

EN BANC

[G.R. No. 154095, November 17, 2004]

FRANCISCO C. ROSALES, JR., PETITIONER, VS. MIGUEL H. MIJARES, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 55904 affirming Resolution No. 991208^[2] of the Civil Service Commission (CSC) granting the appeal of the respondent herein from the Order dated September 24, 1998 dismissing the respondent as Municipal Engineer of Catarman, Northern Samar; and Resolution No. 992130 denying the motion for reconsideration thereof.

As culled by the appellate court from the records, the antecedents are as follows:

Being the duly-elected mayor of Catarman, Northern Samar, during the 1998 local elections, Francisco C. Rosales, Jr. (or "petitioner") assumed office on July 1, 1999. Shortly thereafter, petitioner summoned the department heads for a conference, among whom was the municipal engineer, Miguel H. Mijares (or "respondent").

During the meeting, petitioner told respondent to resign under pain of abolition of his position. Not wishing to antagonize the mayor, respondent informed him a week later that he was "open" to the possibility of being transferred or detailed at the Provincial Engineering Office. Then and there, petitioner instructed respondent to prepare his papers.

On August 3, 1998, petitioner indorsed respondent to the provincial governor of Northern Samar for consideration for the position of Assistant Provincial Engineer.

On August 12, 1998, petitioner wrote to respondent stating:

Your request to transfer to the Provincial Engineering Office, Catarman, Northern Samar, is granted for a period of thirty (30) days from receipt hereof, subject to the condition imposed by Civil Service Law, rules and regulations.

Meanwhile, respondent continued reporting for work at the Municipal Engineer's Office. However, the provincial governor did not act on petitioner's endorsement.

On September 24, 1998, petitioner again wrote to respondent, this time informing him of his separation, viz:

The 30-day period given to you to transfer to the Provincial Engineering Office has now elapsed and, in as much as you did not seek an extension of your permit to transfer, you are considered resigned from this government unit as of September 13, 1996, pursuant to MC No. 38, S. 1993 of the Civil Service Commission.

In a letter dated October 2, 1998, respondent requested petitioner to withdraw the above-quoted separation letter. He pointed out that since the request for transfer to the Provincial Engineer's Office was not acted upon, the same never became effective and, therefore, he did not cease to be an employee of the municipal government.

In his reply letter dated October 15, 1998, petitioner explained that respondent was not terminated and that his separation from the service was by operation of law, i.e., Civil Service Commission (or "CSC") Memorandum Circular (or "MC") No. 38, S. 1993. In the same communication, petitioner offered to reinstate respondent.

On November 12, 1998, respondent filed a complaint for illegal termination against petitioner before the CSC. Treating the complaint as an appeal, the Director of CSC Regional Office No. 8 instructed Victoria E. Valeriano (or "Ms. Valeriano"), Head Civil Service Field Officer in Catarman, to conduct a fact-finding investigation on respondent's case. Pursuant to the directive, Ms. Valeriano asked petitioner to submit the original of respondent's request for transfer. In a letter dated January 11, 1998, petitioner informed Ms. Valeriano that respondent's request was merely verbal.

In an order dated April 16, 1999, the CSC Office of Legal Affairs required petitioner to comment on the appeal. Complying with the directive, petitioner explained that respondent's separation was valid and legal under CSC MC No. 38, S. 1993, since the latter's permit to transfer to the Provincial Engineer's Office expired without his transfer being effected. In support of his defense, petitioner appended his documentary evidence to his comment, including the legal opinions of the CSC Regional Office and the Provincial Prosecutor upholding the validity of his action.

On June 17, 1999, the CSC issued a resolution, the decretal portion of which resolution (*sic*) reads:

WHEREFORE, the appeal of Miguel H. Mijares is hereby granted. Accordingly, Mayor Francisco C. Rosales, Jr. is directed to immediately reinstate Mijares to his former position of Municipal Engineer and to cause the payment of all his salaries and other benefits from the date of his unlawful separation from the service up to his actual reinstatement.^[3]

The CSC held that the respondent did not freely and voluntarily seek permission from the petitioner to transfer to another office and that based on the record, the

supposed transfer of the respondent to the Office of the Provincial Engineer was a shrewd machination or clever ploy resorted to by the petitioner to oust the respondent from his position as Municipal Engineer; hence, such transfer was illegal. The CSC cited the rulings of this Court in *Sta. Maria v. Lopez*^[4] and *Divinagracia, Jr. v. Sto. Tomas*.^[5] The CSC also ruled that a request for transfer, under CSC Memorandum Circular No. 98-38, must be in writing; and that even assuming that a verbal request for transfer may be made, the petitioner failed to adduce any proof that the respondent made such verbal request, as well as the date of the effectivity of the transfer. The CSC cited its ruling in CSC Resolution No. 99-1616 dated July 20, 1999. The CSC declared that the letter of the petitioner to the respondent dated August 12, 1998 was but a detail of the respondent to the Office of the Provincial Engineer.

The petitioner's motion for a reconsideration of the resolution was denied by the CSC per its Resolution No. 992130.

The petitioner, thereafter, filed a petition for review with the CA assailing the resolutions of the CSC. On December 20, 2001, the CA rendered a decision dismissing the petition and affirming the resolutions of the CSC. The appellate court affirmed *in toto* not only the finding of the CSC, but also its rulings on the issues raised by the petitioner. The CA also held that:

Well-settled is the rule that in reviewing administrative decisions, the findings of fact made therein must be respected as long as they are supported by substantial evidence (Lo vs. Court of Appeals, 321 SCRA 190). We see no cogent reason to depart from said principle.

It is also noteworthy that the ground relied upon to justify respondent's removal, i.e., expiration of his permit to transfer, is purely technical and, therefore, too flimsy to override the constitutional mandate upholding an employee's right to security of tenure (Art. IX-B, Sec. 2, par. 3, 1987 Constitution). As held in *Divinagracia, Jr. vs. Sto. Tomas* (244 SCRA 595), "the guarantee of security of tenure is an important object of the civil service system because it affords a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal prejudicial reprisal."^[6]

The petitioner's motion for reconsideration of the decision was denied by the appellate court.

The petitioner filed his petition for review on certiorari with this Court, contending that the CA erred as follows:

I. IN UPHOLDING THE FINDINGS OF THE CIVIL SERVICE COMMISSION WHICH IMPROPERLY INTERPRETED THE PROVISIONS OF PART II, ITEM 5(a)^[4] OF CSC MC NO. 93-38 AND RULING THAT PETITIONER ILLEGALLY TERMINATED RESPONDENT.

II. IN HOLDING THAT PETITIONER WAS AFFORDED DUE PROCESS.

III. IN DECIDING THE CASE IN FAVOR OF RESPONDENT DESPITE THE EXISTENCE OF OVERWHELMING EVIDENCE TO THE CONTRARY.

IV. IN ORDERING PETITIONER TO PAY THE COSTS.^[7]

The petition has no merit.

The petitioner faults the CSC and the appellate court for ruling in favor of the respondent, contending that, as gleaned from the respondent's October 2, 1998 Letter, the latter requested for a transfer and was not coerced nor forced to do so. The petitioner asserts that no less than the respondent declared therein, as well as on the other documents on record, that he requested to be transferred to the Office of the Provincial Engineer, and that he secured photo copies of his service records and other documents from the municipality in support of his written request for transfer, and himself submitted such request to the Office of the Governor. The petitioner asserts that the October 28, 1998 Opinion of CSC Regional Office No. 8 and of the Provincial Prosecutor dated November 12, 1998 frontally belie the findings of the CSC and the appellate court. According to the petitioner, he should not be faulted by the CSC for applying the letter and spirit of CSC Memorandum Circular No. 93-38.

The petitioner further alleges that the respondent did not even heave a whimper of protest despite the receipt of the Letter dated September 24, 1998 informing him of his separation. The respondent is thus estopped, the petitioner insists, from assailing the termination of his service as Municipal Engineer of Catarman. The petitioner concedes that factual findings of quasi-judicial bodies, such as the CSC, are conclusive if based on substantial evidence. He, however, contends that, in this case, the CSC ignored and misunderstood the evidence on record, thereby committing a grave injustice.

We do not agree with the petitioner. CSC Memorandum Circular No. 93-38 reads:

Transfer – is a movement from one position without break in service involving the issuance of an appointment.

The transfer may be from one agency to another or from one organizational unit to another in the same agency.

An employee who seeks transfer to another office shall first secure permission from the head of the department or agency where he is employed stating the effective date of the transfer. If the request to transfer of an employee is not granted by the head of the agency where he is employed, it shall be deemed approved after the lapse of 30 days from the date of notice to the agency head.

If, for whatever reason, the employee fails to transfer on the specified date, he shall be considered resigned and his reemployment in his former office shall be at the discretion of his head.^[8]

The CSC interpreted its Memorandum as requiring a written and not merely a verbal request for an employee to transfer to another office. Moreover, such request must be express and unequivocal, and cannot be merely implied or ambiguous. The request by an employee to transfer to another office must be such that he intended to surrender his permanent office. Also, a transfer connotes an absolute

relinquishment of an office in exchange for another office. Such request must be voluntary on the part of the officer concerned and not vitiated by force, coercion, or intimidation or even deceit. Indeed, in *Sta. Maria v. Lopez*,^[9] we held that:

A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to "lure the employee away from his permanent position," cannot be done without the employee's consent. For that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position.^[10]

The Court also held that unconsented transfer is anathema to security of tenure.^[11] A transfer that aims by indirect method to terminate services or to force resignation constitutes removal.^[12] An employee cannot be transferred unless for causes provided for by law and after due process.^[13] Any attempt to breach the protective wall built around the employee's right to security of tenure should be slain on sight. The right of employees to security of tenure should never be sacrificed merely at the whims and pleasure of some unscrupulous and heartless politicians. As we held in *Nemanzo v. Sabillano*:^[14]

There are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts.^[15]

In this case, the petitioner, who perceived that the respondent was a well-known supporter of the political party opposed to his candidacy, coerced the respondent into resigning and even threatened to have his position as Municipal Engineer abolished. This was chronicled by the respondent in his letter to the petitioner dated October 2, 1998:

Hon. Francisco C. Rosales, Jr.
Municipal Mayor
Cataraman, Northern Samar

Dear Mayor Rosales:

In answer to your letter of 24 September 1998 terminating my services as Municipal Engineer of Cataraman, effective September 13, 1998, allegedly due to my failure to seek an extension of my permit to transfer to [the] Provincial Engineering Office, please be reminded of the following facts and events.

A few days after you assumed office as new Mayor of Cataraman, or on July 2, 1998, you called me to your office and told me to resign from my position as Municipal Engineer because you did not like me to continue serving under your administration, and if I did not resign, you would abolish my position. You give (*sic*) me one week to think about your proposal. As a permanent employee, I realized that your proposal was