

EN BANC

[G.R. NO. 157877, March 10, 2006]

COMMISSIONER ON HIGHER EDUCATION, PETITIONER, VS. ROSA F. MERCADO, RESPONDENT.

D E C I S I O N

TINGA, J.

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the January 13, 2003 *Decision*^[1] of the Court of Appeals in CA-G.R. SP No. 72864 which dismissed the petition for review filed by the Commission on Higher Education (CHED) on the ground of prematurity and its April 2, 2003 *Resolution* denying the CHED's motion for reconsideration of said *Decision*.

The following factual antecedents are matters of record.

Through a letter-complaint dated November 13, 1998, Ma. Luisa F. Dimayuga (Dimayuga), Dean of the College of Criminology, Republican College, accused respondent Rosa F. Mercado of arrogance, abuse of power and authority, ignorance of the appropriate provisions of the Manual of Regulations for Private Schools and incompetence before the CHED.^[2] Respondent Mercado is the Senior Education Specialist of the Office of Programs and Standards of the CHED.

The complaint stemmed from the Republican College's application for the recognition of its Master in Criminology Program with the CHED. As part of the standard procedure, respondent Mercado would evaluate Republican College's compliance with the prescribed requirements. Respondent

Mercado allegedly acted with arrogance when she manifested that the fate of Republican College's application rested on her to the extent of maligning the person of Dimayuga during the inspection conducted at the Republican College.

On January 22, 1999, the Office of Programs and Standards Director issued a Memorandum directing respondent Mercado to explain in writing why no administrative charges should be filed against her. Respondent Mercado complied, denying the allegations against her. Dimayuga submitted a reply.^[3]

On September 27, 1999, the CHED sitting *en banc* rendered a decision finding respondent Mercado guilty of discourtesy in the course of official duties. Respondent Mercado was reprimanded and warned that a similar violation in the future will warrant a more severe punishment.^[4]

On October 27, 1999, respondent Mercado moved for the reconsideration of the September 27, 1999 CHED decision. Attached to the motion was a resolution supposedly issued and signed by former CHED Chairman Angel C. Alcala (Alcala

Resolution), dismissing the charges against respondent Mercado on the strength of an affidavit of desistance purportedly executed by Dimayuga.^[5]

The CHED, however, deferred the resolution of respondent Mercado's motion for reconsideration when it discovered that no record of the "Alcala Resolution" was on file and that there was a marked discrepancy in the signature appearing in the affidavit of desistance of Dimayuga and the sample signature she submitted.^[6]

On December 24, 1999, the CHED *en banc* passed Resolution No. R-439-99 adopting the recommendation of its Legal Affairs Service to investigate and place respondent Mercado under preventive suspension for a period of sixty (60) days without pay. A hearing and investigation committee was also created for this purpose. On the basis of a Formal Charge and Order of Preventive Suspension charging her with dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official documents, respondent Mercado was placed under preventive suspension for sixty (60) days without pay.^[7]

Respondent Mercado failed to appear before the hearing committee despite the issuance of at least three (3) subpoenas. At the hearing on March 17, 2000, only Dimayuga appeared and testified under oath that she never signed any affidavit of desistance and denied that it was her signature appearing on the affidavit of desistance presented by respondent Mercado. Before the scheduled hearing on April 13, 2000, respondent Mercado moved for its postponement asking for additional time to confer with her counsel. Notwithstanding the absence of respondent Mercado, the hearing committee received on May 21, 2000 the testimonies of the CHED Records Officers, Maximina Sister and Revelyn Brina, to the effect that the "Alcala Resolution" does not exist in the records.^[8]

On June 19, 2000, the CHED *en banc* issued a resolution denying respondent Mercado's motion for reconsideration and finding her guilty of the subsequent charges, which include falsification, among others. The dispositive portion reads:

WHEREFORE, the respondent's motion for reconsideration dated October 26, 1999 is hereby DENIED for lack of merit. Consequently, the Decision dated September 27, 1999 is hereby AFFIRMED. With reference to the subsequent charges of falsification of official documents, dishonesty, grave misconduct and conduct prejudicial to the best interest of the service as contained in the Formal Charge and Order of Preventive Suspension dated 03 January 2000 and upon recommendation of the Hearing and Investigation Committee constituted pursuant to CHED Resolution No. R-438-99 dated 24 December 1999, this Commission finds substantial basis to hold respondent liable to the foregoing charges, thus, respondent is hereby meted the penalty of DISMISSAL FROM THE SERVICE with forfeiture of leave credits and retirement benefits, without prejudice to the filing of appropriate charges in the proper forum, pursuant to SEC. 9, Rule XIV of the Omnibus Rules.^[9]

Respondent Mercado appealed the June 19, 2000 Resolution to the Civil Service Commission (CSC). On October 18, 2000, the CSC issued CSC Resolution No. 00-2406, denying Mercado's appeal.^[10] Respondent Mercado moved for its

reconsideration. The motion was granted on August 21, 2002 with the issuance of CSC Resolution No. 02-1106,^[11] the dispositive portion of which reads:

WHEREFORE, the motion for reconsideration of Rosa F. Mercado is hereby GRANTED. CSC Resolution No. 00-2406 dated October 18, 2000 affirming the CHED decision dated June 19, 2000 is thus modified accordingly. Moreover, Mercado is ordered reinstated to the service with payment of backwages from the time she was dismissed therefrom until her actual reinstatement.^[12]

The CHED filed a *Manifestation with Motion for Clarification* dated September 9, 2002 asking, among others, whether CSC Resolution No. 02-1106 was final and executory and whether the CHED could still file a motion for reconsideration in view of the one motion for reconsideration rule in CSC proceedings.^[13] For her part, respondent Mercado filed a motion for the issuance of a writ of execution of CSC Resolution No. 02-1106.^[14]

Pending resolution of its *Manifestation with Motion for Clarification* and before the expiration of the period to appeal, the CHED filed with the Court of Appeals a motion for additional time within which to file a petition for review of CSC Resolution No. 02-1106.^[14] Within the extended period allowed by the Court of Appeals, on October 3, 2002, the CHED filed a petition for review, docketed as CA-G.R. SP No. 72864, assailing CSC Resolution No. 02-1106.^[16] Without delving into the merits, the Court of Appeals dismissed the petition on January 13, 2003 on the ground of prematurity.^[17]

Meanwhile, with the CHED's petition with the Court of Appeals filed and even decided already, on January 20, 2003 the CSC acted on the motion and manifestation filed by respondent Mercado and the CHED, respectively, through CSC Resolution No. 030054.^[18] In the resolution, the CSC granted respondent Mercado's motion for execution and answered, belatedly though, the queries raised in the CHED's *Manifestation with Motion for Clarification*.^[19]

The CHED moved for the reconsideration of the January 13, 2003 Decision of the Court of Appeals but the appellate court denied the motion in its April 2, 2003 *Resolution*.^[20] Its efforts set at naught, the CHED filed the instant petition questioning the dismissal of CA-G.R. SP No. 72864.

On behalf of the CHED, the Solicitor General argues that the appeal in CA-G.R. SP No. 72864 was not prematurely filed because the *Manifestation with Motion for Clarification* filed by the CHED with the CSC did not seek the reconsideration of CSC Resolution No. 02-1106; thus, the reglementary period for review by the Court of Appeals of the CSC Resolution No. 02-1106 would have lapsed if no appeal was taken.

Thus, the central issue is whether the appeal before the Court of Appeals suffers from prematurity.

The Court grants the petition.