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SECOND DIVISION

[G.R. NO. 170132, December 06, 2006]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) AND WINSTON F. GARCIA, IN HIS CAPACITY AS GSIS PRESIDENT & GENERAL MANAGER, PETITIONERS, VS. KAPISANAN NG MGA MANGGAGAWA SA GSIS, RESPONDENT.

D E C I S I O N

GARCIA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, the Government Service Insurance System (GSIS) and its President and General Manager Winston F. Garcia (Garcia, for short) assail and seek to nullify the Decision[1] dated June 16, 2005 of the Court of Appeals (CA) in *CA-G.R. SP No. 87220*, as reiterated in its Resolution[2] of October 18, 2005 denying Garcia's motion for reconsideration.

The recourse is cast against the following setting:

A four-day October 2004 concerted demonstration, rallies and *en masse* walkout waged/held in front of the GSIS main office in Roxas Boulevard, Pasay City, started it all. Forming a huge part of the October 4 to October 7, 2004 mass action participants were GSIS personnel, among them members of the herein respondent Kapisanan Ng Mga Manggagawa sa GSIS ("KMG" or the "Union"), a public sector union of GSIS rank-and-file employees. Contingents from other government agencies joined causes with the GSIS group. The mass action's target appeared to have been herein petitioner Garcia and his management style. While the Mayor of Pasay City allegedly issued a rally permit, the absence of the participating GSIS employees was not covered by a prior approved leave.[3]

On or about October 10, 2004, the manager of the GSIS Investigating Unit issued a memorandum directing 131 union and non-union members to show cause why they should not be charged administratively for their participation in said rally. In reaction, KMG's counsel, Atty. Manuel Molina, sought reconsideration of said directive on the ground, among others, that the subject employees resumed work on October 8, 2004 in obedience to the return-to-work order thus issued. The plea for reconsideration was, however, effectively denied by the filing, on October 25, 2004, of administrative charges against some 110 KMG members for grave misconduct and conduct prejudicial to the best interest of the service.[4]

What happened next is summarized by the CA in its challenged decision of June 16, 2005, albeit the herein petitioners would except from some of the details of the appellate court's narration:

> Ignoring said formal charges, KMG, thru its President, Albert Velasco, commenced the instant suit on November 2, 2004, with the filing of the Petition for Prohibition at bench. On the ground that its members should not be made to explain why they supported their union's cause, petitioner [KMG] faulted respondent [Garcia] with blatant disregard of Civil Service Resolution No. 021316, otherwise known as the Guidelines for Prohibited Mass Action, Section 10 of which exhorts government agencies to "harness all means within their capacity to accord due regard and attention to employees" grievances and facilitate their speedy and amicable disposition through the use of grievance machinery or any other modes of settlement sanctioned by law and existing civil service rules." Two supplements to the foregoing petition were eventually filed by KMG. The first, ... apprised [the CA] of the supposed fact that its Speaker, Atty. Molina, had been placed under preventive suspension for 90 days and that the formal charges thus filed will not only deprive its members of the privileges and benefits due them but will also disqualify them from promotion, step increment adjustments and receipt of monetary benefits, including their 13th month pay and Christmas bonuses. The second, xxx manifested that, on December 17, 2004, respondent [Garcia] served a spate of additional formal charges against 230 of KMG's members for their participation in the aforesaid grievance demonstrations.
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> In his December 14, 2004 comment to the foregoing petition, respondent [Garcia] averred that the case at bench was filed by an unauthorized representative in view of the fact that Albert Velasco had already been dropped from the GSIS rolls and, by said token, had ceased to be a member – much less the President – of KMG. Invoking the rule against forum shopping, respondent [Garcia] called [the CA's] attention to the supposed fact that the allegations in the subject petition merely duplicated those already set forth in two petitions for certiorari and prohibition earlier filed by Albert Velasco .... Because said petitions are, in point of fact, pending before this court as CA-G.R. SP Nos. 86130 and 86365, respondent [Garcia] prayed for the dismissal of the petition at bench ....[5] (Words in bracket added.)

It appears that pending resolution by the CA of the KMG petition for prohibition in this case, the GSIS management proceeded with the investigation of the administrative cases filed. As represented in a pleading before the CA, as of May 18, 2005, two hundred seven (207) out of the two hundred seventy eight (278) cases filed had been resolved, resulting in the exoneration of twenty (20) respondent-employees, the reprimand of one hundred eighty two (182) and the suspension for one month of five (5).[6]

On June 16, 2005, the CA rendered the herein assailed decision[7] holding that Garcia's *"filing of administrative charges against 361 of [KMG's] members is tantamount to grave abuse of discretion which may be the proper subject of the writ of prohibition."* Dispositively, the decision reads:

> **WHEREFORE**, premises considered, the petition [of KMG] is **GRANTED** and respondent [Winston F. Garcia] is hereby **PERPETUALLY ENJOINED** from implementing the issued formal charges and from issuing other formal charges arising from the same facts and events.

SO ORDERED. (Emphasis in the original)

Unable to accept the above ruling and the purported speculative factual and erroneous legal premises holding it together, petitioner Garcia sought reconsideration. In its equally assailed Resolution[8] of October 18, 2005, however, the appellate court denied reconsideration of its decision.

Hence, this recourse by the petitioners ascribing serious errors on the appellate court in granting the petition for prohibition absent an instance of grave abuse of authority on their part.

We resolve to **GRANT** the petition.

It should be stressed right off that the civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS,[9] or those created by special law.[10] As such, employees of covered GOCCs are part of the civil service system and are subject to circulars, rules and regulations issued by the Civil Service Commission (CSC) on discipline, attendance and general terms/conditions of employment, inclusive of matters involving self-organization, strikes, demonstrations and like concerted actions. In fact, policies established on public sector unionism and rules issued on mass action have been noted and cited by the Court in at least a case.[11] Among these issuances is Executive Order (EO) No. 180, series of 1987, providing guidelines for the exercise of the right to organize of government employees. Relevant also is CSC Resolution No. 021316 which provides rules on prohibited concerted mass actions in the public sector.

There is hardly any dispute about the formal charges against the 278 affected GSIS employees – a mix of KMG union and non-union members - having arose from their having gone on unauthorized leave of absence (AWOL) for at least a day or two in the October 4 to 7, 2004 stretch to join the ranks of the demonstrators /rallyists at that time. As stated in each of the formal charges, the employee's act of attending, joining, participating and taking part in the strike/rally is a transgression of the rules on strike in the public sector. The question that immediately comes to the fore, therefore, is whether or not the mass action staged by or participated in by said GSIS employees partook of a strike or prohibited concerted mass action. If in the affirmative, then the denounced filing of the administrative charges would be *prima facie* tenable, inasmuch as engaging in mass actions resulting in work stoppage or service disruption constitutes, in the minimum, the punishable offense of acting prejudicial to the best interest of the service.[12] If in the negative, then such filing would indeed smack of arbitrariness and justify the issuance of a corrective or preventive writ.

Petitioners assert that the filing of the formal charges are but a natural consequence of the service-disrupting rallies and demonstrations staged during office hours by the absenting GSIS employees, there being appropriate issuances outlawing such kinds of mass action. On the other hand, the CA, agreeing with the respondent's argument, assumed the view and held that the organized demonstrating employees did nothing more than air their grievances in the exercise of their "broader rights of

free expression"[13] and are, therefore, not amenable to administrative sanctions. For perspective, following is what the CA said:

> Although the filing of administrative charges against [respondent KMG's] members is well within [petitioner Garcia's] official [disciplinary] prerogatives, [his] exercise of the power vested under Section 45 of Republic Act No. 8291 was tainted with arbitrariness and vindictiveness against which prohibition was sought by [respondent]. xxx the fact that the subject mass demonstrations were directed against [Garcia's] supposed mismanagement of the financial resources of the GSIS, by and of itself, renders the filing of administrative charges against [KMG's] member suspect. More significantly, we find the gravity of the offenses and the sheer number of persons ... charged administratively to be, at the very least, antithetical to the best interest of the service....
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> It matters little that, instead of the 361 alleged by petitioner, only 278 charges were actually filed [and] in the meantime, disposed of and of the said number, 20 resulted to exoneration, 182 to reprimand and 5 to the imposition of a penalty of one month suspension. Irrespective of their outcome, the severe penalties prescribed for the offense with which petitioner's members were charged, to our mind, bespeak of bellicose and castigatory reaction .... The fact that most of the employees [Garcia] administratively charged were eventually meted with what appears to be a virtual slap on the wrist even makes us wonder why respondent even bothered to file said charges at all. xxx.
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> Alongside the consequences of the right of government employees to form, join or assist employees organization, we have already mentioned how the broader rights of free expression cast its long shadow over the case. xxx we find [petitioner Garcia's] assailed acts, on the whole, anathema to said right which has been aptly characterized as preferred, one which stands on a higher level than substantive economic and other liberties, the matrix of other important rights of our people. xxx.[14] (Underscoring and words in bracket added; citations omitted.)

While its decision and resolution do not explicitly say so, the CA equated the right to form associations with the right to engage in strike and similar activities available to workers in the private sector. In the concrete, the appellate court concluded that inasmuch as GSIS employees are not barred from forming, joining or assisting employees' organization, petitioner Garcia could not validly initiate charges against GSIS employees waging or joining rallies and demonstrations notwithstanding the service-disruptive effect of such mass action. Citing what Justice Isagani Cruz said in *Manila Public School Teachers Association [MPSTA] v. Laguio, Jr.*,[15] the appellate court declared:

> It is already evident from the aforesaid provisions of Resolution No. 021316 that employees of the GSIS are not among those specifically barred from forming, joining or assisting employees organization such as [KMG]. If only for this ineluctable fact, the merit of the petition at bench is readily discernible.[16]

We are unable to lend concurrence to the above CA posture. For, let alone the fact that it ignores what the Court has uniformly held all along, the appellate court's position is contrary to what Section 4 in relation to Section 5 of CSC Resolution No. 021316[17] provides. Besides, the appellate court's invocation of Justice Cruz's opinion in *MPSTA* is clearly off-tangent, the good Justice's opinion thereat being a dissent. It may be, as the appellate court urged, that the freedom of expression and assembly and the right to petition the government for a redress of grievances stand on a level higher than economic and other liberties. Any suggestion, however, about these rights as including the right on the part of government personnel to strike ought to be, as it has been, trashed. We have made this abundantly clear in our past determinations. For instance, in *Alliance of Government Workers v. Minister of Labor and Employment,*[18] a case decided under the aegis of the 1973 Constitution, an *en banc* Court declared that it would be unfair to allow employees of government corporations to resort to concerted activity with the ever present threat of a strike to wring benefits from Government. Then came the 1987 Constitution expressly guaranteeing, for the first time, the right of government personnel to self-organization[19] to complement the provision according workers the right to engage in *"peaceful concerted activities, including the right to strike in accordance with law."*[20]

It was against the backdrop of the aforesaid provisions of the 1987 Constitution that the Court resolved *Bangalisan v. Court of Appeals.*[21] In it, we held, citing *MPSTA v. Laguio, Jr.,*[22] that employees in the public service may not engage in strikes or in concerted and unauthorized stoppage of work; that the right of government employees to organize is limited to the formation of unions or associations, without including the right to strike.

Jacinto v. Court of Appeals[23] came next and there we explained:

> Specifically, the right of civil servants to organize themselves was positively recognized in Association of Court of Appeals Employees vs. Ferrer-Caleja. But, as in the exercise of the rights of free expression and of assembly, **there are standards for allowable limitations** such as the legitimacy of the purpose of the association, [and] the overriding considerations of national security . . . .
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> As regards the right to strike, the Constitution itself qualifies its exercise with the provision "in accordance with law." This is a clear manifestation that the state may, by law, regulate the use of this right, or even deny certain sectors such right. Executive Order 180 which provides guidelines for the exercise of the right of government workers to organize, for instance, implicitly endorsed an earlier CSC circular which "enjoins under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walkouts and other forms of mass action which will result in temporary stoppage or disruption of public service" by stating that the Civil Service law and rules governing concerted activities and strikes in government service shall be observed. (Emphasis and words in bracket added; citations omitted)

And in the fairly recent case of *Gesite v. Court of Appeals,*[24] the Court defined the limits of the right of government employees to organize in the following wise: