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THIRD DIVISION

[G.R. NO. 155620, August 09, 2005]

PRUDENCIO QUIMBO, PETITIONER, VS. ACTING OMBUDSMAN MARGARITO GERVACIO AND DIRECTRESS MARY SUSAN S. GUILLERMO OF THE OMBUDSMAN OFFICE, RESPONDENTS.

D E C I S I O N

CARPIO-MORALES, J.:

Culled from the records of the case are the following facts:

Petitioner, Prudencio C. Quimbo, Provincial Engineer of Samar, was on May 21, 1995 administratively charged for harassment and oppression by Elmo V. Padaon (Padaon), a general foreman who was detailed to the Motor Pool Division, Provincial Engineering, Barangay Payao, Catbalogan, Samar by then Provincial Governor Jose Roño.

During the pendency of the administrative case before the Office of the Deputy Ombudsman, petitioner, on motion of the complainant Padaon, was by November 28, 1997 Order of the Ombudsman[1] placed under preventive suspension without pay to commence upon receipt of the order and until such time that it is lifted but in no case beyond Six (6) Months.

Petitioner began serving his preventive suspension on March 18, 1998.

After petitioner had presented on direct examination his last two witnesses, the Office of the Ombudsman, by Order of April 27, 1998,[2] lifted petitioner's preventive suspension. He was thus thereupon ordered, by Memorandum of June 3, 1998 issued by the OIC Provincial Governor, to resume performing his duties as Provincial Engineer.[3]

By Decision of April 5, 2000,[4] the Office of the Deputy Ombudsman found petitioner guilty of oppression and recommended that he be "suspended from office for a period of eight (8) months without pay, this case being the second commission by him of the same offense."[5]

The Deputy Ombudsman's recommendation was approved by the Ombudsman on April 28, 2000. Petitioner's motion for reconsideration of the Ombudsman's decision having been denied, he elevated the case to the Court of Appeals.

The appellate court, by Decision of March 1, 2001,[6] modifying the decision of the Ombudsman, found petitioner guilty of simple misconduct only and penalized him with suspension from office for a period of Two (2) Months without pay.

Following the finality of the appellate court's decision, the Office of the Ombudsman, by Order dated June 24, 2002,[7] directed the Provincial Governor to implement its decision, as modified by the appellate court.

Petitioner filed, however, before the Office of the Ombudsman a Motion for Modification/Reconsideration[8] of its June 24, 2002 Order, calling attention to the fact that he had been on preventive suspension from March 18, 1998 to June 1, 1998 and praying that the order under reconsideration be modified "to take into account the period of [his] PREVENTIVE SUSPENSION of TWO (2) MONTHS and SEVENTEEN (17) [DAYS] WITHOUT PAY as part of the final penalty imposed."[9]

In a similar move, Provincial Governor Milagrosa Tan sent a letter[10] also dated July 23, 2002 to the Ombudsman seeking clarification on the merits of petitioner's contention that he should no longer be required to serve the penalty of Two (2) Months suspension without pay, he having priorly served preventive suspension for more than Two (2) Months.

By letter dated August 21, 2002[11] addressed to the Provincial Governor, the Office of the Ombudsman clarified that "preventive suspension is not a penalty but a preliminary step in an investigation; [and that] [i]f after such investigation, the charge is established and the person investigated upon is found guilty . . . warranting the imposition of penalty, then he shall accordingly be penalized." The order for the implementation of its decision, as modified by the appellate court, was thus reiterated in the letter.

Unperturbed, petitioner, via certiorari, assailed before the Court of Appeals the Office of the Ombudsman's denial of his plea to be considered having served the modified penalty.

By Resolution dated October 2, 2002,[12] the Court of Appeals dismissed petitioner's petition for certiorari, it affirming the Ombudsman's ruling that preventive suspension pending investigation is not a penalty.

Hence, the present petition for review on certiorari raising as sole issue whether the appellate court committed reversible error when it dismissed his petition. Petitioner contends in the affirmative, he arguing that the dismissal of his petition is "in violation of the doctrine enunciated in *Gloria v. Court of Appeals*[13] and the rule on equity that a person should not be punished twice nor be made to suffer the suspension penalty after [he] had [served] the same (although in a preventive suspension)."[14]

The petition fails.

Jurisprudential law[15] establishes a clear-cut distinction between suspension as preventive measure and suspension as penalty. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the

accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.[16] If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.[17]

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.

> SEC. 24. Preventive suspension is **not a punishment or penalty** for misconduct in office but is considered to be a preventive measure. (Emphasis supplied).

Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. So Section 25 of the same Rule XIV provides:

> SEC. 25. The period within which a public officer or employee charged is placed under preventive suspension shall **not be considered part of the actual penalty of suspension** imposed upon the employee found guilty. (Emphasis supplied).

Clearly, service of the preventive suspension cannot be credited as service of penalty. To rule otherwise is to disregard above-quoted Sections 24 and 25 of the Administrative Code of 1987 and render nugatory the substantial distinction between, and purposes of imposing preventive suspension and suspension as penalty.

Petitioner's reliance on *Gloria* fails. In said case, this Court recognized two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension, to wit: (1) preventive suspension pending investigation (Section 51 of the Civil Service Law [Book V, Title I, Subtitle A of the Administrative Code of 1987]), and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated (Section 47(4) of The Civil Service Law).[18]

The foregoing classification has significant implications in determining the entitlement of the employee to compensation during the period of suspension, and to credit the preventive suspension to the final penalty of suspension.

Thus, in Gloria, this Court held:

> Preventive suspension pending **investigation**, as already discussed, is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. On the other hand, preventive suspension pending **appeal** is actually punitive although it is in effect subsequently considered illegal if respondent is exonerated and the administrative decision finding him guilty is reversed. Hence, he should be reinstated with full pay for the period of the suspension. Thus, §47(4) states that respondent "shall be considered as **under preventive suspension** during the pendency of the appeal **in the event he wins**."