

## THIRD DIVISION

[ G.R. No. 141149, July 05, 2002 ]

**SEBASTIAN GARCIA, PETITIONER, VS. JUANITO A. PAJARO AND  
THE CITY OF DAGUPAN, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

The city treasurer of Dagupan has the authority to institute disciplinary actions against subordinate officers or employees. The essence of due process in an administrative proceeding is the opportunity to explain one's side, whether written or verbal. The constitutional mandate is satisfied when a petitioner complaining about an action or a ruling is granted an opportunity to seek reconsideration.

#### Statement of the Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the June 17, 1999 Decision<sup>[1]</sup> and the December 14, 1999 Resolution<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR SP No. 48285. The decretal portion of the Decision reads as follows:

"WHEREFORE, finding no reversible error in the appealed decision, [this Court hereby affirms it] *in toto*. No costs."<sup>[4]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

The affirmed Decision of the Regional Trial Court (RTC) of Dagupan City (Branch 40), disposed as follows:

"WHEREFORE, this case is hereby DISMISSED, without costs."<sup>[5]</sup>

#### The Facts

The factual antecedents of the case, as summarized by the RTC and adopted by the CA, are reproduced as follows:

"Evidence for the petitioner tends to show that petitioner SEBASTIAN GARCIA, 61, married, employee at the City Treasurer's Office, Dagupan City and resident of Lucao, Dagupan City, has been employee thereat since June 15, 1974 as Revenue Collector appointed to that position by then City Mayor Cipriano Manaois. He was ordered suspended by City Treasurer Juanito Pajaro from June 1, 1990 to March 15, 1992 and directed the withholding of his salary because of the Formal Charge filed against him. He resumed work on March 16, 1992 as Local Treasury Officer III. When he was suspended, his position was Local Treasury Officer and Revenue Officer with a salary of ₱6,800.00 a month. When he resumed work, his salary was already ₱7,615.00 monthly. From June 1, 1990 up to March 15, 1992, he had been reporting for work because he did not honor the suspension order as the City

Treasurer acted as the complainant, investigator and judge and there was no complaint against him from the Office of the City Mayor. He did not believe in the Order; he did not submit himself for investigation. He was not paid his salary because of the suspension order which caused his sleepless nights, his two (2) children stopped schooling, he has to beg from his relatives. He has a wife with four (4) children in college, one in Commerce, another taking up Dentistry. During the 1990 earthquake, there was calamity loan granted to employees but he could not avail of it because the City Treasurer would not approve the loan. He is asking P1,000,000.00 for his mental anguish and sufferings. From July to October, 1987 the City Treasurer refused to give him his COLA, differential, cash gift, salary and mid-year bonus amounting to P6,800.00 up to the present. His salary now is P13,715.00 as Treasury Officer III. Contrary to the charges of the City Treasurer, he has been doing his duties and obligations; that for the acts of charging him in the Department of Finance and for charging him for neglect of duties, he felt deeply hurt and is asking P250,000.00 for that; his agreement with his counsel is P25% of what will be awarded to him.

"Petitioner's documentary evidence consists of the following:

Exhibit 'A', Order of Preventive Suspension dated June 1, 1990;

Exhibit 'B', Memorandum addressed to the disbursing Officer dated June 1, 1990;

Exhibit 'C', Formal Charge;

Exhibit 'D', Subpoena issued by respondent Pajaro;

Exhibit 'E', Communication dated June 1, 1990 to Regional Director, Bureau of Local Government, Department of Finance by the City Treasurer;

Exhibit 'F', Answer by respondent.

"Evidence for Respondent PAJARO tends to show that

"JUANITO PAJARO, 65, married, City Treasurer of Dagupan City, first served in concurrent capacity and OIC on December 4, 1981 and was regularly appointed as City Treasurer on January 2, 1986 up to the present. Petitioner Sebastian Garcia is at present the Local Treasury Officer III but way back in 1990 he was Senior Revenue Collector whose immediate superior was the late Mr. Viray, the Chief of the Local Taxes, then the Assistant City Treasurer, and the City Treasurer himself. Petitioner has been rating Unsatisfactory in his performance for several semesters which is the reason a [Formal] Charge was filed against petitioner received by him on June 1, 1990, 10:00 a.m. and, as a matter of procedure, if the charge is a major offense, by civil service laws, he was preventively suspended for ninety (90) days, also duly received by Mr. Garcia on June 4, 1990 at 2:00 p.m. Then an investigation was scheduled and a subpoena was issued to Mr. Garcia to appear and testify on August 15, 1990 duly received by him on August 1, 1990, 8:55. Again Mr. Garcia did not Answer and refused to honor the subpoena to submit himself for investigation. So he proceeded with ex-parte investigation and gathered and submitted testimonies to support the allegations in the Formal Charge then submitted the result of their findings to the Department of Finance for decision. A Decision was promulgated by the Department of Finance on August 1, 1991. The matter of preventive suspension of Mr. Garcia was submitted to the Regional Director, Bureau of Local Government Finance which was 'favorably approved' by the Regional

Director. This case stemmed from the application of the petitioner for the position of supervising revenue collector and he was duly appointed. The same appointment was opposed by Mrs. Evangeline Estrada and by a resolution of the Civil Service Commission, the appointment of Mrs. Evangeline Estrada was duly confirmed. Mrs. Estrada was recommended first and she was issued an appointment by the City Mayor and was submitted to the CSC. It was contested by Mr. Garcia. The first ruling of the CSC was adverse to Mrs. Estrada and she requested for reconsideration. In the meantime, Mr. Garcia was able to get an appointment from the same City Mayor but it was not approved. The CSC reconsidered the request of Mrs. Estrada favorably as shown by Resolution 91-359 dated March 14, 1991. That position was affected by the reorganization and it was changed to Local Treasury Operations Officer III now occupied by Mrs. Estrada. Despite the fact that he was always u[p]held by the CSC and the Department of Finance, this case based on unfounded allegations was filed against him, he is confirming his counterclaim against the petitioner with 25% attorney's fees and P1,000.00 per appearance. Petitioner's charge that his benefits were unduly withheld from him is not true because the law states when you are charged and preventively suspended, the salary could not be collected. As a matter of fact, the petitioner was not acquitted; there was additional penalty. He was penalized with a suspension of six (6) months without pay so he could not by any means collect his salary. On the other hand, he was the one being harrassed (sic) by the petitioner; it has affected his performance and efficiency in the office, including sleepless nights. In explaining the entries in the Performance [A]ppraisal Report, he said that the forms were given to the personnel to rate themselves and then the final rating goes to the supervisor. The personnel gave themselves excellent ratings but the basis of their record is the true assessment made by the supervisor. In this case, the petitioner should have protested when he received his copy but he did not. During the period of his preventive suspension, of course, the petitioner did not receive his salary. He is not aware of the petitioner's allegation that he reported for work during the period of his preventive suspension, but that his co-employees testified that petitioner timed-in at 8:00 a.m. and 1:00 p.m. but did not make 'time-outs'.

"The respondent City of Dagupan adopted the evidence of respondent Treasurer Pajaro.

"At the pre-trial conference, the parties agreed to limit the litigation on the following issues:

- 1) whether or not petitioner is entitled to right of action against the respondents; and
- 2) who is entitled to damages."<sup>[6]</sup> (Citations omitted.)

### Ruling of the Court of Appeals

Affirming the RTC Decision, the CA held that private respondent was vested with legal power and authority to institute disciplinary action against subordinate officers and employees.<sup>[7]</sup>

The appellate court further held that the requisites of administrative due process had been fully observed by Respondent Pajaro while investigating petitioner. But despite being informed of the charges against him and being given the opportunity to be heard in a formal investigation, petitioner chose not to answer those charges.<sup>[8]</sup>

Hence, this Petition.<sup>[9]</sup>

### Issues

In his Memorandum, petitioner raises the following issues for the Court's consideration:

"First: Who has the power to remove, suspend or discipline the petitioner as a local employee, appointed by the City Mayor, the latter o[r] the City Treasurer?

"Second: Is the filing of the formal charge by the [private respondent] with himself valid?

"Third: Is the suspension of the petitioner by virtue of the formal charge valid?

"Fourth: Who is liable for the unpaid salaries and benefits of the petitioner?

"Fifth: Is the respondent personally liable for the damages suffered by the petitioner?"<sup>[10]</sup>

Simply stated, the issues boil down to two:

1. Whether the city treasurer of Dagupan can discipline petitioner
2. Whether petitioner's right to due process was violated

### This Court's Ruling

The Petition is not meritorious.

#### First Issue:

#### *Disciplinary Authority of the City Treasurer*

Petitioner claims that the officer empowered to institute disciplinary proceedings against him is the city mayor of Dagupan -- not the city treasurer. He further asserts that under Section 78 of the Local Government Code of 1983,<sup>[11]</sup> the city treasurer does not have the power to discipline him.

We are not persuaded.

At the outset, it should be pointed out that under the old and the present Local Government Codes, appointive officers and employees of local government units are covered by the Civil Service Law; and such rules, regulations and other issuances duly promulgated pursuant thereto,<sup>[12]</sup> unless otherwise specified. Moreover, the investigation and the adjudication of administrative complaints against appointive local officials and employees, as well as their suspension and removal, shall be in accordance with the Civil Service Law and rules and other pertinent laws.<sup>[13]</sup>

The Administrative Code of 1987,<sup>[14]</sup> -- specifically Book V on the civil service -- is the primary law governing appointive officials and employees in the government.<sup>[15]</sup> This Code enumerates the grounds for disciplining them.<sup>[16]</sup> They may be removed or dismissed summarily "(1) [w]hen the charge is serious and the evidence of guilt is strong; (2) [w]hen the respondent is a recidivist x x x; and (3) [w]hen the respondent is notoriously undesirable."<sup>[17]</sup> Technical rules of procedure and evidence are not strictly applied; due process in the administrative context cannot be fully equated with that in the strict judicial sense.<sup>[18]</sup>

The power to discipline is specifically granted by Section 47 of the Administrative Code of 1987<sup>[19]</sup> to heads of departments, agencies and instrumentalities, provinces and cities.<sup>[20]</sup> On the other hand, the power to commence administrative proceedings against a subordinate officer or employee is granted by Section 34 of the Omnibus Rules Implementing Book V of the said Administrative Code<sup>[21]</sup> to the secretary of a department, the head of office of equivalent rank, the head of a local government unit, the chief of an agency, the regional director or a person with a sworn written complaint.

Further, the city treasurer may institute, *motu proprio*, disciplinary proceedings against a subordinate officer or employee. Local Administrative Regulations (LAR) No. 2-85,<sup>[22]</sup> which was issued by the Ministry of Finance on March 27, 1985, authorized the minister (now secretary) of finance, the regional director, and head of a local treasury or an assessment office to start administrative disciplinary action against officers or employees subordinate to them. The pertinent portions of LAR 2-85 are reproduced hereunder:

#### “RULE I - INSTITUTION OF ADMINISTRATIVE DISCIPLINARY ACTIONS

“Sec. 1. How commenced. – Administrative disciplinary action may be commenced against a subordinate officer or employee by the Minister of Finance, Regional Directors or heads of the local treasury or assessment offices at their own instance (*motu proprio*) or upon sworn written complaint by any other person.

“In the case of a complaint filed by any other person, the complainant shall submit sworn statements covering his testimony and those of his witnesses together with his documentary evidence.

x x x

x x x

x x x

#### “RULE IV - HEARING

“Sec. 1. *Officer authorized to conduct hearings.* -- The investigation shall be conducted by the Minister of Finance or the Director for Local Government Finance or his/her assistants or regional director or head of office concerned or the duly designated representatives of said officials. The duly designated representatives shall make the necessary report and recommendation to the chief of office, regional director or this Ministry, as the case may be. The investigation shall be held not earlier than five (5) days not later than ten (10) days from date of receipt of respondent's answer by the disciplining authority and shall be finished within thirty (30) days from commencement of the hearing, unless the period is extended or continuance allowed in meritorious cases.”<sup>[23]</sup>

In the case at bar, the city treasurer is the proper disciplining authority referred to in Section 47 of the Administrative Code of 1987.<sup>[24]</sup> The term “agency” refers to any of the various units of the government including a department, a bureau, an office, an instrumentality, a government-owned or controlled corporation, or a *local government or a distinct unit* therein.<sup>[25]</sup> Respondent Pajaro, as the city treasurer, was the head of the Office of the Treasurer; while petitioner, a senior revenue collector, was an officer under him. Thus, the city treasurer is the proper disciplining authority who could investigate petitioner and issue a preventive suspension order against him.<sup>[26]</sup>