2000 of the First Division of the Court of Appeals (CA) in CA-G.R. SP No. 51900, which affirmed Resolution No. 98-0521 dated March 11, 1998 and Resolution No. 99-0273 dated January 28, 1999, both issued by the Civil Service Commission (CSC), dismissing petitioner from the service for Grave Misconduct.

Facts of the Case

Petitioner is a public school teacher of Pandan Elementary School, Pandan, Mambajao, Camiguin Province. Respondent Eduardo O. Wahiman is the father of AAA, an elementary school student of the petitioner.

AAA claimed that on August 16, 1995, petitioner asked her to be at his office to do an errand.^[2] Once inside, she saw him get a folder from one of the cartons on the floor near his table, and place it on his table. He then asked her to come closer, and when she did, held her hand, then touched and fondled her breast. She stated that he fondled her breast five times, and that she felt afraid.^[3] A classmate of hers, one Vincent B. Sorrabas, claiming to have witnessed the incident, testified that the fondling incident did happen just as AAA related it.^[4]

Petitioner was charged with Misconduct in a Formal Charge dated February 12, 1996 by Regional Director Vivencio N. Muego, Jr. of the CSC.^[5]

In his defense, petitioner claimed that the touching incident happened by accident, just as he was handing AAA a lesson book.^[6] He further stated that the incident happened in about two or three seconds, and that the girl left his office without any complaint.^[7]

Resolution of the CSC

In Resolution No. 98-0521 dated March 11, 1998, the CSC found petitioner guilty of Grave Misconduct (Acts of Sexual Harassment), and dismissed him from the service.^[8] Specifically, the CSC found the petitioner to have committed an act constituting sexual harassment, as defined in Sec. 3 of Republic Act No. (RA) 7877, the *Anti-Sexual Harassment Act of 1995*.

Petitioner filed a motion for reconsideration, but the same was denied in Resolution No. 99-0273 dated January 28, 1999.

Decision of the Court of Appeals

Petitioner then brought the matter to the CA under Rule 43 of the 1997 Rules of Civil Procedure, the recourse docketed as CA-G.R. SP No. 51900.

Petitioner raised the following issues before the CA:

1. Whether or not there were efforts by [AAA], her parents and the Honorable Civil Service Commission to magnify the accidental touching incident on August 16, 1995;
2. Whether or not the guilt of the petitioner was supported by the evidence on record; and
3. Whether or not there was irregularity in the imposition of the penalty of removal.^[9]

In resolving the case, the CA determined that the issue revolved around petitioner's right to due process, and based on its finding that petitioner had the opportunity to be heard, found that there was no violation of that right. The CA ruled that, even if petitioner was formally charged with "disgraceful and immoral conduct and misconduct," the CSC found that the allegations and evidence sufficiently proved petitioner's guilt of grave misconduct, punishable by dismissal from the service.

The Issues Before Us

The petitioner now raises the following issues in the present petition:

1. Whether or not the petitioner could be guilty of acts of sexual harassment, grave misconduct, which was different from or an offense not alleged in the formal charge filed against him at the inception of the administrative case.
2. Assuming petitioner was guilty of disgraceful and immoral conduct and misconduct as charged by complainant, whether or not the penalty of dismissal from the service imposed by the Civil Service Commission and affirmed by the Court of Appeals is in accord with Rule XIV, Section (23) of the Omnibus Civil Service Rules and applicable rulings.
3. Whether or not the charge of Misconduct, a lesser offense, includes the offense of Grave Misconduct; a greater offense.

The petition is without merit.

Petitioner argues that the CSC cannot validly adjudge him guilty of an offense, such as "Grave Misconduct (Acts of Sexual Harassment)," different from that specified in the formal charge which was "Misconduct." He further argues that the offense of "Misconduct" does not include the graver offense of "Grave Misconduct."